



Agenda Item D-1 – Market Monitoring

Meeting #3 – January 26-27, 2017

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As the agency in charge of implementing the Clean Fuels Program (CFP), DEQ believes that providing robust oversight of the CFP credit market is of utmost importance. DEQ has broad authority to require regulated parties to keep records to demonstrate compliance under OAR 340-253-0600. DEQ is also monitoring the market for signs of manipulation, fraud, or both. Recent discussions of the advisory committee have identified several issues specific to the CFP credit market that may benefit from additional clarity. DEQ is seeking input on adding new language to make clear which categories of activities are prohibited, and what actions the agency would have available to it if necessary.

Recent experience of RIN market associated with the federal Renewable Fuel Standard has shown that it is important for the regulator to guard against both fraud and significant market swings on an ongoing basis. Market monitoring provisions are meant to clarify existing authority for the agency's general surveillance of the market, while anti-manipulation provisions are meant to allow DEQ to take action in cases of manipulation or fraud.

This raises the importance of DEQ's ability, and duty, to monitor the program's credit market in a robust manner and design its regulations defensively in order to ensure that it can ably react in worst-case situations.

Market monitoring provisions

DEQ is seeking input on its proposal to clarify the market monitoring provisions of the CFP. Specifically, the agency is considering language that would clarify that DEQ's existing record-keeping and inspection requirements extend to documents related to transferring credits.

DEQ believes that its current record-keeping and inspection requirements extend to documents underlying credit market transfers, as they are necessary for the calculations to determine compliance. The clarification here is meant to communicate clearly to regulated parties and market participants that DEQ, as part of its market monitoring efforts, is requiring credit transaction forms and supporting documents to be kept for the specified period and be available for review. This could be as part of a broad, general review of the market or because DEQ has questions about a specific transfer or series of transfers.

DEQ will be looking at adding language to its rule which is similar to that found in section (e) of §95487 Credit Transactions of the California Health and Safety Code.

Anti-manipulation and anti-fraud provisions

DEQ is seeking input on its proposal to create anti-manipulation provisions of the CFP. Specifically, the agency is considering language that would:

- 1) Prohibit credit transfers which are undertaken in service of a market manipulation scheme or with the intent to defraud.
- 2) Add procedures to suspend, revoke, or modify credit balances, transfers, or the carbon intensity values as a result of market manipulation or fraud.

DEQ believes that additional language is needed to clarify that the above actions would be triggered in addition to any formal enforcement action taken within the regulatory framework of the program. The new provisions would serve as an additional safeguard of the integrity of the credit market.

DEQ is reviewing Oregon laws regulating commodity contracts and unlawful trade practices to develop such prohibitions against fraud, which will be aimed at actions with knowing intent to defraud counterparties, regulators, or others through intentional misstatements of, the concealment of, or the failure to make known material facts, or by other means. The addition of these provisions are not intended to take the place of companies' own due diligence on their credit and fuel transactions.

DEQ will be looking at adding language to its rule which is similar to that found in §95495 Authority to Suspend, Revoke, or Modify regarding Item 3.

For both the market monitoring and anti-manipulation and fraud provisions, DEQ would welcome comment from entities that also participate in the California LCFS about how they feel those provisions are structured and have worked in practice.

Comments

The agency invites comments addressing all aspects of this paper. This discussion will be captured in the meeting summary and posted on the committee webpage. DEQ will accept written comments for two weeks after the meeting in order to develop materials for the next meeting. Comments received after two weeks will still be considered, but may not be reflected in the next meeting's materials. Please e-mail any written comments to:

OregonCleanFuels@deq.state.or.us.