

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Approval of the 2015 Ozone NAAQS Designation
Recommendation to the Governor

AGENDA REQUESTED: August 3, 2016

DATE OF REQUEST: July 15, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Joyce Spencer-Nelson, (512) 239-5017

CAPTION: Docket No. 2016-0399-SIP. Consideration of the approval of the designation recommendation for the 2015 eight-hour ozone National Ambient Air Quality Standards (NAAQS) for submittal to the governor for consideration and transmittal to the United States Environmental Protection Agency (EPA). The EPA will consider the state recommendation in making final designations and area boundary determinations for the 2015 ozone NAAQS.

The EPA revised the eight-hour ozone NAAQS on October 1, 2015, lowering the standard from 0.075 parts per million (ppm) to 0.070 ppm. The Federal Clean Air Act requires that state designation recommendations be sent to the EPA within one year of NAAQS promulgation, or by October 1, 2016. Staff recommends that all counties in the State of Texas with regulatory ozone monitors exceeding the revised NAAQS, based on certified 2013 through 2015 monitoring data, as well as all counties designated nonattainment for the 2008 ozone NAAQS, be designated nonattainment for the 2015 ozone NAAQS. Staff also recommends that the recommendation for any of these areas that subsequently meet the standard based on 2016 monitoring data be changed to an attainment recommendation. Additionally, staff recommends that all counties in the State of Texas that have regulatory ozone monitors with complete data meeting the revised NAAQS and are not currently located in an area designated nonattainment for the 2008 ozone NAAQS be designated attainment. Finally, staff recommends that all other counties of the state be designated as unclassifiable/attainment. (Kristin Patton, Amy Browning/Sierra Redding) (Project No. 2016-009-SIP-NR)

Steve Hagle, P.E.
Deputy Director

David Brymer
Division Director

Joyce Nelson
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 15, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2016-0399-SIP

Subject: Commission Approval for the State Designation Recommendation for the 2015 Eight-Hour Ozone National Ambient Air Quality Standards (NAAQS)

State Designation Recommendation for the 2015 Ozone NAAQS
Non-Rule Project No. 2016-009-SIP-NR

Background and reason(s) for the recommendation package:

On October 1, 2015, the United States Environmental Protection Agency (EPA) revised the primary eight-hour NAAQS for ozone from 0.075 parts per million (ppm) to 0.070 ppm, or 70 parts per billion (ppb).¹ The EPA also revised the secondary NAAQS for ozone to 70 ppb, equivalent to the primary standard. The Federal Clean Air Act (FCAA) requires that state designation recommendations be sent to the EPA within one year of NAAQS promulgation. By October 1, 2016, the governor of each state must recommend designations of attainment, nonattainment, or unclassifiable under the 2015 eight-hour ozone standard for all areas of the state. For any areas where the governor recommends a nonattainment designation, the state may also recommend nonattainment area boundaries (i.e., which counties or parts of counties within a metropolitan area should be included in the nonattainment area).

The 2015 ozone standard is exceeded with a design value greater than 70 ppb, measured over a three-year period. Based on certified air monitoring data for 2015, four areas in Texas are not meeting the revised ozone standard: Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), San Antonio (SA), and El Paso (ELP).

Scope of the recommendation package:

The recommendation from the commission, along with supporting documentation, would be provided to the governor with information sufficient to recommend designations for all counties in Texas to the EPA by October 1, 2016. The EPA will consider the governor's recommendations in making final designations by October 1, 2017.

A.) Summary of what the recommendation will do:

Staff's recommendation to the governor is for counties with regulatory ozone monitors measuring over the 2015 ozone NAAQS of 70 ppb, based on certified 2013 through 2015 monitoring data, to be designated nonattainment. In addition, staff recommends that counties currently designated as nonattainment for the 2008 ozone standard be recommended as nonattainment for the 2015 ozone standard. Staff recommends that the

¹ The 2015 ozone NAAQS was promulgated by the EPA on October 1, 2015 and published in the *Federal Register* on October 26, 2015 (80 FR 65292).

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following counties be designated nonattainment for the 2015 eight-hour ozone standard: Bexar, Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Harris, Hood, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties.

