

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: April 23, 2013

DATE OF REQUEST: April 4, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2012-1663-RUL. Consideration of the adoption of the amendment to Section 11.1, Historically Underutilized Business Program, of 30 TAC Chapter 11, Contracts.

The adoption would update the Historically Underutilized Business (HUB) Rule. The Texas Comptroller of Public Accounts conducted a disparity study in 2009 and as the result of the new study, made revisions to Title 34, Part 1, Chapter 20, Subchapter B (HUB rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, Section 2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule. The proposed rule was published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9466). (Laura Cagle, Amy Mendez) (Rule Project No. 2012-036-011-AS)

Dorca Zaragoza-Stone

Deputy Director

John Racanelli

Division Director

Charlotte Horn

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: April 4, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Dorca Zaragoza-Stone, Deputy Director
Office of Administrative Services

Docket No.: 2012-1663-RUL

Subject: Commission Approval for Adoption of Rulemaking
Chapter 11, Contracts
Update HUB Program Rules
Rule Project No. 2012-036-011-AS

Background and reason for the rulemaking:

The Texas Comptroller of Public Accounts conducted a disparity study in 2009 and as the result of the new study, made revisions to Title 34, Part 1, Chapter 20, Subchapter B, Texas Procurement (HUB rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, §2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule.

Scope of the rulemaking:

The adopted rulemaking would amend 30 TAC §11.1, Historically Underutilized Business Program.

A.) Summary of what the rulemaking will do:

The adopted rulemaking would amend §11.1 by adopting the Texas Comptroller of Public Accounts HUB rules by reference.

B.) Scope required by federal regulations or state statutes:

Texas Government Code, §2161.003 requires that TCEQ adopt the Texas Comptroller of Public Accounts HUB rules.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

- Texas Water Code, §5.103
- Texas Government Code, §2161.003

Commissioners

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April 4, 2013

Re: Docket No. 2012-1663-RUL

Effect on the:

A.) Regulated community:

By amending this rule, no additional effect is expected on the regulated community. The regulated community and TCEQ must comply with the Texas Comptroller of Public Accounts HUB rules whether TCEQ corrects this rule or not.

B.) Public:

By adopting this rule, no additional effect is expected on the public.

C.) Agency programs:

By adopting this rule, no additional effect is expected on agency programs.

Stakeholder meetings:

There were no stakeholder meetings for this rulemaking project.

Potential controversial concerns and legislative interest:

No controversial issues are expected.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Should TCEQ not move forward with this rulemaking, TCEQ's rules will reference outdated HUB rules and incorrect rule citations.

Key points in the proposal rulemaking schedule:

***Texas Register* proposal publication date:** November 30, 2012

Anticipated *Texas Register* publication date: May 10, 2013

Anticipated effective date: May 16, 2013

Six-month *Texas Register* filing deadline: May 30, 2013

Agency contacts:

Laura Cagle, Rule Project Manager, 239-1293, Financial Administration Division

Amy Mendez, Staff Attorney, 239-5917

Charlotte Horn, Texas Register Coordinator, 239-0779

Attachments

None.

Commissioners

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April 4, 2013

Re: Docket No. 2012-1663-RUL

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
John Racanelli
Laura Cagle
Charlotte Horn

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendment to §11.1 *without change* to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9466) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The Texas Comptroller of Public Accounts (Comptroller) conducted a disparity study in 2009 and as the result of the new study, made revisions to 34 TAC Part 1, Chapter 20, Subchapter B (Historically Underutilized Business (HUB) rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, §2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule.

Section Discussion

§11.1, Historically Underutilized Business Program

The commission adopts the amendment to §11.1 to update the reference to the Texas Comptroller of Public Accounts HUB rules. Should TCEQ not adopt this amended rule, TCEQ's rule will reference outdated HUB rules and incorrect rule numbers.

Final Regulatory Impact Determination

The commission reviewed the adopted amendment in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted amendment is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule." The intent of the adopted rulemaking is to reflect the current numbering of the Comptroller's HUB rules. The changes are not expressly to protect the environment and reduce risks to human health and environment.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received.

Takings Impact Assessment

The commission evaluated this adopted rule and performed an assessment of whether this adopted amendment constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this amendment is to update and correct references to rules. Promulgation and enforcement of this adopted amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens

imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no comments received.

Public Comment

The comment period closed on January 7, 2013. No comments were received.

**SUBCHAPTER A: HISTORICALLY UNDERUTILIZED BUSINESS
PROGRAM**

§11.1

Statutory Authority

The amendment is adopted under the Texas Water Code, §5.013, Rules, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and any other laws of the state.

The adopted amendment implements the Texas Comptroller of Public Account's Historically Underutilized Business rules under 34 TAC Part 1, Chapter 20, Subchapter B, as required by Texas Government Code, §2161.003.

§11.1. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program) [, Texas Procurement and Support Services in 34 TAC §§20.11 - 20.22 and §§20.26 - 20.28 (relating to Historically Underutilized Business Program), transferred effective September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237)].

