

Agenda Item F

Consumer Cost Safety Net

From HB 2186

SECTION 6. (2) (d) The commission shall provide exemptions and deferrals as necessary to mitigate the costs of complying with the low carbon fuel standards upon a finding by the commission that the 12-month rolling weighted average price of gasoline or diesel in Oregon is not competitive with the 12-month rolling weighted average price in the PADD 5 region.

SECTION 6. (1) As used in this section:

(d) “PADD 5 region” means the Petroleum Administration for Defense District 5 states of Arizona, Nevada, Oregon and Washington¹.

Advisory Committee Objective:

The consumer cost safety net is intended to protect fuel consumers in the event that an Oregon low carbon fuel standard (LCFS) causes an increase in gasoline or diesel prices, and give the Environmental Quality Commission tools to mitigate an increase due to a LCFS. This consumer cost safety net is specific to the price of gasoline and diesel. HB 2186 has other exemptions for other purposes, such as to ensure an adequate fuel supply. Other exemptions will be discussed in a different issue paper (see Revised Policy Issues document posted on low carbon fuel advisory committee website for a full list of issues for the advisory committee to discuss).

Based on the relevant language in HB 2186 (see above), how would Oregon implement a consumer cost safety net with regard to the LCFS? Below are discussion questions that DEQ has identified related to this issue. If there are other questions you feel should be included, please let us know. Each of the questions has a companion discussion piece on the following pages.

Discuss and give input on the following questions

1. a. How do we determine the 12-month rolling weighted average price of gasoline or diesel for Oregon and for PADD-5 as defined in HB 2186¹(AZ, NV, OR, WA)?(See page 2)
- b. How do we determine the average prices for the most recent three-four months, when Energy Information Administration data is not yet available? (See page 3)
2. How do we define “not competitive”? (See page 3)
 - a. Gasoline (See page 5)

¹ Please note that the actual PADD-5 is different from the HB 2186-defined statutory PADD-5. For the purposes of Oregon low carbon fuel standards, the legislature has defined PADD-5 as only including the states of Oregon, Washington, Nevada and Arizona.

- b. Diesel (See page 8)
- 3. What process will be followed for the Environmental Quality Commission to make a determination whether or not exemptions and deferrals are necessary to mitigate the costs of complying with the low carbon fuel standards? (See page 8)
 - a. How will the issue be brought before the Environmental Quality Commission? (See page 8)
 - b. What criteria will be used to determine whether the LCFS caused non-competitive gasoline or diesel prices? (See page 8)
- 4. What types of exemptions and deferrals do we recommend that could address the non-competitive price of gasoline or diesel? (See page 9)
- 5. If Washington State actually does adopt a low carbon fuel standard, how would that affect our competitiveness calculations and criteria given that Washington is part of the statutory PADD5 region under HB2186? (See page 10)
- 6. Would there be any unintended consequences of the options proposed by DEQ, particularly for fuel consumers? (See page 10)

1. a. How do we determine the 12-month rolling weighted average price of gasoline or diesel for Oregon and for the statutory PADD-5 subset of (AZ, NV, OR, WA)

In order to calculate the average price of gasoline or diesel, we propose to use information from the US Department of Energy's Energy Information Administration (EIA)². The EIA provides official energy statistics, data, and analysis on resources, supply, production, and consumption for all energy sources.

Gasoline

The EIA conducts a weekly survey of retail gasoline prices. The report is mandatory under the Federal Energy Administration Act of 1974 (Public Law 93-275). Data is reported for AZ, NV, OR, and WA. This data is weighted by volume of fuel sold. The data reflects retail prices but does not include local, federal or state taxes, so the prices cited by EIA are not the final prices seen by consumers.

EIA also calculates a monthly weighted average price of gasoline in the Petroleum Administration Defense Department region 5 (PADD-5) area. This includes the states of OR, WA, AZ, NV, CA, HI, and AK. For the purposes of the low carbon fuel standards, the Oregon legislature has defined PADD-5 as only including AZ, NV, OR and WA. To calculate the 12-month rolling weighted average price of gasoline for this subset of states only, the EIA fuel volume data for each state and the price data for each state are used.

