Praxair, Inc.
39 Old Ridgebury Road
Danbury, CT 06810

VIA WEBSITE POSTING AND E-MAIL

December 15, 2010

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Subject: Comments of Praxair, Inc. Regarding Proposed Regulation Order for a California Cap-and-Trade Program

Dear Clerk:

Praxair, Inc. ("Praxair") submits these comments to the California Air Resources Board ("CARB") in response to the public notice regarding CARB's proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms and related Appendixes (collectively, the "Proposed Rule"). Praxair appreciates the goals of the cap-and-trade program but is concerned that, as currently structured, the Proposed Rule would unfairly disadvantage three of Praxair's separate business operations and other similar businesses within California.

Praxair is a global, Fortune 300 company that supplies atmospheric, process, and specialty gases, high-performance coatings, and related services and technologies to a wide diversity of customers. Praxair has approximately 27,000 employees and operations in more than 30 countries. Praxair serves a wide range of industries: aerospace, food and beverages, chemicals, refining, healthcare, semiconductors, ore and gas production, primary metals and metal fabrication, as well as other areas of general industry.

Praxair has more than 1,000 employees working at 80 locations in California. Primary products are oxygen, nitrogen, hydrogen, carbon dioxide, helium, and argon. Praxair operates numerous air separation plants, a hydrogen production facility (two others are in construction), two carbon dioxide recycling/purification plants, many cylinder filling/retail operations, coatings services operations, and other businesses within the state. Praxair also owns a cogeneration plant in Wilmington, California that is likely to be repowered to support nitrogen, oxygen, and argon production. All of Praxair's gas production activities are energy intensive, with electricity representing up to approximately 70% of the variable cost of production for atmospheric gases.[1] That energy intensity provides a very strong

[1] In addition to its electricity use intensity, certain of Praxair's industrial gas production activities utilize natural gas as a feedstock. Hence, Praxair faces significant indirect compliance cost burdens in addition to the future imposition of direct compliance costs on natural gas consumption.

signal for Praxair to be efficient with its energy use since energy consumption—whether purchased from the grid or produced on-site—directly and substantially impacts the costs of the products it sells. Praxair's efficiency improvements, along with its greenhouse gas ("GHG") management efforts, are well-recognized by a number of sustainability benchmarking entities, including its status as the only industrial gases company included in the 2010-2011 Dow Jones Sustainability World Index.[2]

Praxair's comments primarily focus on the anticipated substantial adverse economic impacts arising from the Proposed Rule's failure to directly allocate any allowances for the purpose of industry assistance to the company's three types of operations: 1) its stand-alone hydrogen gas production plants; 2) cogeneration plants/self-generation plants, and 3) its carbon dioxide supply and distribution efforts.

Praxair recently met with CARB Staff to discuss its concerns with the Proposed Rules. We understand that the Board will direct Staff to continue its work to address stakeholder concerns with the issues highlighted here. Praxair is committed to work with Staff to address the unique and serious impacts that the Proposed Rules as currently drafted would have on Praxair's operations.

1. The Final California Cap-and-Trade Regulations Should Allot Allowances for Stand-alone Hydrogen Plants Not Associated with Refineries

Section 95811(a)(4) of the Proposed Rule identifies operators of hydrogen production plants as covered entities and Section 95890(a) states that a covered entity from the industrial sectors listed in Table 8-1 shall be eligible for direct allocations of California GHG allowances. However, hydrogen production plants are *not* listed in Table 8-1. Instead, Appendix K, Leakage Analysis, p. K-6, includes hydrogen plants as an associated process of petroleum refining: ("These plants and activities [petroleum refining] include hydrogen plants,…"). Table K-2: Sector Classification for Emissions Leakage Analysis, p. K-7, lists "Petroleum products mfg" as an aggregated sector and includes "industrial gas/hydrogen plant" as the description of one of these associated processes. And Table 8-1: Industry Assistance, assigns a "Leakage Risk" to "petroleum refining" as "Medium" and provides a 100% Industry Assistance Factor ("AF") for the first Compliance Period from 2012-2014; 75% AF for the second Compliance Period (2015-2017); and 50% AF for the last Compliance Period (2018-2020).