(b) The adoption of this rule is required by Texas Government Code, §2161.003,
76th Legislature, 1999.

ORDER ADOPTING AMENDED RULE

Docket No. 2012-1663-RUL

On November 14, 2012, the Texas Commission on Environmental Quality (Commission) amended § 11.1 in 30 TAC Chapter 11, concerning Contracts. The proposed rule was published for comment in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9466).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rule necessary to comply with *Texas Register* requirements. The adopted rule and the preamble to the adopted rule is incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you want the department to consider written comments on the proposal, you must submit them no later than 5:00 p.m. on December 31, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You should separately submit any request for a public hearing to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); 651.006(a); and 36.001.

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner must administer money in the Texas Department of Insurance operating account and may spend money from the account in accord with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §651.003 authorizes the commissioner to adopt and enforce rules necessary to administer the Insurance Code Chapter 651.

The Insurance Code §651.005(b) requires that the department deposit an assessment or fee associated with examination costs, as defined by §401.251, to the account described by §401.156(a).

The Insurance Code §651.006(a) requires each insurance premium finance company licensed by the department to pay an amount imposed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies.

The Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); and 651.006(a).

§25.88. *General Administrative Expense Assessment.*

No later than [On or before] April 1, 2013 [2012], each insurance premium finance company holding a license issued by the department under the Insurance Code Chapter 651 must [shall] pay an assessment

to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. An insurance premium finance company must [shall] send payment to the Texas Department of Insurance, Financial, TPA/Premium Finance, Mail Code 999, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses is \$250 [shall be computed and paid as follows].

~~{(1) The amount of the assessment is .01011 of 1.0 percent of the total loan dollar volume of the company for calendar year 2011}.~~

~~{(2) If the amount of the assessment required by paragraph (1) of this section is less than \$250, the amount of the assessment shall be \$250.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2012.

TRD-201205945

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 30, 2012

For further information, please call: (512) 463-6326



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 11. CONTRACTS

SUBCHAPTER A. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

30 TAC §11.1

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes an amendment to §11.1.

Background and Summary of the Factual Basis for the Proposed Rule

The Texas Comptroller of Public Accounts (Comptroller) conducted a disparity study in 2009 and as the result of the new study made revisions to 34 TAC Part 1, Chapter 20, Subchapter B (Historically Underutilized Business (HUB) rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, §2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule.

Section Discussion

§11.1. *Historically Underutilized Business Program*

The proposal would amend §11.1 to update the reference to the Texas Comptroller of Public Accounts HUB rules. Should TCEQ not adopt this amended rule, TCEQ's rule will reference outdated HUB rules and incorrect rule numbers.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule is administrative in nature and updates agency rules concerning HUBs to adopt, by reference, revisions made by the Comptroller to 34 TAC. The agency is required by Texas Government Code, §2161.003 to adopt HUB rules. The proposed rule implements requirements that are already in effect, and there will be no fiscal implications for the agency or other units of state or local government as a result of adopting the revision to the HUB rules.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and administrative consistency with Comptroller HUB rules.

The proposed rule, which adopts HUB rules by reference, would not have a fiscal impact on individuals or businesses that provide goods and services to the agency since HUB requirements became effective statewide on September 14, 2011. The proposed rule is required by state law.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule adopts HUB provisions (as required by state law) that have already been implemented statewide.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect. The proposed rule adopts HUB requirements as required by state law.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed amendment in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed amendment is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule". The intent of the proposed rulemaking is to reflect the current numbering of the Comptroller's HUB rules. The changes are not expressly to protect the environment and reduce risks to human health and environment.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rule and performed an assessment of whether this proposed amendment constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this amendment is to update and correct references to rules. Promulgation and enforcement of this proposed amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, Texas Register Coordinator, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-036-011-AS. The comment period closes January 7, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Laura Cagle, Historically Underutilized Business Program Office, (512) 239-1293.

Statutory Authority

The amendment is proposed under the Texas Water Code, §5.013, Rules, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and any other laws of the state.

The proposed amendment implements the Texas Comptroller of Public Account's Historically Underutilized Business rules under 34 TAC Part 1, Chapter 20, Subchapter B, as required by Texas Government Code, §2161.003.

§11.1. *Historically Underutilized Business Program.*

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program).¹ Texas Procurement and Support Services in 34 TAC §§20.11 - 20.22 and §§20.26 - 20.28 (relating to Historically Underutilized Business Program), transferred effective September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237).²

(b) The adoption of this rule is required by Texas Government Code, §2161.003, 76th Legislature, 1999.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2012.

TRD-201205930

David Timberger

Director, General Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 30, 2012

For further information, please call: (512) 239-0779



CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER B. FAILURE TO ATTAIN FEE

30 TAC §§101.100 - 101.102, 101.104, 101.106 - 101.110, 101.113, 101.116 - 101.122

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§101.100 - 101.102, 101.104, 101.106 - 101.110, 101.113, and 101.116 - 101.122.