² Energy Information Administration website: <http://www.eia.doe.gov/>.

Diesel

The EIA conducts a weekly survey of on-highway diesel prices. The data reflects retail prices but does not include local, federal or state taxes, so is not the final price seen by consumers. The report is mandatory under the Federal Energy Administration Act of 1974 (Public Law 93-275). EIA calculates a monthly weighted average price of gasoline for OR, AK, WA, and the actual PADD-5 region (which includes OR, WA, AZ, NV, CA, HI, and AK), but not for NV or AZ.

Question for petroleum representatives on advisory committee: Are there other sources of diesel price information and volumes for the states of AZ and NV?

b. How do we determine the average prices for the most recent three or four months, when Energy Information Administration data is not yet available?

For discussion purposes, we propose the following methodology:

Where EIA data is available, it must be used, since it is the most accurate volume-weighted price data. However, the EIA data is not generally available for 3-4 months. For months where EIA data is not available, state price information such as that from Oil Price Information Service (OPIS)³ can be substituted, and the PADD-5 volume estimated by using the most recent EIA month's volume sold data.

Using OPIS data is not likely to be as accurate as the EIA data for purposes of a 12-month weighted rolling average price.

2. How do we define "not competitive"?

The definition of non-competitive is important because it will determine when an investigation into a price difference is triggered. The trigger needs to be high enough to account for normal fluctuation in gasoline and diesel prices, and so that an investigation would not be triggered unnecessarily. It also needs to be low enough so that it would capture any impacts from a LCFS early on.

a. Gasoline

Gasoline Prices in Oregon and the statutory PADD-5: For almost a decade, Oregon's gasoline prices have varied within a very narrow range of the statutory PADD-5 prices. On page 4, **Figure 1** graphs the 12-month rolling weighted average retail price of gasoline in Oregon and in the statutory PADD-5. As you can see in **Figure 2** (page 5),

³ Current fuel price data from OPIS are based on fuel prices at individual retail outlets, determined by data collected from credit card swipes. Fuel prices are not weighted based on volume sold.

Oregon’s average gasoline prices have generally been within 3% of the statutory PADD-5 prices, but have had a recent jump to 4% in 2007, and have since remained higher than previous years. In Figure 2, positive percent numbers indicate that the average Oregon price of gasoline is **higher** than the PADD-5 average price. Negative percent numbers indicate that the average Oregon price of gasoline is **lower** than the PADD-5 average price.

For more information on calculations, formulas, and for the price and volume data used, please refer to the “Consumer Cost Safety Net Detailed Methodology” posted on the DEQ Low Carbon Fuel Standard Advisory Committee website.