Praxair's Ontario hydrogen plant does not supply refineries. This plant - and any other company's stand-alone merchant hydrogen production plant that does not serve a petroleum refinery - will not have an opportunity to seek from a host petroleum refinery any allowances that have been directly allotted by CARB to the refinery. Because merchant hydrogen production is not listed as an industry eligible for direct assistance, our Ontario plant will be compelled to acquire allowances at auction or from third parties in the secondary markets, raising the cost of our hydrogen product.

[2] Praxair has been repeatedly cited for excellence in sustainability and climate change management, innovation, and reporting by leading socially responsible investment analyst groups and others. A summary of sustainability recognition can be found at: http://www.praxair.com/praxair.nsf/0/B41C07E0D4C2B47A8525770500686313/$file/SD_Awards.pdf.

Praxair's Ontario plant supplies liquefied hydrogen to customers in the aerospace/defense, steel, and glass manufacturing industries, among others. The U.S. government is a major customer for aerospace and defense-related needs. More than 50% of the Ontario plant's production used to meet customer demand outside of California, making this plant vulnerable to "activity shifting leakage" (e.g., production-related emissions shifting to out-of-state competitors not subject to the AB 32 program) from plants not subject to the GHG compliance costs. Moreover, there will be elevated competition for customers located within California from production occurring outside the state where production plus transportation costs can meet or beat in-state production and delivery costs.

Because hydrogen is such a light compound compared to carbon dioxide, for every ton of hydrogen product produced in a steam methane reformer ("SMR") there are ten tons of carbon dioxide byproduct. This energy-intensive production relationship magnifies the direct and indirect GHG compliance cost impact on Praxair's final price to its hydrogen customers. So, assuming the CO_2 allowances' initial cost in 2012 is $10 per metric ton (the floor price), the corresponding impact on our hydrogen product price is $100 per ton. At full production, this cost could amount to almost a million dollars annually, with such compliance cost burdens increasing as the presumed value of allowances increases and the allowance cap decreases over time.

Should Praxair not be allocated free allowances, the high incremental compliance costs for purchasing allowances will likely prompt two results: 1) Praxair buying allowances and incurring substantial incremental costs for product sold to customers, thus rendering our business uneconomic; and 2) our customers obtaining hydrogen from out-of-state producers, at substantial increased costs to the customer, but at the same time undermining our continued business operation viability. Increasing demand for out-of-state supply also has the unintended consequence of increasing GHG emissions from the liquid hydrogen-bearing tractor trailers that will need to travel substantially farther from states into California to supply in-state customers. Either outcome is inconsistent with some of the Act's stated purposes in section 38562: "to achieve …cost-effective reductions…" and "to minimize leakage".

Praxair met with CARB Staff on Monday, December 13, 2010 to discuss this leakage issue. We are currently in the process of compiling additional data as requested by CARB Staff to help with the leakage risk analysis. We anticipate providing the information and continuing our dialogue with Staff on the impacts to Praxair's activities and the justification for inclusion in Table 8-1.

At this time Praxair requests that the Board's Resolution adopting the draft regulations give specific instruction to allocate free allowances for stand-alone hydrogen production plants as a "High" Leakage Risk and to include such plants in Table 8-1 in Appendix A of the Proposed Rule.

2. CARB Should Allocate Allowances to Operators of Cogeneration and Self-generation Plants; Clarify Utilities' Uses of Allowances; and Offer Flexibility in Meeting Compliance Obligations

A. Allowances Should be Freely Allocated to Cogeneration Facilities Supporting Industrial Operations

Cogeneration and self-generation are efficient, clean, and reliable approaches to generating power and thermal energy from a single fuel source. That is, they use heat that is otherwise discarded from conventional power generation to produce thermal energy. This energy is used to provide cooling or heating for industrial facilities, district energy systems, and commercial buildings. By recycling this waste heat, cogeneration and self-generation systems can achieve a dramatic improvement over the conventional fossil-fueled power plants, or from separate production of electricity and useful thermal energy. Cogeneration plants' higher efficiencies reduce air emissions of nitrogen oxides, sulfur dioxide, mercury, particulate matter, and carbon dioxide.

