



Houston-Galveston-Brazoria (HGB) Technical Information Meeting Section 185 Fee

July 28, 2022

Section 185 Fee Requirements

- The federal Clean Air Act (FCAA) fee is a penalty imposed if an area fails to meet its severe or extreme attainment date.
- The fee applies to major sources of nitrogen oxides (NO_x) and volatile organic compounds (VOC) in the ozone nonattainment area.
- The fee is required each year after the missed attainment date until the area is redesignated as attainment by the United States Environmental Protection Agency (EPA).
- If the state does not impose the fee, the EPA will impose the fee with interest. The revenue is not returned to the state.

Section 185 Fee Requirements (cont.)

- The baseline amount is the lower of actual ozone precursor emissions (NO_x and/or VOC) or permit allowable in the scheduled attainment year.
- The fee rate is \$5,000 per ton of NO_x and VOC over a baseline amount and is adjusted by inflation, using the Consumer Price Index.
- For calendar year (CY) 2021, the [EPA-published fee rate](#) was \$10,663.33 per ton.

FCAA Section 185 Fee Rule Does Not Address Important Issues

- Baseline amounts for the following:
 - New major sources after the attainment date
 - Minor sources that existed on the attainment date but later became major
 - Equipment sold or transferred between companies
 - Aggregation of NO_x and VOC in a baseline determination
- Period between the state submitting a redesignation request and maintenance (RDM) state implementation plan (SIP) revision and the EPA formally redesignating the area to attainment.
- Revoked standards

HGB Section 185 Fee History: One-Hour Ozone National Ambient Air Quality Standard (NAAQS)

- HGB failed to attain the one-hour ozone NAAQS by November 15, 2007.
- The TCEQ has attained the one-hour ozone NAAQS since 2013.
- The TCEQ adopted the Section 185 fee rule in 2013 (Chapter 101, Subchapter B).
 - Per TCEQ rules, the Section 185 fee was required for 2012-2015.
- In 2020, the EPA determined that the HGB area was attaining the one-hour ozone NAAQS and met FCAA criteria for redesignation.
- The EPA also approved the TCEQ Section 185 fee rule in 2020.

HGB Section 185 Fee History: One-Hour Ozone NAAQS

- The TCEQ Section 185 fee rule provided flexibilities in fee assessment:
 - Use of site and pollutant aggregation in the baseline amount
 - Mobile source funding credit
 - Texas Emissions Reduction Program (TERP) and the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Repair Program (LIRAP)
 - Since the one-hour ozone NAAQS has been revoked, the EPA approved these flexibilities as an “equivalent alternative program” allowed under FCAA Section 172(e)
- The TCEQ assessed the Section 185 fee and meets the fee obligation based on HGB-area TERP and other revenue.

HGB Section 185 Fee: 2008 Eight-Hour Ozone NAAQS Dates

- **2020: Serious Nonattainment Year**

- HGB did not attain by the end of 2020 to meet the July 20, 2021 serious attainment date.
- The area qualified for a 1-year attainment date extension based on monitoring data.

- **April 13, 2022: EPA Proposed Severe Reclassification**

- The EPA proposed to reclassify HGB to severe for the 2008 eight-hour ozone NAAQS and deny the request for a 1-year extension.

- **Date To Be Determined: 185 Fee Due Date to the EPA**

- The EPA is proposing 18 months from the effective date of the reclassification to submit the Section 185 fee program and severe SIP revisions.

HGB Section 185 Fee: 2008 Eight-Hour Ozone NAAQS Dates

- **2026 Severe Attainment Year**

- Attainment would be required by the end of 2026 to meet the July 20, 2027 severe attainment date.
- The design value will be based on 2024, 2025, and 2026 monitoring data.

- **2028: Fee Potentially Imposed**

- If HGB does not meet the severe attainment date, Section 185 fees could be imposed as soon as 2028.
- The fee is collected until the EPA redesignates the area as attainment.
 - First, clean data determination must be certified for 3 years of monitoring data.
 - Next, the TCEQ must propose and adopt RDM SIP revision.
 - Then, the EPA must propose and approve both the RDM SIP revision and redesignating the area to attainment.

HGB Section 185 Fee: 2008 Eight-Hour Ozone NAAQS

- The EPA has indicated alternative program flexibilities afforded under the revoked one-hour ozone NAAQS will potentially not be allowed for the 2008 eight-hour ozone NAAQS:
 - Site aggregation
 - Pollutant aggregation
 - Mobile source funding credit (TERP)
- The estimated Section 185 fee obligation for HGB based on the conventional fee could be as much as \$154 million per year for 2028.
- We will be asking for stakeholder input.