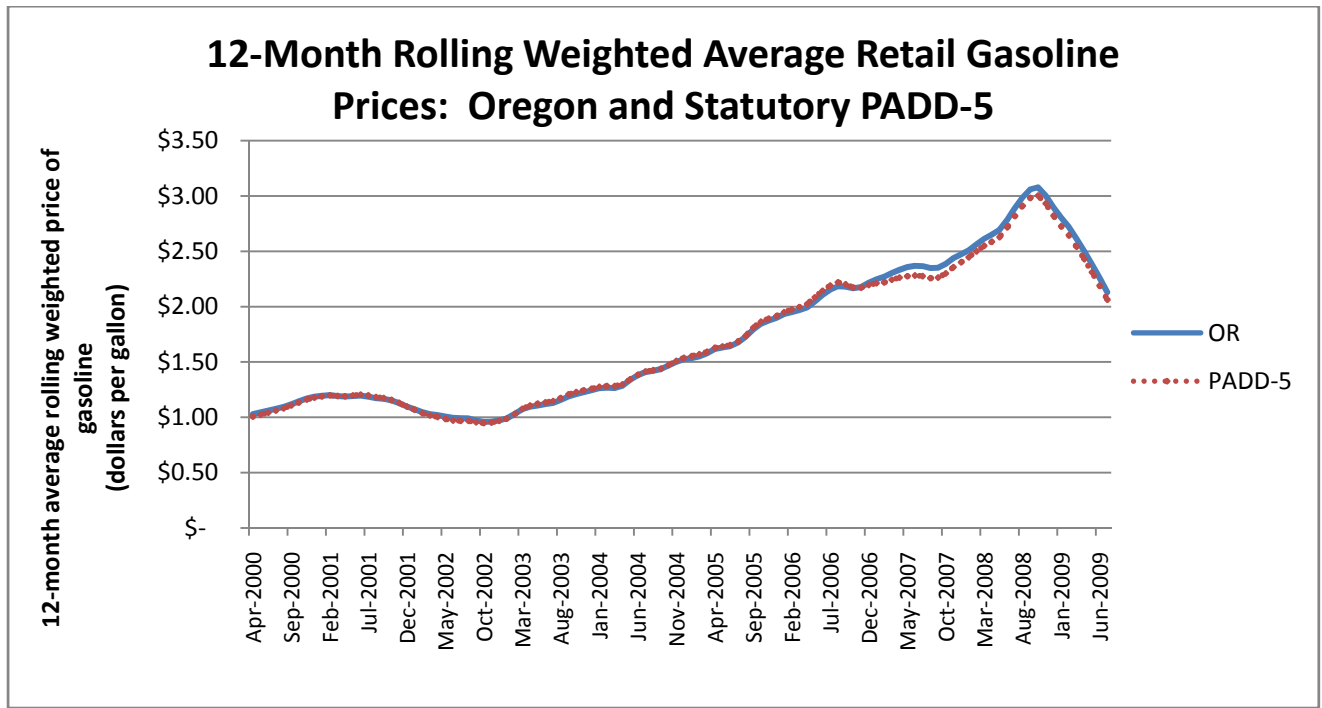


Figure 1. Twelve month rolling weighted average retail gasoline price difference between PADD-5 and OR, April 2000 to July 2009. Data from Energy Information Administration websites:

Price: http://tonto.eia.doe.gov/dnav/pet/pet_pri_allmg_a_EPM0_PTA_cpgal_m.htm

Volume: http://tonto.eia.doe.gov/dnav/pet/PET_CONS_PRIM_DCU_SOR_M.htm

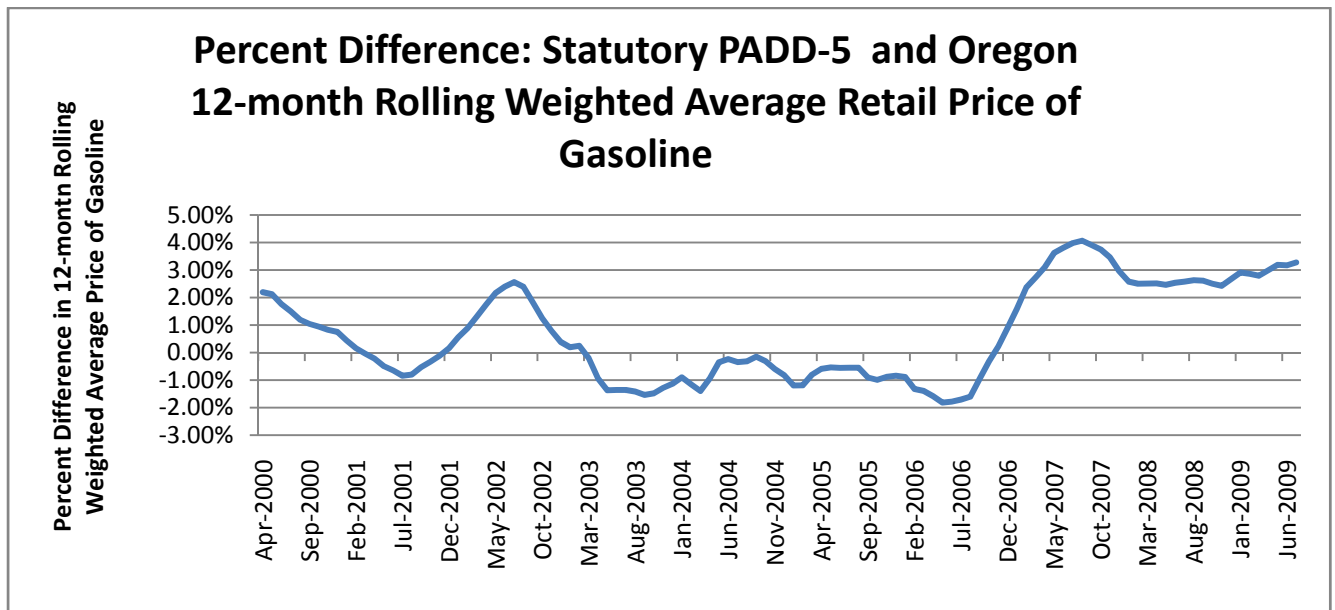


Figure 2. Percent difference between the 12-month weighted average gasoline price in PADD-5 and OR – April 2000 to June 2009. Data from Energy Information Administration websites:
 Price: http://tonto.eia.doe.gov/dnav/pet/pet_pri_allmg_a_EPM0_PTA_cpgal_m.htm
 Volume: http://tonto.eia.doe.gov/dnav/pet/PET_CONS_PRIM_DCU_SOR_M.htm

Proposed definition of “non-competitive” for gasoline

For discussion purposes, we propose to trigger an investigation into whether Oregon’s price of gasoline is “non-competitive” due to low carbon fuel standards when Oregon’s 12-month rolling weighted average price of gasoline is greater than **5% higher** than the 12-month rolling weighted average price of gasoline in the statutory PADD-5 (AZ, NV, OR, WA).

Rationale: Because Oregon’s 12-month rolling average weighted price of gasoline has not gone over 5% above the 12-month rolling weighted average price of gasoline in the statutory PADD-5 during the past 10 years, 5% is a reasonable trigger to investigate whether the 12-month rolling weighted average price of gasoline in Oregon has become non-competitive due to low carbon fuel standards. Again, the goal would be to set a trigger high enough to account for normal fluctuation in gasoline prices so that an investigation would not be triggered unnecessarily, yet low enough so that it would capture any impacts from a LCFS.

b. Diesel

Unfortunately, EIA does not have the same level of detailed data available for diesel as it does for gasoline. EIA does publish separate average prices for on-highway No. 2 diesel prices and ultra low sulfur diesel for the actual PADD-5 region collectively (including California), and individual state average prices for No. 2 diesel for the states of Oregon, Washington, and Alaska. EIA does not publish ultra low sulfur diesel prices for Oregon.

Because the retail price information for ultra low sulfur diesel or No. 2 diesel is not available for NV or AZ individually, we cannot use the same methodology for calculating the 12-month rolling weighted average in the statutory PADD-5 for diesel as we do for gasoline. In addition, because transportation diesel is transitioning from low sulfur to ultra low sulfur, historical data are not available for ultra low sulfur diesel prices, making it difficult to track historical fluctuations with the same accuracy as we can for gasoline. We are still seeking data sources for this, and any input would be appreciated.

Based on the available data, there are two options:

1. Compare the 12-month rolling weighted average retail price of No. 2 diesel in Oregon with the 12-month rolling average weighted price of No. 2 diesel in the actual PADD-5⁴. This means that price effects from California and other states not included in the statutory PADD-5 would be included.
2. Compare the the 12-month rolling weighted average retail price of No. 2 diesel in Oregon with a 12-month rolling average weighted price of No. 2 diesel in the statutory PADD-5, based on estimates of price from OPIS and volume based on EIA data.

No. 2 Diesel Prices in Oregon and the actual PADD-5

We have looked at the variation in Oregon's price of diesel, compared to the actual PADD-5. **Figure 3** on page 6 plots the difference in Oregon and PADD-5's diesel prices. **Figure 4** on page 6 shows the percent difference between Oregon's and PADD-5 diesel prices for the past 10 years.

In **Figure 4**, positive percent numbers indicate that the avg. Oregon price of diesel is **higher** than the PADD-5 average price. Negative percent numbers indicate that the avg. Oregon price of diesel is **lower** than the PADD-5 average price.

⁴ The "actual PADD-5" includes the states of OR, WA, AZ, NV, CA, HI, and AK and is different from the HB 2186-defined statutory PADD-5.