Moreover, cogeneration and self-generation facilities reduce net grid demand and associated transmission losses, a fact recognized by the Modeling GHG Reductions Strategies California Air Resources Board ENERGY 2020 Inputs and Assumptions. *See* page 21. Appendix N – Economic Analysis, Figure N-3, of the Proposed Rule identifies cogeneration as a favored policy of the state.[3]

As a covered entity under section 95811(a) of the Proposed Rules, the operators of cogeneration plants serving industrial energy needs should directly receive free allowances. CARB should ensure that the potential industrial customers' investment in combined heat and power ("CHP"), with its significant greenhouse gas reduction benefits, is not discouraged by the cap-and-trade regulation.

The AB 32 Scoping Plan sets "a target of an additional 4,000 MW of installed CHP capacity by 2020, enough to displace 30,000 GWh of demand from other power generation sources."[4] However, the cap-and-trade program does not account for the reductions in GHG emissions attributable to CHP facilities. Moreover, the rationale for inclusion of CHP facilities in the cap-and-trade program states that "It is necessary to include emissions from cogeneration units because these units are widely used by industries and represent a large share of California GHG emissions. The use is expected to grow and the efficiency is

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[3] *See*, e.g., Calif. Pub. Util. Code §372(a) "372. (a) It is the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth. …". Assembly Bill 1613 (Blakeslee, Chapter 713, Statutes of 2007) as amended by Assembly Bill 2791 (Blakeslee, Chapter 253, Statutes of 2008) directed the California Energy Commission, the Public Utilities Commission (CPUC), and the Air Resources Board (ARB) to implement the Waste Heat and Carbon Emissions Reduction Act. The Act is designed to encourage the development of new combined heat and power (CHP) systems, also known as cogeneration, in California with a generating capacity of not more than 20 megawatts. Also, Calif. Pub. Util. Code § 454.7. "The [public utilities] commission shall, to the extent permitted by federal law and consistent with Section 2771, provide cogeneration technology projects with the highest possible priority for the purchase of natural gas."

[4] *See* Scoping Plan at pp. 43-44.

expected to improve."[5] This anticipated growth and efficiency enhancement is not recognized through financial support in the Proposed Rules – the financial support provided through free allowances that is offered by CARB to many other industrial sectors.

As currently structured, the cap-and-trade program will undermine the Scoping Plan's CHP goal by placing significant, additional direct compliance costs on new and existing cogeneration facilities, regardless of the efficiency of a particular facility, especially if the facility is sized to meet on-site loads and does not make substantial quantities of electric power for wholesale sales.[6] This is particularly true in Praxair's case, where as the owner of the self-generation facility in a sector not provided any relief via direct allowance allocations, its potential investment in CHP could be rendered uneconomic because of the direct compliance burden, particularly when compared to electricity procurement from the grid where there is a potential level of rebate from the IOU or POU.

The cap-and-trade program may also disrupt existing commercial arrangements for the use of CHP at industrial facilities. If a CHP facility sells thermal energy to an industrial facility that is eligible for a direct allowance allocation under § 95890(a), the industrial facility may choose to discontinue its purchase of thermal energy from the CHP facility. This could occur because thermal energy from the CHP facility would have been subject to the cost of a compliance obligation to purchase emissions allowances, whereas thermal energy produced by the industrial facility would be eligible for direct allocation. Consequently, thermal energy from the CHP would carry an incremental GHG compliance cost and could be more expensive than thermal energy produced by the industrial facility, resulting in the unintended consequence of reducing use of CHP.

