

Section 185 Failure to Attain Fee Frequently Asked Questions

This document is intended to clarify requirements and does not supersede or replace requirements of federal or state law, including 30 Texas Administrative Code (TAC) Chapter 101, Subchapter B. It is the responsibility of the owner or operator of a regulated entity to read and understand all federal and state laws and regulations applicable to the regulated entity.

General

What is a Section 185 Account? How does it differ from a regulated entity or air account number?

It is a separate tracking number for Section 185 fee purposes and is needed because of the aggregation allowed for major stationary sources. It identifies a group of one or more major stationary sources (each identified by an air account number or Regulated Number (RN)).

What aggregation is allowed for a baseline amount?

- A major stationary source may aggregate VOC with NO_x or keep them separate. If they are kept separate, the source will have two Section 185 Account numbers.
- A major stationary source may be aggregated with other major stationary sources under common control for a single pollutant or both pollutants.

An example of how several sites might choose to aggregate and how the Section 185 Account number is associated with these sites is shown below.

Section 185 Account Number	Major Stationary Source	Pollutants in Group
10000	A	VOC & NO _x
20000	B, C, D	VOC & NO _x
30000	E, F, G	VOC
40000	E	NO _x
50000	F, G	NO _x
60000	H	VOC
70000	H	NO _x

A more detailed discussion can be found in *the Instructions for Section 185 Fee Program Baseline Amount Determination Forms Under 30 TAC 101.106 and 101.107* at www.tceq.texas.gov/airquality/point-source-ei/sipsection185.html

How do I get a Section 185 Account Number?

The numbers will be assigned by the TCEQ as part of the baseline amount determination process.

Baseline Amount

What are “baseline emissions”?

These are the annual and maintenance, startup and shutdown emissions reported in the emissions inventory. The baseline is based on 2007 or if the source is cyclic, irregular or varies significantly, a previous period of time may be selected. Baseline emissions are not the same as baseline amount. A baseline amount is the lower of baseline emissions and authorized limits at a major stationary source.

What is a baseline amount?

It is the lower of the authorized emissions in the attainment year or baseline emissions for the attainment year. The attainment year was 2007 for the one-hour ozone standard. If a source is aggregated with other sources, the baseline amount is the lower of the actual or the authorized emissions for the group.

Can I have a separate basis and period for VOC and for NO_x?

Yes, a separate basis and period can be used if VOC are not aggregated with NO_x at the site. The site will have two separate Section 185 Account numbers and the fee will be calculated separately for each pollutant.

Can I consider emissions limits that were in an authorization issued after the attainment year in a baseline amount?

Emissions limits can be considered if a source had an administratively complete permit application by the attainment date and the permit was authorized by the adoption of the rule under the following conditions.

- These emissions (from activities or emissions units) must not have been covered in any previous authorization.
- Emissions from these units or from the activity covered in the permit had to be reported in the emissions inventory prior to or during the attainment year. For example, a tank may have been authorized in a permit for breathing and working losses. However, tank landing losses were not covered. If the major stationary source had reported tank landing losses in the inventory prior to or during 2007 and received a permit that was administratively complete by the attainment year and was approved by the adoption of this rule, the major stationary source may consider these new limits in a baseline amount determination.

Use the forms for Alternative Baseline Amounts under §101.108. (Forms 108V, 108N, or 108C)

Can I get a baseline amount for sources that were new to the area after the attainment date?

A baseline amount can be obtained for these sources under certain circumstances.

- New major sources (not in existence as a major source on November 15, 2007) may use the first full year of operation to determine a baseline amount.
- New emissions units issued under Chapter 116, Subchapter B, Division 5 may include the newly authorized emissions limits in its baseline amount determination.

Use the forms for Baseline Amounts For New Sources under §101.110. (Form 110C)

Can I update the baseline amount if the source operated for less than 24 months?

Yes. Use the forms for Baseline Amounts For New Sources under §101.110. (Form 110C)

Will I receive a notice on what my approved baseline amount is?

Yes, companies will be contacted with the baseline amounts.

Aggregated Baseline Amount

Can I combine VOC with NO_x at my site for a baseline amount?

VOC and NO_x emissions at a site may be combined for a baseline amount determination. Note, if a source is not major for one of the pollutants, a baseline amount is not required for that pollutant. When combining the VOC and NO_x emissions for a baseline amount, these pollutants will also be combined for the fee calculation even if the source is no longer major for one of the pollutants.

Use the forms for Baseline Amounts under §101.106 and §101.107. (Forms 106V, 106N, or 106C)

Can several sites under common control be combined for a baseline amount?

Major stationary sources under common control may combine VOC, NO_x, or both from all sites as long as the common control is not being used to avoid applicability of the FCAA, §185 Failure to Attain Fee rule. Sites must have a common, valid TCEQ-issued customer number (CN).

For aggregated groups, select one valid CN to represent the group. It must be associated in the agency's Central Registry Database with *at least one* of the RNs in the group. This is a change from earlier guidance that required *all* RNs in a group to be associated with the CN in the Central Registry.

Do I have to use the same period for all my sites or pollutants in an aggregated group?

For all emissions units operating at major stationary sources by the attainment year, the same 24-month period is required for all aggregated major stationary sources. Each Section 185 Account (group) will have one period for all major stationary sources (and the emissions units at the sources) in the group. However for new construction at a major source, sources that were not major at the attainment year or operated for less than 24 months at the attainment year, under certain restrictions a different period or basis may be used.