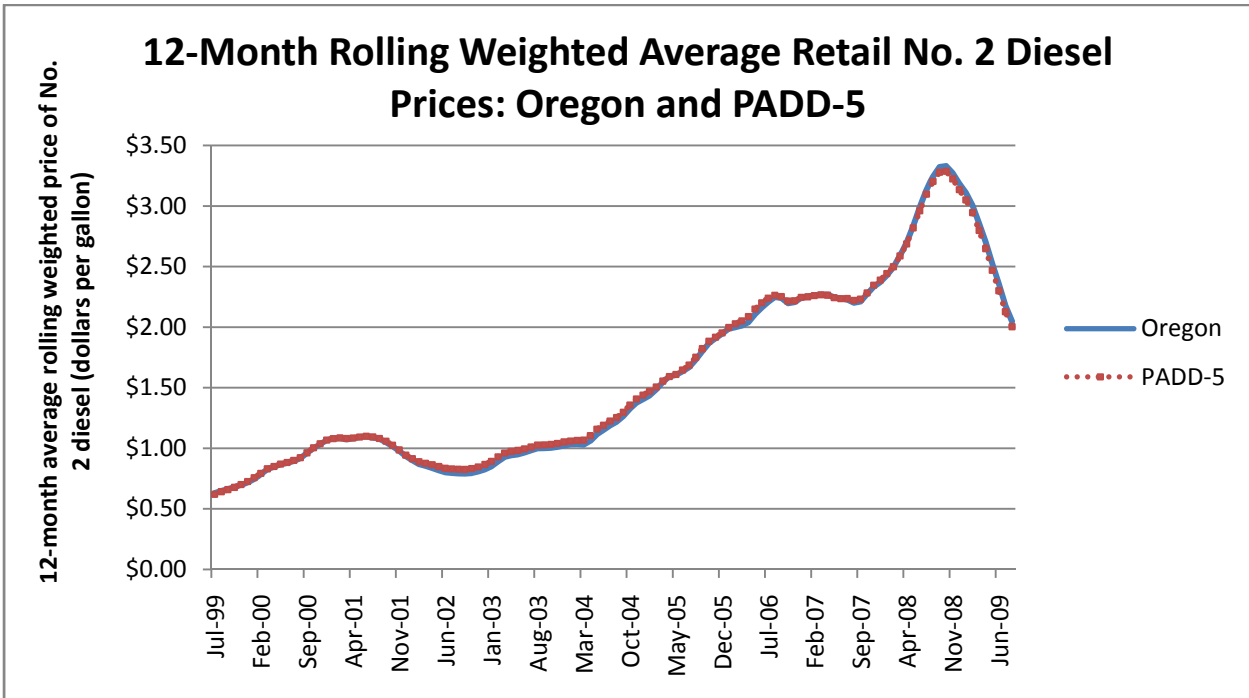


Figure 3. Twelve month rolling weighted average retail No. 2 Diesel price difference between PADD-5 and OR, April 2000 to July 2009. Data from Energy Information Administration websites: Price weighted by volume: http://tonto.eia.doe.gov/dnav/pet/pet_pri_dist_dcu_R50_m.htm