To avoid this counterproductive result, emissions associated with CHP facilities should be characterized as industrial sector emissions. CHP facilities should be eligible for allowances allocated for "industry assistance" and should be included in Table 8-1. CHP facilities should receive allowances based on the Thermal Energy Based Allocation Calculation Methodology, which would effectively allocate allowances to a source based on a thermal efficiency benchmark (0.05307 GHG allowances / MMBtu).[7] Facilities that beat the efficiency benchmark should be able to sell the surplus emissions allowances in the quarterly auctions (or bank for use in subsequent periods) and, in doing so, CARB would create an investment incentive for repowering and efficiency improvements at existing industrial CHP facilities.

Finally, operation of a cogeneration or self-generation plant, and decisions about additional capital expenditures to repower or enhance its efficiency, turn in part on the relative cost of operation and value of electric and thermal energy produced compared to the forecasted costs for separate electric commodity purchases from the grid and thermal energy production. If the electric distribution utilities receive free allocations that will result in a transfer of value back to customers taking electricity from the grid, but no similar value is rebated to the loads served by on-site cogeneration or self-generation, then the cost

[5] See ISOR at p. IX-3.

[6] This assumes that for those facilities able to make sales into the wholesale market, the market price should reflect some level of GHG-related compliance costs.

[7] See Proposed 17 Cal. Code Reg. § 95891(c).

comparison will skew against use of or investment in cogeneration or self-generation. This would be inconsistent with CARB's goals to increase use of cogeneration and self-generation as a GHG emission reduction strategy.

B. Electricity Cost Impacts and Use of Allowance Proceeds (§95892(d))

CARB should provide greater clarity and direction on the distribution utilities' use of allowance proceeds and direct the use of allowance proceeds to minimize rate impacts to the distribution utilities' customers. This is critical to provide some parity between similar facilities located in different utility (IOU vs. POU) territories. CARB should also include additional reporting requirements to ensure that the IOUs do not use allowance proceeds in a manner that discriminates among customers with different electric commodity providers.

The Proposed Rule does not specify how allowance proceeds should be used by the distribution utilities. Praxair is concerned that without additional direction from CARB, allowance revenues could be used for the utility programs that may not benefit all distribution services customers, particularly those in electricity intensive industries interconnected at transmission voltages or receiving electric commodity in the competitive market. Praxair urges CARB to clarify Section 95892 to ensure that allowance revenues are used to mitigate electricity cost impacts, especially in industries that are largely exposed to higher energy costs, such as the energy-intensive industrial gases industry.

The Proposed Rule (§95892(d)(3)(A)) provides that "Investor Owned Utilities shall ensure equal treatment of their own customers and customers of electricity service providers and community choice aggregators." This is an important provision, and a similar directive should also apply to the publicly owned utilities' ("POUs") application of allowance value.

The Proposed Rule provides little guidance on how CARB would ensure that IOUs will distribute allowance proceeds in a manner that ensures parity between various types of customers. The reporting requirements on the use of allowance proceeds are very simplistic and will not result in meaningful information or guidance concerning a utility's use of allowance proceeds. The reporting requirements would only require that the reporting utility provide the monetary value of the auction proceeds and how the utility's use of the proceeds complies with AB 32 (§95892(e)).

The reporting requirements should be expanded to provide enough information for CARB to fully determine that customers received equal treatment. CARB should include a new subsection (h) under Section 95111 of the Amendments to the Mandatory Reporting Regulation, which should provide as follows:

> (h) *Additional Requirements for Electrical Distribution Utilities Eligible For Receipt of Direct Allocation of California Greenhouse Gas Emission Allowances.* Electrical Distribution Utilities, as defined in Title 17 California Code of Regulations, Subchapter 10, Article 5, shall report the amount of allowance revenue received from each quarterly auction, as well as the Electrical Distribution Utility's use or distribution of the revenues as follows:
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> (1) The aggregate amount of allowance revenue received from each quarterly auction;