The proposed new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

Federal Clean Air Act (FCAA), §182(d)(3) and (e) and §185 (Section 185 requirements or Section 185, generally) require the SIP to include a requirement for the imposition of a Failure to Attain Fee (fee) for major stationary sources of volatile organic compounds (VOC) located in an ozone nonattainment area classified as severe or extreme if that area fails to attain the ozone National Ambient Air Quality Standard (NAAQS or standard) by the applicable attainment date. FCAA, §182(f) requires all SIP requirements that apply for VOC to also apply for emissions of nitrogen oxides (NO_x). The Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) was originally classified as severe for the one-hour ozone NAAQS of 0.12 parts per million and was required to attain this standard by November 15, 2007. The HGB area did not attain the one-hour ozone NAAQS by its attainment date, and, as of October 2012, is not demonstrating attainment at this time. EPA's finding that the HGB area did not attain the one-hour ozone standard by its attainment date was published in the *Federal Register* on June 19, 2012, and was effective on July 19, 2012. The fee is required to be paid until the area is redesignated as an attainment area for ozone. Additionally, the SIP must include procedures for the assessment and collection of the penalty fee.

As stated in FCAA, §182(d)(3) and (e) and §185, the required penalty is \$5,000 per ton, as adjusted by the consumer price index (CPI), of VOC, NO_x, or both (depending upon how a stationary source is determined to be a major source) emitted in excess of 80% of a major stationary source's baseline amount. A stationary source that is major for VOC is subject to fees on VOC; a stationary source that is major for NO_x is subject to fees on NO_x; and a stationary source that is major for both VOC and

NO_x will be subject to the fee on both VOC and NO_x. The source's baseline amount is proposed to be calculated as the lower of the baseline emissions or authorized emissions from the baseline year, which is 2007. If the fee is not imposed and collected by the state, then FCAA, §185(d) requires that the EPA impose and collect the fee.

Although EPA has revoked the one-hour ozone NAAQS, FCAA, §185 requirements still apply for one-hour ozone nonattainment areas that were classified severe or extreme. EPA's implementation rule for the transition from the one-hour ozone standard to the 1997 eight-hour ozone standard originally provided that areas no longer were required to meet the requirements of FCAA, §185, but that rule was vacated by the D.C. Circuit court in, *South Coast v. EPA*, 472 F.3d 882 (D.C. Cir. 2007), *decision clarified on reh'g* by 489 F.3d 1245 (D.C. Cir. 2007), *cert. denied* by 128 S.Ct. 1065 (U.S. 2008). Future EPA rulemaking may specify how the EPA interprets the applicability of the penalty fee requirement for future ozone standards.

The commission previously proposed FCAA, §185 rules under §101, Subchapter B, in November 2009 (34 TexReg 8644). The proposed rules reflected the explicit FCAA, §185 fee-based calculation and considered alternative approaches to meet this obligation. The commission did not pursue adopting the rules because in January 2010 the EPA issued a guidance memo, titled *Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS*, (available at <http://www.epa.gov/glo/pdfs/20100105185guidance.pdf>) indicating that states could meet the one-hour ozone standard FCAA, §185 obligation through a SIP revision containing either the fee program or an equivalent alternative program. The memo further stated that an area showing attainment of the more stringent 1997 eight-hour ozone standard, based on permanent and enforceable reductions, would no longer be required to submit a fee program SIP revision to satisfy anti-backsliding requirements associated with the transition from the one-hour ozone standard to the 1997 eight-hour ozone standard. The commission submitted a request for termination of the fee program in May 2010 based on data showing attainment of the 1997 eight-hour standard.

However, the EPA's January 2010 guidance memo was challenged by environmental groups, and on July 5, 2011, the United States Court of Appeals District of Columbia Circuit issued an opinion in *Natural Resources Defense Council v. EPA*, No. 10-1056 (D.C. Cir.), vacating the January 2010 guidance document. Previous to this ruling, on July 7, 2011, the EPA had taken final action on one termination determination request, from the State of Louisiana, for the Baton Rouge area. EPA had also proposed approval of a termination determination for the State of California, Sacramento Metro Area, but has not taken final action. On July 25, 2011, the EPA denied the commission's fee program termination request based on 2011 data that failed to show attainment of the 1997 eight-hour ozone standard and the July 5, 2011, appeals court decision. Additionally, preliminary 2011 data fail to show attainment of the one-hour standard in the HGB ozone nonattainment area. On August 30, 2011, EPA proposed redesignation of the Baton Rouge nonattainment area to attainment for the 1997 eight-hour ozone standard and further discussed its position regarding the application of the January 2010 guidance vacated by the D.C. Circuit. The EPA has stated that "the Court's opinion does not preclude EPA from terminating the one-hour §185 anti-backsliding requirement for areas like Baton Rouge, that EPA has determined through notice and comment rulemaking, have attained the one-hour ozone stan-