Do all sites or pollutants in an aggregated group use the same basis?

The baseline amount for all sources in a group must be based on the same basis. The basis describes what type of emissions (authorized limits or on the amount that was reported in the EI) were used to determine the baseline amount.

Baseline Amount Adjustments

Are there conditions that would allow the baseline amount to be changed?

There are two.

- Equipment transfers – The baseline amount associated with the equipment being transferred will be transferred to the new major stationary source. Both regulated entities must sign the transfer notice.
- New sources – Sources with less than 24 months of operation as a major source may modify their baseline amount within 90 days of completing 24-months of operation.

Please contact the Emissions Assessment Section at 512-239-1773 for further instructions on how to adjust a baseline amount.

Section 185 Fee and Fee Obligation

What is the difference between the fee and the fee obligation.

The fee obligation is the total amount of fee due from each major stationary source if no other source of revenue is used to offset (reduce) the \$185 fee for the area. The portion of the fee not offset is the fee that will be assessed to the Section 185 Accounts. The fee is the final assessed amount.

What other sources of revenue may be used to offset the fee obligation.

The TCEQ has proposed using the amount of revenue collected annually from the HGB area for Texas Emission Reduction Plan (TERP), Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Repair Program (LIRAP), and Local Initiative (LIP) programs as a credit because these programs are surplus to the one-hour ozone SIP revision and statutorily have programs that reduce ozone precursor emissions. No actual funding will be transferred from these programs.

How will other sources of revenue affect my fee calculation?

The commission will determine the amount of revenue collected from the HGB area for TERP and LIRAP/LIP programs. This amount will be compared against the total \$185 fee obligation from all the major sources in the HGB one-hour ozone nonattainment area. If the revenue meets or exceeds the fee obligation, no fee is assessed. If the revenue is less than the fee obligation, major stationary sources will be assessed sufficient fee to ensure the total obligation is met.

The reduced amount will be prorated based on how much of the area's obligation is covered by TERP and LIRAP/LIP. For example, if those revenues cover 60% of the fee obligation for HGB, each Section 185 Account's fee will be reduced by 60%.

How is the fee obligation estimated?

The fee obligation is the total amount of fee due from each Section 185 Account. The fee obligation is calculated by subtracting 80% of the baseline amount from all actual emissions from all sources in a Section 185 Account. This difference is multiplied by the fee rate. For example if the baseline amount for a Section 185 Account were 100 tons for VOC and, in 2012, all VOC emissions at the Section 185 Account were 95 tons, the VOC fee obligation would be based on 15 tons.

$$95 \text{ tons} - (0.80 \times 100 \text{ tons}) \times \$185 \text{ fee rate} = 15 \text{ tons} \times \$185 \text{ fee rate.}$$

This is the amount due *if* no other revenue is used to offset the fee. The final fee may be less because of these offsets.

Are there other methods to pay or credit the fee?

An owner or operator of a Section 185 Account may partially or fully meet its fee obligation by relinquishing an equivalent amount of emissions reduction credits, discrete emission reduction credits, current or banked Highly-Reactive Volatile Organic Compound Emissions Cap and Trade program allowances; and/or current or banked Mass Emissions Cap and Trade program allowances. The owner or operator of a Section 185 Account may also contribute to a Supplemental Environmental Project to offset the fee.

How is the fee rate established?

The fee rate is set by the FCAA, §185. It is \$5,000 per ton in 1990, adjusted by the consumer price index. For 2012 emissions, the fee was estimated to be approximately \$9,230 per ton.

Does aggregation affect how the fee is calculated?

The fee calculation is consistent with the aggregation method chosen. For example, if a Section 185 Account had aggregated VOC from multiple sites for a baseline amount determination, the fee will be due on actual VOC emissions from all the major stationary sources that were aggregated for the baseline amount.

Timing of the Program

What emissions year is the first year for the fee?

The first fee will be based on emissions from year preceding adoption of the rule. Because the rule was adopted May 22, 2013, the first year fees will be based on 2012 emissions.

When does the fee program end?

Under the Clean Air Act, the program ends when the Houston-Galveston-Brazoria one-hour ozone nonattainment area is redesignated to attainment by the EPA, with finding of attainment by the EPA; or any action or rulemaking by the EPA to end the Failure to Attain fee. However, the EPA has stated that it will not be doing redesignations of the revoked standard.

What does abeyance of the fee mean?

The fee will be calculated but not invoiced. Fee collection may be placed in abeyance by the executive director demonstrates that the area would have attained by the attainment date except for emissions emanating from outside the United States. The design value may exclude

days that exceeded the standard because of exceptional events. Fee collection will remain in abeyance until the EPA takes final action on its review of the certified monitoring data and any demonstration. If the EPA does not approve the demonstration, then the fee will be invoiced.

Miscellaneous

Can I change my historical EI so I can get a better baseline amount?

Emissions may be changed only for the current inventory and the most previous year. In calendar year 2013, the current EI year is 2012 and most previous is 2011; and, up to three more years can be changed on a case-by-case basis. An exception is if the agency imposes a change in calculation methodology for EI purposes. Updates to emissions factors or the current version of an approved estimation program such as EPA's TANKS does not qualify because the Emissions Assessment Section has always required use of current factors and programs.