(2) The amount of revenue received from selling allowances in a secondary allowance market (i.e., allowance revenue received from sources other than the quarterly auctions);

(3) The amount of allowance revenue the distribution utility distributed in the form of bill relief to retail customers, including the number of customers that received allowance revenue in the form of rebates or other relief, the classification of customers that received rebates or other relief, and the amount of rebates or other relief by each classification of customer received;

(4) A list of programs that the distribution utility funded with allowance revenue, including the amount of allowance revenue applied to each program; and,

(5) The amount of allowance revenue that the utility did not spend or distribute during a reporting year.

The Proposed Rule should also explicitly provide that CARB will coordinate with the CPUC through an open, public workshop process to discuss how the IOUs may use allowance revenue and how the CARB and the CPUC will ensure that the distribution of allowance revenue to customers does not have a discriminatory result.

Finally, Praxair suggests that CARB provide similar guidance to the POUs with respect to the application of allowances to benefit their customers. Praxair is concerned that similar facilities located within different service areas—one IOU and one POU—could potentially face different economic impacts in their electricity costs due to different applications of value from the CARB-allocated allowances. While true parity in the compliance burden between the different types of utilities is unlikely, potential differences to customer costs should not be exacerbated from vastly different applications of the allocated allowances.

3. Only CO_2 Producers, Not CO_2 Suppliers, Should be Covered Entities

At its carbon dioxide plants, Praxair obtains certain refinery gas streams rich in CO_2 and purifies them into carbon dioxide which can be used in many processes like food freezing and beer carbonation. Praxair does not produce the carbon dioxide it processes. If Praxair did not take and purify the refinery gas streams, they would be emitted at the refinery as a waste gas.

Section 95811(g) provides that suppliers of carbon dioxide are covered entities. A "supplier" is defined in Section 95802 as "a producer, importer, or exporter of a fossil fuel or an industrial greenhouse gas." As a result of this proposed definition it appears that CARB would subject a number of entities along the supply chain to a compliance obligation, including not only Praxair as a purifier and distributor of CO_2 to its customers (but not as a producer of CO_2) but also its customers. Carbon dioxide producers alone, as the generators of the raw CO_2, should bear sole responsibility for CO_2 controls, and not those entities recycling and distributing the CO_2. Subjecting multiple entities in the same supply chain is simply unfair and economically onerous on CO_2 recyclers, distributors, and their customers. Imposition of additional compliance obligations for distribution-related activities may threaten Praxair's continued CO_2 supplier operations within the state. Carbon dioxide suppliers do not create the raw CO_2 that they purify and render into usable products for

consumer and commercial use - the producers do; therefore, producers should solely bear the costs of such production and subsequent users of the raw CO_2 should be exempted from this Proposed Rule.

CARB has acknowledged that raw/waste gas CO_2 purchased, purified, and sold by CO_2 suppliers is produced primarily by petroleum refineries. Application of compliance obligations solely on the producers of this CO_2 is entirely consistent with CARB's identification of other covered entities in section 95811, e.g., lime manufacturers, cement manufacturers, petroleum refineries, iron and steel mills, and many others, that produce CO_2 as waste emissions from their manufacturing operations. Moreover, imposition of compliance obligations on CO_2 suppliers is inconsistent with the U.S. Environmental Protection Agency's ("EPA") comprehensive regulatory scheme requiring both the mandatory reporting of GHG emissions and, separately, controls of such GHG emissions. EPA's rules fairly and appropriately provide that the producers or manufacturers of raw/waste gas CO_2 bear the sole responsibility and liability for monitoring and controlling such CO_2 emissions. Even CARB's Mandatory Reporting Regulation is consistent with the federal reporting scheme, providing that only suppliers of carbon dioxide that are included in 40 CFR Sec. 98.2 are required to report under the Mandatory Reporting Rule (§ 95101(a)(1)(B).