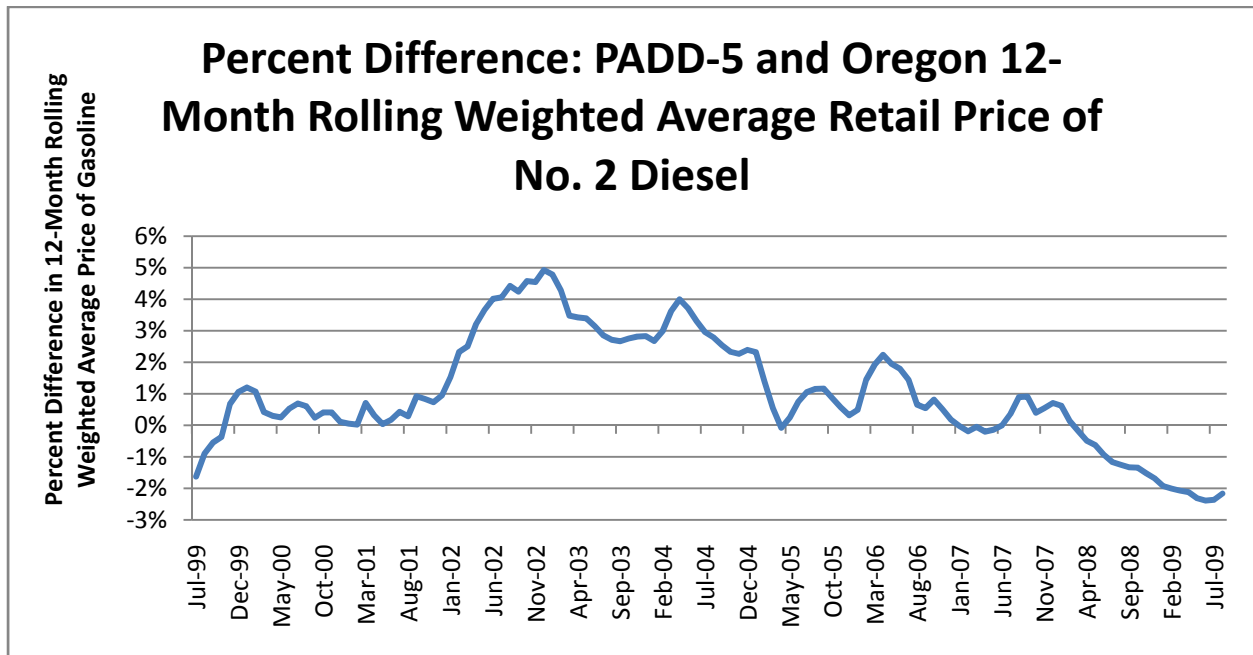


Figure 4. Percent difference between the 12-month weighted average diesel price in PADD-5 and OR – April 2000 to June 2009. Data from Energy Information Administration websites: http://tonto.eia.doe.gov/dnav/pet/pet_pri_dist_dcu_R50_m.htm

Proposed definition of “non-competitive” for diesel

For discussion purposes, we propose to trigger an investigation into whether Oregon’s price of diesel is “non-competitive” when Oregon’s 12-month rolling weighted average price of diesel is greater than 5% **higher** than the 12-month rolling weighted average price of diesel in the actual PADD-5 (OR, WA, AZ, NV, CA, HI, and AK).

3. What process will be followed for Environmental Quality Commission to make a determination whether or not exemptions and deferrals are necessary to mitigate the costs of complying with the low carbon fuel standards?

a. How will the issue be brought before the Environmental Quality Commission?

When the 12-month rolling average price of gasoline or diesel is more than 5% above the 12-month rolling average price of gasoline or diesel in the statutory PADD-5, this can trigger an investigation leading to an Environmental Quality Commission determination of whether or not exemptions and deferrals are necessary. This issue can be brought before the Environmental Quality Commission in one of two ways:

- 1) DEQ will track the 12-month rolling average price of gasoline or diesel in Oregon and PADD-5 on a monthly basis, based on published EIA data (which will be 3-4 months behind). If prices in Oregon reach the trigger (i.e. greater than 5% over the prices in the statutory PADD-5), then DEQ will investigate whether the cause of the non-competitive price is the LCFS. DEQ will use the criteria listed below to make this determination, and bring a recommendation to the EQC, or
- 2) An entity outside of DEQ can track EIA information, or more current price and volume information, and if the 12-month rolling average price of gasoline or diesel in Oregon is greater than 5% above the statutory PADD-5 average, then the entity can provide data to DEQ and request an investigation.

b. What criteria will be used to determine whether the LCFS caused non-competitive gasoline or diesel prices?

The Environmental Quality Commission would consider the extent to which the LCFS caused the non-competitive Oregon gasoline or diesel price, or whether there were other causal factors unrelated to the LCFS. In order to trigger an exemption or deferral, the Environmental Quality Commission would have to find that the cause of the non-competitive Oregon gasoline or diesel price is attributable to the LCFS, and not some other factor, and that action is necessary to mitigate the non-competitive price.