Staff recommends that all counties in Texas that have regulatory ozone monitors meeting the 2015 ozone NAAQS, based on complete and certified 2013 through 2015 monitoring data, and are not currently located in an area designated nonattainment for the 2008 ozone NAAQS, be designated attainment for the 2015 eight-hour ozone standard: Bell, Brewster, Cameron, Gregg, Harrison, Hidalgo, Hunt, Jefferson, McLennan, Navarro, Nueces, Orange, Randall, Smith, Travis, Victoria, and Webb Counties.

Finally, staff recommends that the remaining 216 counties in the state be designated unclassifiable/attainment consistent with historical EPA designation practices.

The following attachments are provided in support of the TCEQ's recommendation:

- Attachment A: State of Texas 2015 Eight-Hour Ozone NAAQS Designation Recommendation
- Attachment B: Certified 2013 through 2015 Eight-Hour Ozone Design Values for Regulatory Monitors in the State of Texas

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

Section 107(d) of the FCAA requires state designation recommendations to the EPA within one year of NAAQS promulgation. For the 2015 ozone NAAQS, the governor of each state must recommend to the EPA designations of attainment, nonattainment, or unclassifiable for all areas of the state by October 1, 2016. The EPA issued guidance on the schedule and process for area designations for the 2015 ozone NAAQS, including guidelines for setting nonattainment area boundaries, on February 25, 2016.²

This state designation recommendation is based on certified 2013 through 2015 data, the latest three years of complete monitoring data that will be available at the time that recommendations are due. 2015 monitoring data was certified by the TCEQ and submitted to the EPA for concurrence on April 27, 2016. The EPA is expected to finalize area designations by October 1, 2017 and the designations will likely be based on certified 2014 through 2016 monitoring data.

C.) Additional staff recommendations that are not required by federal rule or state statute: Staff recommends that nonattainment area designation recommendations based on 2013 through 2015 monitoring data be revised to attainment for any counties monitoring attainment based on 2016 data.

² Memorandum from Janet McCabe, Acting Assistant Administrator, February 25, 2016, Area Designations for the 2015 Ozone National Ambient Air Quality Standards, EPA Office of Air and Radiation.
<https://www.epa.gov/sites/production/files/2016-02/documents/ozone-designations-guidance-2015.pdf>

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Statutory authority:

The EPA published the final rule establishing the revised NAAQS for ozone in the *Federal Register* on October 26, 2015 (80 FR 65291). The authority to propose and adopt the SIP revision is derived from FCAA, 42 United States Code, §7410, which requires states to submit SIP revisions that contain enforceable measures to attain the NAAQS. Additionally, the authority to propose and adopt the implementation plan and similar documents is derived from Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, §382.011, which authorizes the commission to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

Effect on the:

A.) Regulated community: Regulated entities in areas designated nonattainment by the EPA could be subject to regulatory requirements (some, for the first time). These may include permitting requirements, general conformity, transportation conformity, and requirements to reduce emissions within the nonattainment area. The complete impact of compliance with the 2015 ozone standard is unknown until implementation guidance is available and will also depend upon the classification assigned to areas designated nonattainment by the EPA. Based on the classifications approach used for the 2008 eight-hour ozone NAAQS and preliminary 2015 monitoring data, it is anticipated that any areas designated as nonattainment in Texas would likely be classified as marginal or moderate.

B.) Public: This recommendation has no immediate effect on the public. Nonattainment designations made by the EPA could cause the public to be subject to increased regulatory requirements, such as a vehicle inspection and maintenance program.

C.) Agency programs: Nonattainment area designations made by the EPA will require additional work from agency programs and functions associated with state implementation plan development and implementation, including rulemaking, program implementation, monitoring, permitting, and enforcement.

Stakeholder meetings:

The TCEQ's recommended designations were provided for public review and comment. Staff offered the option for public informational meetings regarding the 2015 ozone NAAQS and the designations process, if requested by local stakeholders. No local stakeholder meetings were requested.

Public comment:

The TCEQ's proposed designation recommendations were provided for public review and comment through a Web solicitation and GovDelivery notification. The public comment period opened on March 15, 2016 and closed on April 15, 2016. The TCEQ received written comments on the recommended designations from the 8-Hour Ozone SIP Coalition, Alamo Area Council of Governments (AACOG), Alamo Group of the Sierra Club, Association of Electric Companies of Texas (AECT), Bay City Chamber of Commerce and Agriculture, Capital Area Council of Governments (CAPCOG), CEMEX Construction

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Materials South, LLC, City of Dayton, City of El Paso, City of Liberty, City of San Antonio and Bexar County, City of Seguin, Corpus Christi Air Quality Group, El Paso Electric (EPE), El Paso Metropolitan Planning Organization (MPO), Environmental Defense Fund (EDF), Golden Triangle Business Roundtable, Greater El Paso Chamber of Commerce, Hood County Clean Air Coalition, Lhoist North America, Liberty County, Martin Marietta, Office of Representative Molly S. White, Sierra Club and Downwinders at Risk, Texas Chemical Council, Texas Oil and Gas Association, Western Refining, and 30 individuals.