Imposition of these proposed compliance obligations will encourage substantial leakage as well, encouraging out-of-state CO_2 suppliers to import into California just enough quantities of CO_2 to fall below the 25,000 metric ton/year threshold and avoid the burdensome costs imposed on in-state suppliers to acquire allowances, potentially undercutting in-state businesses such as Praxair's. CARB Staff recognized, in our recent meeting, the distinction between production and the suppliers' role in distribution, and conceptually agreed that only one entity in the supply chain should be subject to the compliance obligation. Praxair looks forward to continuing discussions with Staff to improve the Proposed Rule in this regard.

However, should CARB determine not to exempt such CO_2 suppliers, then CARB should allocate free allowances to such suppliers in recognition of leakage risk and to avoid substantial adverse economic harm to CO_2 suppliers. Moreover, such industry assistance might enhance innovative use of CO_2 for positive environmental and sustainability purposes (e.g., use of CO_2 as a refrigerant versus environmental damaging alternatives such as ammonia, ozone depleting substances, or other chemicals with higher GHG warming potentials and longer atmospheric persistence).

4. CARB Should Not Impose a Compliance Obligation on CO_2 Suppliers Unless There Are Net Imports Greater Than 25,000 Metric Tons of CO_2e Annually

Section 95852(g) provides that "[A]n entity that supplies carbon dioxide covered under section 95811(g) has an aggregated compliance obligation based on the sum of imported and exported quantities of CO_2."

Praxair transports CO_2 product in and out of California, mostly by CO_2 trailers and railcars as a normal course of business. This movement across state borders allows for the most efficient utilization of our capital and resources, enabling lower costs to supply and lower prices to customers. For example, it may be more efficient and cost-effective to import CO_2

from Oregon to supply northern California customers while exporting CO_2 from southern California to supply Arizona customers.

As written, the Proposed Rule would penalize a company for making these types of cross border shipments by requiring the purchase of allowances for both the imports *and* the exports. This would have the unintended impact of increasing CO_2 trailer delivery miles to avoid cross-border movement, resulting in higher costs to Praxair and other CO_2 suppliers as well as higher overall carbon footprint due to incremental transportation activities.

Praxair has two CO_2 production plants in California. At both of these plants, the raw/waste gas CO_2 purchased is produced as an off-gas by a neighboring petroleum refinery and sold to Praxair for recycling and purification prior to resale of the CO_2 to wholesale and retail customers. These producers have compliance obligations for this CO_2 as covered entities. If Praxair exports the CO_2 outside of California, however, Praxair would then have a compliance obligation because this material is being exported. The effect of this export is a double counting of the CO_2 molecules and thus a double compliance obligation – the first obligation falling on the producer and the second obligation falling on the supplier. Imposing such additional costs is arbitrary and unreasonable.

This also places Praxair at a competitive economic disadvantage, with respect to product CO_2 being produced in California, with CO_2 that is sourced from other states' markets, resulting in leakage.

Another real life example of leakage that can occur if exports are required to have allowances is as follows. A few years ago Praxair was involved with a promising CO_2 reduction project in which CO_2 recycled from a refinery was shipped out-of-state to a customer that previously generated their own CO_2 from an on-site lime kiln operation. By changing from CO_2 production to purchase of recycled and purified refinery off-gas, this project resulted in a "net" CO_2 emissions reduction. If under the Proposed Rule this exported CO_2 would now be subject to a compliance burden, there is a strong likelihood that the economics of this transaction will erode, and the customer will revert to producing their own CO_2.

We encourage the CARB to provide in the final regulation that exported CO_2 that has already been subject to regulatory coverage as produced CO_2 (e.g., petroleum refining as a CO_2 producer) should be excluded from a CO_2 supplier's determination of its aggregated compliance obligation. This approach is consistent with the concept that only one entity in the chain of custody should be subject to the compliance obligation. Should a supplier's net imports exceed the threshold for reporting—and the CO_2 was not already subject to an upstream compliance obligation—only then should such a supplier be subject to a compliance obligation for such imported CO_2.

