

Plain Language Summary of Proposed Rulemaking to Address the Federal Clean Air Act, Section 185 Fee

Full title of proposed rule: Failure to Attain Fee for the 2008 Eight-Hour Ozone Standard

Summary

The U.S. Environmental Protection Agency (EPA) regulates air pollutants, including ozone, to protect human health and the environment. EPA revised the maximum level of ozone in the air (referred to as an ozone standard) in 2008 and 2015. Currently, the ozone levels in both the Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) are not meeting EPA's 2008 and 2015 standards.

For the 2008 ozone standard, the DFW and HGB areas are classified as severe nonattainment. For severe ozone nonattainment areas that do not meet EPA's 2008 ozone standard by the end of 2026, certain industries in the area will be subject to a penalty fee under the federal Clean Air Act (FCAA), Section 185. Specifically, this fee would be assessed on large industries that produce air pollution that contributes to ozone levels, such as power plants, refineries, cement plants, and chemical manufacturing plants. The fee could start as early as 2028 and be required each year until the area meets EPA's 2008 ozone standard.

The proposed rules would address the Section 185 fee requirements in the FCAA, including establishment, assessment, and payment of the penalty fee. The proposed rules would credit grant revenue from a TCEQ program, the Texas Emissions Reduction Plan (TERP), to offset the fee. TERP is designed to reduce emissions from vehicles, construction equipment, and similar sources, which create more pollution that contributes to ozone levels than large industries in the DFW and HGB areas. If the amount of grant revenue is smaller than the total penalty fee for the area, the large industries would pay the remainder of the penalty fee owed.

The TCEQ is required to develop and submit Section 185 fee rules for the DFW and HGB areas by November 2025 to EPA. If the state does not implement a program to collect the fee, EPA will collect the fee with interest, and the money will not be returned to the state.

Public Comment

The comment period for this project opens on May 6, 2025, and closes on June 18, 2025. Submit written comments through the *TCEQ Public Comments* system at <https://tceq.commentinput.com/>. Comments for the proposed rulemaking must reference **Project No. 2023-131-101-AI**.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html.

For more information about the proposed rulemaking or to get help with submitting written comments, contact Jill Dickey-Hull, Project Manager, 512-239-5912 or 185Rule@tceq.texas.gov or jill.dickey@tceq.texas.gov.