Generally, comments supported the TCEQ's recommended designations for areas identified as attainment or unclassifiable/attainment. Commenters in the DFW area recommended expanding the DFW nonattainment area to include Freestone, Limestone, Rusk, and Titus Counties. City of Cleveland, City of Dayton, City of Liberty, and Liberty County in the HGB area recommended an attainment designation for Liberty County and the Texas Chemical Council commented that counties designated nonattainment for the 2008 NAAQS should not be recommended as nonattainment for the 2015 NAAQS without a current analysis. Commenters in the El Paso area, including El Paso Electric, El Paso MPO, Greater El Paso Chamber of Commerce, and Western Refining, recommended either an unclassifiable designation or partial county nonattainment designation for El Paso County. Many commenters also urged the TCEQ to pursue exceptional events to avoid a nonattainment designation for areas like El Paso County. Commenters in the San Antonio area, including AACOG and City of Seguin, recommended an unclassifiable designation for Bexar County. Several commenters, including Bexar County, City of San Antonio, EDF, and Sierra Club and Downwinders at Risk, also requested that the TCEQ complete a five-factor analysis to identify if any other counties in the San Antonio-New Braunfels MSA may contribute to nonattainment in Bexar County. CAPCOG also provided an alternative approach to TCEQ's recommendation, supported by AACOG, Bexar County, City of San Antonio, and El Paso MPO, that would account for the range of measurement uncertainty that EPA allows for ozone monitoring (+/- 7%) as part of its consideration of air quality data. The alternative approach would be for the TCEQ to recommend that EPA designate counties that have regulatory monitors with design values over the 2015 ozone NAAQS that are within the EPA's allowable range of measurement uncertainty for ozone (71 ppb - 75 ppb) as "unclassifiable" rather than "nonattainment." Finally, AECT and EPE commented that Texas' designation recommendation submittal should specify that if the 2014 through 2016 design value for any of the three counties recommended as new nonattainment counties (i.e., Bexar County, El Paso County, and Hood County) does not exceed 70 ppb, Texas' recommended designation for that county will change to attainment.

Potential controversial concerns and legislative interest:

The EPA will consider exceptional events in the designations process and finalized an exceptional events flagging and demonstration submittal timeline as part of the final 2015 ozone NAAQS rule to align with initial area designations. Under the schedule promulgated in the final rule, the deadline for flagging exceptional events for data years 2013 through 2015 is July 1, 2016. The deadline for submitting exceptional events demonstrations for data years 2013 through 2015 is October 1, 2016. For 2016 monitoring data, the deadline for both the flagging of exceptional events and submittal of demonstrations is May 31, 2017.

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The EPA expects to promulgate revisions to the 2007 Exceptional Events Rule and finalize a guidance document to address criteria for wildfires that could affect ozone concentrations before the October 1, 2016 date by which states are required to submit their initial designation recommendations and exceptional event demonstrations for data years 2013 through 2015. The EPA announced the proposed rule revisions and draft guidance on November 10, 2015; however, it is uncertain whether they will be finalized in a timely manner for states to use in developing these October 1, 2016 submittals.

Does this recommendation package affect any current policies or require development of new policies? No

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

The governor's office would not have the TCEQ's recommendation to consider for a recommendation to the EPA. Not submitting a recommendation to the EPA could remove Texas' opportunity to provide input on designations and could lead to EPA designations of Texas counties under the new standard without state input. However, the EPA is expected to publish a *Federal Register* notice regarding proposed designations at the time that 120-day letters are issued to states providing an additional opportunity for Texas to comment before the EPA finalizes designations under the 2015 ozone standard.