5. CARB Should Provide Flexibility in Achieving Compliance Obligations

In accordance with §95857(b)(2), p. A-72), a covered entity will be penalized at a 4:1 ratio if it fails to retire sufficient allowances consistent with its triennial or annual compliance obligation. The regulated entity would be required to retire four times the allowances within 30 days of the triennial or annual compliance deadline. Praxair is concerned that this penalty structure will be unduly burdensome in situations in which a regulated entity was

either unable to procure a sufficient amount of allowances (despite diligent efforts) or the shortfall resulted from unintentional accounting errors. The 4:1 penalty should only take effect after CARB provides notice and a reasonable opportunity to cure the shortfall.

6. Temporal Restrictions on Purchase of Allowances (§95856(b)(2), p. A-70).

The Proposed Rule would not allow a covered entity to procure emissions allowances from a year later than the year the emissions were actually emitted. This restriction could create a compliance hurdle in meeting the triennial compliance obligation, which is due in November following the end of the triennial period. If a regulated entity discovers it does not have enough emissions allowances at the end of the triennial period (i.e., after 2014), the regulated entity would only be able to procure emissions allowances in auctions that have a previous year's vintage (i.e., allowances from 2012-2014, but not 2015). While it is understandable that CARB would seek to limit compliance procrastination, there are legitimate reasons related to variance in consumer demand for product or advantageous market conditions for product manufacture that may result in a covered entity needing to secure some allowances in a subsequent annual period, particularly where its operations are not easily forecasted or are subject to demand drivers outside of its control. Accordingly, CARB should relax its temporal restrictions to the triennial compliance period to provide some flexibility in meeting obligations that arise from market conditions or operations late in the compliance period.

7. Confidentiality of Allowance Holding Accounts and Cap-and-Trade Transactions (§ 96021, p. A-181)

The Proposed Rule provides that emissions information is public information and is not confidential. The mandate to have emissions data public should not extend to other information submitted under the Mandatory Reporting Regulation and particularly information concerning the amount of allowances contained in a regulated entity's Holding Account. This information has economic value, particularly if non-covered entities participate in the market and can readily determine a covered entity's compliance position and extract economic value from that knowledge in the secondary markets. CARB should specify that information related to allowances that have not been retired or retired ahead of the compliance deadline are not emissions information and therefore will be protected from public disclosure.

8. Record Retention

Section 98850(b) requires records associated with this Proposed Rule be retained for 10 years. The corresponding requirement in the California GHG reporting rule (section 95105(a)) is 5 years. Since this rule is significantly linked to the California GHG Mandatory Reporting Regulation the record retention periods should be consistent. We recommend only a 5-year records retention period, since this should provide ample time period for CARB to review, if needed, a covered entity's records.

9. Deadline for Annual Surrender

Section 95856(d)(2) requires the annual surrender of allowances within 45 days of when the facility has reported the previous year's GHG emissions but prior to having the emission

reports verified. Praxair recommends that CARB amend this provision and allow covered entities until 45 days after the GHG emissions report has been reviewed and passed the required verification process.

10. Auction Reserve Price

Section 95911(b)(6) prescribes the auction reserve price set for 2012 as well as the 5% price increase plus the rate of inflation. This setting of allowance prices is inconsistent with the basic premise of the cap-and-trade system to reflect the pricing fluctuations inherent in a free market trading system so that GHG reductions can be obtained in an efficient, market-based process. To be consistent with this premise, CARB should set the initial price floor of the allowance and allow the market to dictate future allowance prices.

Praxair appreciates CARB's effort and time in considering our comments. We request that the Board's Resolution provide direction to CARB Staff to address the above issues to ensure that they will be addressed in January 2011.

If you have any questions on our comments please feel free to contact Steve Botic at 925-866-6843

Respectfully submitted,

/S/

John Calka
Sales / Business Development Director
Praxair Inc.

CC: Steve Cliff, CARB
Sam Wade, CARB