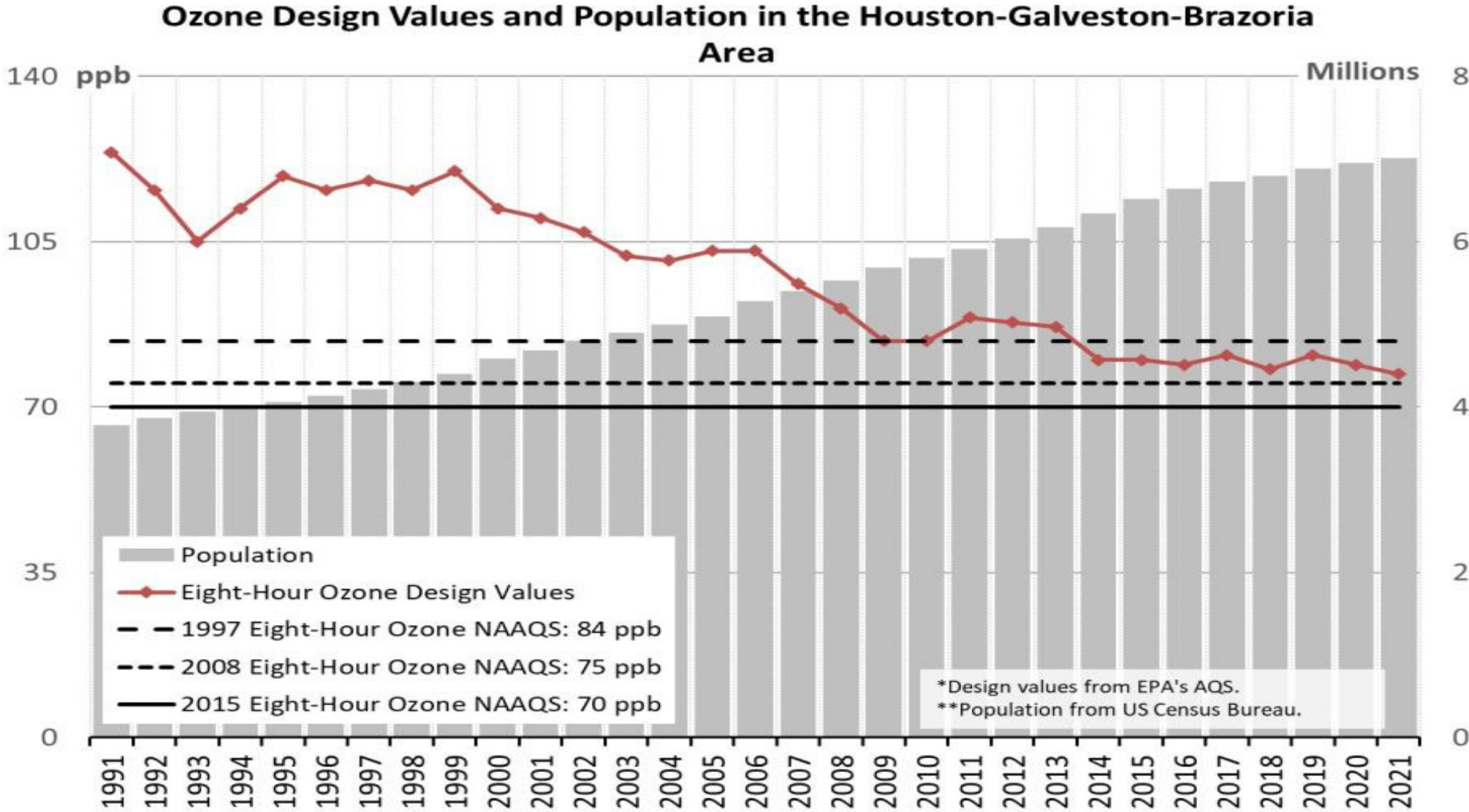




Section 185 Fee Overview of the Houston-Galveston-Brazoria (HGB) 2008 Eight-Hour Ozone Nonattainment Area

April 26, 2023

HGB Ozone Design Value Trends



2008 Eight-Hour Ozone National Ambient Air Quality Standard (NAAQS)

- Standard is 0.075 parts per million (ppm).
- Initial designations on May 21, 2012.
 - HGB designated moderate effective July 20, 2012.
- Eight-county HGB nonattainment area includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.
- HGB nonattainment area reclassified to serious, effective September 23, 2019.

2008 Eight-Hour Ozone NAAQS Severe Reclassification

- HGB nonattainment area reclassified to severe, effective November 7, 2022.
 - Attainment Demonstration (AD) and Reasonable Further Progress (RFP) State Implementation Plan (SIP) revisions due by May 7, 2024.
 - Anticipated proposal of AD and RFP SIP revisions in November 2023 with adoption in April 2024.
 - **Federal Clean Air Act (FCAA) Section 185 fee program rules due by November 7, 2025.**
 - Attainment is required by the end of 2026 to meet the July 20, 2027 attainment deadline.

FCAA Section 185 Fee Requirements

- The FCAA requires a penalty fee to be imposed if an area fails to meet its severe or extreme attainment date for an ozone NAAQS.
- The fee applies to major sources of ozone precursor emissions located in the ozone nonattainment area.
 - Ozone precursor emissions are nitrogen oxides (NO_x) or volatile organic compounds (VOC).

FCAA Section 185 Fee Requirements, cont.

- Major stationary sources are defined in 30 Texas Administrative Code Section 116.12 based upon actual or potential emissions.
 - Typically includes point sources such as power plants and cement plants.
- Section 185 fee basis:
 - If a site is a major source for NO_x emissions, then fee is assessed on NO_x.
 - If the site is major for VOC, then the fee is assessed on VOC.
 - If the site is major for both NO_x and VOC emissions, then the fee is assessed on both NO_x and VOC.

FCAA Section 185 Fee Collection

- 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).
- Since the HGB area's attainment deadline is July 20, 2027, the Section 185 fee could be imposed as early as 2028.
 - The estimated Section 185 Fee obligation for the HGB area could be as much as **\$154 million in 2028**.
- If the state does not collect the fee, the EPA will impose with interest. The revenue is not returned to the state.

FCAA Section 185 Fee Assessment

- The Section 185 fee baseline amount is 80% of the lower of either actual ozone precursor emissions (NO_x and/or VOC) or permitted emissions for the attainment year.
- The fee is charged annually on the tonnage of actual ozone precursor emissions that exceed the baseline amount.
- The fee rate is \$5,000 per ton of NO_x and VOC and is adjusted by inflation, using the Consumer Price Index.
 - For calendar year (CY) 2022, the EPA-published fee rate was \$11,122 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 sources
 - Equipment sold or transferred between companies
 - Aggregation of NO_x and VOC in a baseline determination
- Revoked standards
- Length of time for the EPA to formally redesignate the area to attainment.

FCAA Section 185 Fee Rule Does Not Address Important Issues

- Redesignation to attainment can be a lengthy process. Requirements include:
 - The area must attain the applicable NAAQS based upon three years of certified ambient air monitoring data.
 - The EPA must approve all required SIP elements for the area under FCAA Section 110(k).
 - The TCEQ must develop, propose, and adopt a redesignation request and maintenance (RDM) SIP revision.
 - The EPA must propose and approve the RDM SIP revision and redesignation of the area to attainment.

Section 185 Fee History in Texas

- 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.

Section 185 Fee History in Texas

- 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.

Section 185 Fee History in Texas

- 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).
- Based on these approved flexibilities, the TCEQ assessed the Section 185 fee and the HGB one-hour ozone nonattainment area meet the fee obligation based on TERP and other revenue.
- The TCEQ is considering all options for the 2008 eight-hour ozone NAAQS.
- The EPA has indicated states should consult the appropriate regional office regarding Section 185 fee guidance for the eight-hour ozone NAAQS.

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

- **November 7, 2022:** The EPA reclassified HGB to severe
- **Spring 2025:** Potential proposal of the TCEQ Section 185 fee program
- **Fall 2025:** Potential adoption of the TCEQ Section 185 fee program
- **November 7, 2025:** TCEQ Section 185 fee program due to the EPA
- **January 1 through December 31, 2026:** Attainment year for the 2008 eight-hour ozone NAAQS
- **2028:** If the attainment date is missed, fee potentially imposed

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