Other causal factors that could affect the price of gasoline or diesel include, but are not limited to:

- Faulty or incomplete EIA data

- Natural or manmade disasters affecting the fuel supply to Oregon, but not one of the other states (WA, AZ or NV)
- Crude oil prices in Alaska and sources of our crude vs. crude prices in Arizona and Nevada sources
- Seasonal demands or unusual demands (for example, the Olympic games)
- A change in environmental regulations that affects Oregon, but not Washington, Arizona or Nevada
- Arizona discontinues its use of reformulated gasoline
- An increase in population or demand for fuel
- A decrease in retail outlets for fuel

The Environmental Quality Commission would also need to make a finding that exemptions and deferrals are necessary to mitigate the non-competitive price. The Environmental Quality Commission would need to consider the current and future supply and availability of low carbon fuels, as well as the phase in schedule of the rule, in order to evaluate to what extent a deferral or exemption would help make the price of Oregon gasoline or diesel more competitive.

In making a recommendation to the Environmental Quality Commission, DEQ may ask petitioners to submit data related to the factors listed above so that DEQ is able to assess the cause of a price increase.

4. What types of exemptions and deferrals do we recommend that could address the price of gasoline or diesel?

Proposed: If the Environmental Quality Commission finds that the LCFS has caused the 12-month rolling weighted average price of gasoline or diesel in Oregon to become not competitive with the 12-month rolling weighted average price in the PADD-5 region (AZ, NV, WA, OR), and that exemptions and deferrals are necessary to mitigate the costs of complying with the low carbon fuel standards, we propose that the Environmental Quality Commission can implement these types of exemptions and deferrals:

- Deferral of the low carbon fuel standards for one year.
- Exempt any of the following from the low carbon fuel standards for one month to a year:
 - A certain fuel or fuels; or
 - A certain company or companies; or
 - All regulated parties.
- Provide a partial exemption from the low carbon fuel standards, based on the fuel source or on a portion of the fuel sold, for one month to a year for:
 - A certain fuel or fuels; or
 - A certain company or companies; or

- All regulated parties.

We propose that low carbon fuels can still accrue credits during exemptions and deferrals. If the price is still non-competitive after the exemptions and deferrals have expired, DEQ will conduct another investigation into the cause of the non-competitive price.

Timing issues

There are several additional challenges to implementing a consumer cost safety net. Any recommendations on how these challenges could be overcome would be appreciated.

If a LCFS is causing a non-competitive price of gasoline or diesel in Oregon, we want to provide exemptions and deferrals as needed to mitigate the situation as soon as possible. However, we can foresee difficulties:

- The lag in EIA data availability. We try to address this by allowing OPIS data and estimates of fuel volume sold to be substituted where EIA data is not yet available.
- If DEQ finds that the price is non-competitive, then it will take time (potentially several months) for DEQ to research and collect information on the criteria, and for the issue to be brought before the Environmental Quality Commission.
- If some other entity submits a petition, it is likely that the Environmental Quality Commission will ask DEQ to review the information and give a recommendation. Again, it would potentially take several months for DEQ to research the issues and develop a recommendation to the Environmental Quality Commission.

In all cases, there is likely to be some type of public process involved with an Environmental Quality Commission finding.

5. Washington State LCFS

If Washington State ultimately decides to adopt a low carbon fuel standard, their program may cause changes in average fuel prices in Washington and hence in the statutory PADD5 region under HB2186, depending upon the structure of the Washington LCFS. Hence, Washington's LCFS may affect the likelihood of fluctuations in Oregon's fuel prices triggering an investigation into non-competitiveness.

6. Would there be any unintended consequences, particularly for fuel consumers, with the options described above?

The issuance of exemptions and deferrals could also have other unintended consequences. Please bring for discussion other unintended consequences you think might occur.

- Exemptions or deferrals could penalize early actors. For example, if a company has invested in low carbon fuels, technologies, or credits, exemptions or deferrals could lessen the value of these investments.
- There needs to be reasonable regulatory certainty with regard to the rules, especially if they are in part the basis for investment in new Oregon alternative fuels production capacity.
- Excessive use of exemptions or deferrals could act as a disincentive to investments in low carbon fuels.