Key points in the recommendation schedule:

Commissioners' Agenda: August 3, 2016

Recommendation to the governor's office: Mid-August 2016

Recommendation due to the EPA: October 1, 2016

Certification of 2016 Monitoring Data: May 1, 2017

EPA sends 120-day letters for designations: June 2, 2017

Final ozone area designations to be issued by the EPA: October 1, 2017

Agency contacts:

Kristin Patton, Project Manager, Air Quality Division, (512) 239-4907

Amy Browning, Staff Attorney, (512) 239-0891

Sierra Redding, Staff Attorney, (512) 239-2496

Joyce Spencer-Nelson, Division Liaison, (512) 239-5017

Attachments:

Draft letter from Chairman Shaw to Governor Abbott

Attachment A: State of Texas 2015 Eight-Hour Ozone NAAQS Designation Recommendation

Attachment B: Certified 2013 through 2015 Eight-Hour Ozone Design Values for Regulatory Monitors in the State of Texas

Resolution Concerning the 2015 Eight-Hour Ozone National Ambient Air Quality Standards Designations

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Re: Docket No. 2016-0399-SIP

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Kristin Patton
Joyce Spencer-Nelson

August XX, 2016

The Honorable Greg Abbott
Governor of Texas
State Capitol
P. O. Box 12428
Austin, TX 78711-2428

RE: State Designation Recommendations for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)

Dear Governor Abbott:

The United States Environmental Protection Agency (EPA) revised the primary and secondary eight-hour NAAQS for ozone to 0.070 parts per million, or 70 parts per billion (ppb), on October 1, 2015. Section 107(d) of the Federal Clean Air Act requires the governor of each state to submit to the EPA a list of all areas with a designation recommendation of attainment, nonattainment, or unclassifiable, within one year of promulgation of a new or revised NAAQS.

The Texas Commission on Environmental Quality (TCEQ) recommends that all counties in Texas with regulatory ozone monitors measuring over the 2015 ozone NAAQS of 70 ppb as well as counties currently designated as nonattainment for the 2008 ozone standard be recommended as nonattainment for the 2015 ozone standard. The TCEQ recommends that all counties in Texas that have regulatory ozone monitors with complete data meeting the 2015 ozone NAAQS, and are not currently located in an area designated nonattainment for the 2008 ozone NAAQS, be designated attainment. Finally, the TCEQ recommends that all other counties in the state be designated unclassifiable/attainment consistent with historical EPA designation practices. This recommendation is based on the three most recent years of quality-assured air data from the current regulatory monitoring network for the years 2013 through 2015 (see Attachments A and B). Additionally, the TCEQ recommends that nonattainment area designation recommendations based on 2013 through 2015 monitoring data be revised to attainment for any counties monitoring attainment based on 2016 data.

Enclosed are a resolution and attachments containing the designation recommendation for your submittal to the EPA by the October 1, 2016 deadline.

If I can be of any assistance, please contact me at 512-239-5510.

Sincerely,

Bryan W. Shaw, Ph.D., P.E., Chairman

Enclosures

cc: Mr. Ryan Vise, Office of Budget and Policy, Office of the Governor
Mr. Richard A. Hyde, P.E., Executive Director, TCEQ

ATTACHMENT A

**STATE OF TEXAS
2015 EIGHT-HOUR OZONE NAAQS DESIGNATION RECOMMENDATION**

The following table identifies Texas counties and the designations that the State of Texas is recommending for the 2015 eight-hour ozone NAAQS.

Recommended Designation	Counties
Nonattainment	Bexar Brazoria Chambers Collin Dallas Denton El Paso <i>(with the exception of tribal lands, i.e. Ysleta Del Sur Reservation or Trust Lands)</i> Ellis Fort Bend Galveston Harris Hood Johnson Kaufman Liberty Montgomery Parker Rockwall Tarrant Waller Wise
Attainment	Bell Brewster Cameron Gregg Harrison Hidalgo Hunt Jefferson McLennan Navarro Nueces Orange Randall Smith Travis Victoria Webb
Unclassifiable/Attainment	Remaining 216 counties in the state

ATTACHMENT B

CERTIFIED 2013 THROUGH 2015 EIGHT-HOUR OZONE DESIGN VALUES FOR REGULATORY MONITORS IN THE STATE OF TEXAS

The Texas Commission on Environmental Quality has calculated the eight-hour ozone design values for Texas counties with regulatory monitors, as presented in the table below, in support of the State's designation recommendation for the 2015 Ozone National Ambient Air Quality Standards (NAAQS). The design values were calculated with certified 2013 through 2015 monitoring data.

