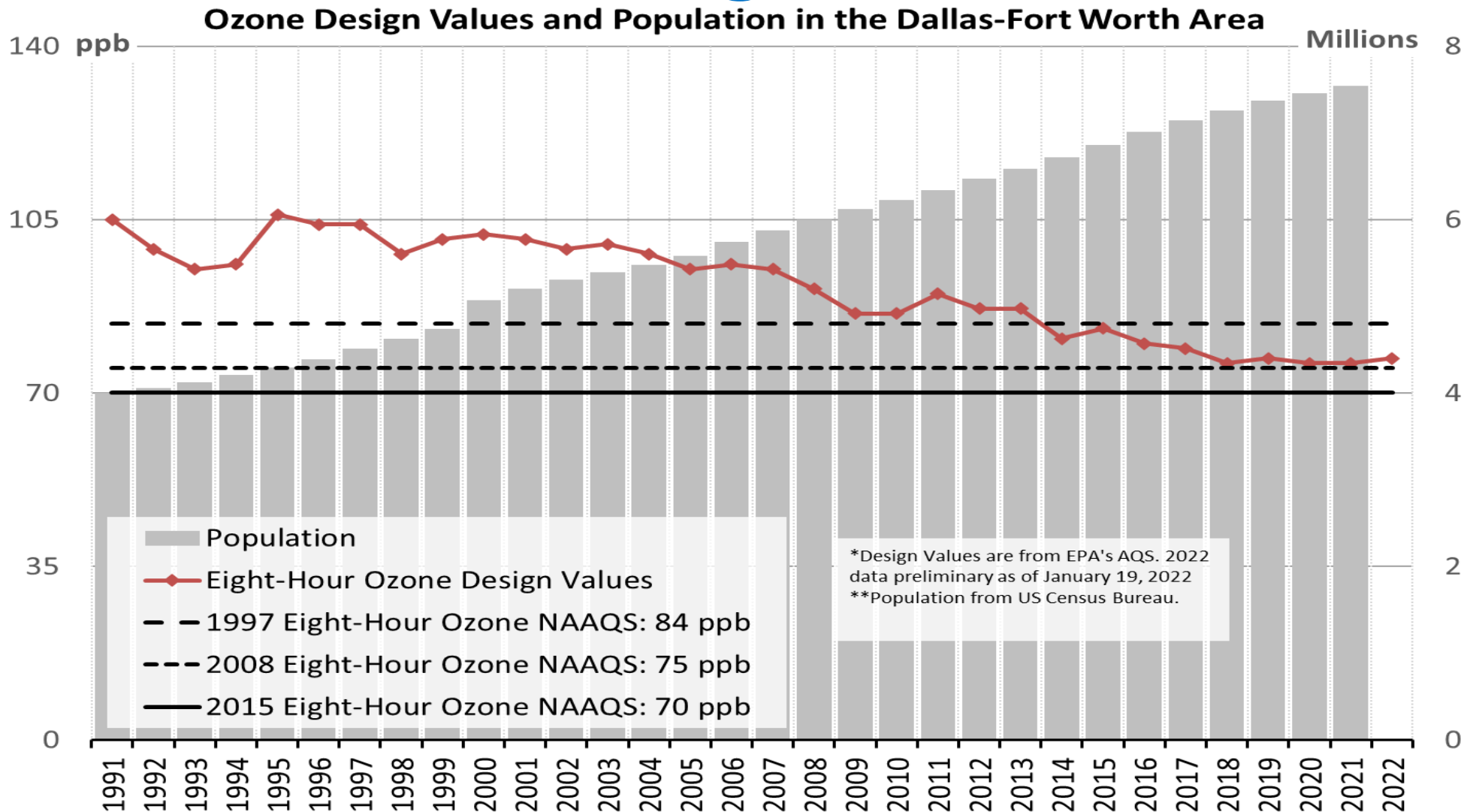




Section 185 Fee Overview

February 17, 2023

DFW 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.
 - DFW designated moderate effective July 20, 2012.
- 10-county Dallas-Fort Worth nonattainment area includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties.
- DFW nonattainment area reclassified to serious, effective September 23, 2019.

2008 Eight-Hour Ozone NAAQS Severe Reclassification

- DFW 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 DFW 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 DFW area could be as much as **\$45 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 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 20% of 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
- Period between the area attaining the NAAQS and the EPA formally redesignating the area to attainment.

FCAA Section 185 Fee Rule Does Not Address Important Issues, cont.

- 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

- Since DFW has not been classified as severe under a previous ozone NAAQS, a Section 185 Fee program has not been required.
- The TCEQ Section 185 fee developed for Houston-Galveston-Brazoria (HGB) under the **revoked** one-hour standard provided flexibilities in fee assessment.
- These flexibilities included:
 - site and pollutant aggregation to determine baseline amounts, and
 - mobile source funding credit.
 - Texas Emissions Reduction Program (TERP) and the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Repair Program (LIRAP) credits

Section 185 Fee History in Texas (cont.)

- 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 is expected to issue Section 185 fee guidance for the eight-hour ozone NAAQS.

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

- **November 7, 2022:** The EPA reclassified DFW 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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