Design Values by County for the 2015 Eight-Hour Ozone NAAQS

County	Certified 2013 through 2015 Design Value (parts per billion)
Denton	83
Brazoria	80
Tarrant	80
Harris	79
Bexar	78
Collin	76
Dallas	75
Parker	75
Galveston	73
Hood	73
Johnson	73
Montgomery	73
El Paso	71
Rockwall	70
Bell	69
Ellis	68
Gregg	68
Jefferson	68
Travis	68
Kaufman	67

ATTACHMENT B

County	Certified 2013 through 2015 Design Value (parts per billion)
McLennan	67
Smith	67
Harrison	66
Navarro	66
Orange	66
Randall	66
Nueces	65
Brewster	64
Hunt	64
Victoria	64
Cameron	59
Webb	59
Hidalgo	56

Note: The regulatory CASTNET monitor in Polk County does not have a valid 2013 through 2015 design value as the monitor does not meet data completeness requirements. Incomplete data shows a 2015 design value of 64 parts per billion.

Source: The EPA Air Quality System database (<https://www.epa.gov/aqs>)

**RESOLUTION CONCERNING THE 2015 EIGHT-HOUR OZONE
NATIONAL AMBIENT AIR QUALITY STANDARDS DESIGNATIONS**

**Docket No. 2016-0399-SIP
Project No. 2016-009-SIP-NR**

WHEREAS, the Texas Commission on Environmental Quality (Commission) met on August 3, 2016 to discuss and consider designation recommendations for the 2015 eight-hour ozone National Ambient Air Quality Standards (NAAQS) for submittal to the governor for his consideration and transmittal to the United States Environmental Protection Agency (EPA); and

WHEREAS, the Commission finds that the EPA revised the eight-hour standard for ozone on October 1, 2015, setting both the primary and secondary standards at 0.070 parts per million, or 70 parts per billion (ppb); and

WHEREAS, the Commission acknowledges that the Federal Clean Air Act (FCAA), § 107(d), requires the EPA, after the promulgation of a new or revised NAAQS, to designate areas as attainment, nonattainment, or unclassifiable; and

WHEREAS, the Commission acknowledges that the FCAA, § 107(d), also establishes a process for each governor to provide recommendations to the EPA regarding appropriate designations for the 2015 ozone NAAQS for their state, including appropriate geographic boundaries; and

WHEREAS, the Commission acknowledges that the EPA has specified a deadline for the submittal of recommended designations for the 2015 ozone NAAQS of October 1, 2016; and

WHEREAS, the Commission acknowledges that the EPA recommends that states identify areas not in compliance with the revised NAAQS using the most recent three years of air quality data, preferably data from calendar years 2013 through 2015, stored in the EPA Air Quality System (AQS) from Federal Reference Method and Federal Equivalent Method monitors that are sited and operated in accordance with 40 Code of Federal Regulations (CFR) Part 58; and

WHEREAS, the Commission finds that based on complete and certified AQS monitoring data from 2013 through 2015, all monitors in Texas with data eligible for comparison to the revised 2015 eight-hour ozone NAAQS were reviewed, and there are areas of the state that should be recommended for designation as nonattainment, in addition to areas that should be recommended for designation as attainment or

unclassifiable/attainment, as noted in the attached Exhibit A; and

WHEREAS, the Commission finds that at the time that the EPA makes final designations, AQS monitoring data from 2016 may also be available for the EPA's consideration and that nonattainment area designation recommendations based on 2013 through 2015 monitoring data may be revised to attainment for any counties monitoring attainment based on 2016 data; and

THEREFORE, BE IT RESOLVED, that the Commission hereby requests the governor of Texas to submit a recommendation for the 2015 eight-hour ozone NAAQS to the EPA for consideration consisting of nonattainment designations for all counties in Texas with regulatory ozone monitors measuring over the 2015 ozone NAAQS of 70 ppb as well as areas currently designated as nonattainment for the 2008 ozone standard, attainment designations for all counties in Texas that have regulatory ozone monitors with complete data meeting the 2015 ozone NAAQS that are not currently located in an area designated nonattainment for the 2008 ozone NAAQS, and unclassifiable/attainment designations for all other counties in the state, as detailed in Exhibit A, by the EPA's requested deadline of October 1, 2016.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed