



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2015-0496; FRL-9964-11-Region 6]

#### **Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to conditionally approve revisions to the Texas State Implementation Plan (SIP) addressing Oxides of Nitrogen (NO<sub>x</sub>) Reasonably Available Control Technology (RACT) for the Martin Marietta (formerly, Texas Industries, Inc., or TXI) cement manufacturing plant in Ellis County. We are proposing to fully approve revisions to the Texas SIP addressing NO<sub>x</sub> RACT for all other affected sources in the ten county Dallas Fort Worth (DFW) 2008 8-Hour ozone nonattainment area. We are also proposing to approve NO<sub>x</sub> RACT negative declarations (a finding that there are no emission sources in certain categories) for the DFW 2008 8-Hour ozone nonattainment area. The DFW 2008 8-Hour ozone nonattainment area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties. The RACT requirements apply to major sources of NO<sub>x</sub> in these ten counties.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0496 or via email to [shar.alan@epa.gov](mailto:shar.alan@epa.gov). Follow the on-line instructions for submitting comments. Once

submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Alan Shar, (214) 665-6691, shar.alan@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar (6MM-AA), (214) 665-6691, shar.alan@epa.gov. To inspect the hard copy materials, please contact Alan Shar.

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” refer to EPA.

**Outline**

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## **III. Proposed Action**

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### **I. Background**

#### **A. What is RACT and what are the RACT requirements relevant for this action?**

Section 172(c)(1) of the Clean Air Act (CAA, Act) requires that SIPs for nonattainment areas "provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the primary National Ambient Air Quality Standards (NAAQS)." The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See September 17, 1979 (44 FR 53761).

Section 182(b)(2) of the Act requires states to submit a SIP revision and implement RACT for major stationary sources in moderate and above ozone nonattainment areas. For a Moderate, Serious, or Severe area a major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tons per year (tpy) or more of VOCs or NO<sub>x</sub>, respectively. See CAA sections 182(b), 182(c), and 182(d). The EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of Control Technique Guidelines (CTG) and Alternative Control Techniques (ACT) documents. See <http://www.epa.gov/airquality/ozonepollution/SIPToolkit/ctgs.html> (URL dating August 17, 2014) for a listing of EPA-issued CTGs and ACTs.

The DFW nonattainment area was designated nonattainment for the 1997 8-Hour ozone standard and classified as Moderate with an attainment deadline of June 15, 2010. See January 14, 2009 (74 FR 1903).

The DFW area was later reclassified to Serious on December 20, 2010 (75 FR 79302) because it failed to attain the 1997 8-Hour standard by its attainment deadline of June 15, 2010. Thus, per section 182(c) of the CAA, a major stationary source in the DFW area, is one which emits, or has the potential to emit, 50 tpy or more of VOCs or NO<sub>x</sub>. The EPA approved NO<sub>x</sub> RACT for the DFW area classified as Serious under the 1997 8-Hour Ozone standard on March 27, 2015 (80 FR 16291).

The EPA designated the DFW area as nonattainment for the 2008 8-Hour ozone NAAQS with a moderate classification. The designated area for the 2008 standard includes Wise County, which was not included as part of the nonattainment area for the 1997 8-Hour Ozone standard. See May 21, 2012 (77 FR 30088), 40 CFR 81.344; and Mississippi Commission on

Environmental Quality vs. EPA, No. 12-1309 (D.C. Cir., June 2, 2015) (upholding EPA's inclusion of Wise County in the DFW 2008 8-Hour ozone nonattainment area).

Thus, based on the moderate classification of the DFW area for the 2008 ozone standard, under section 182(b) of the CAA, a major stationary source in Wise County is one that emits, or has the potential to emit, 100 tpy or more of VOCs or NO<sub>x</sub>.

## **II. Evaluation**

### **A. What is the TCEQ's approach and analysis to RACT?**

Sections 182(b)(2)(A) and (B) of the CAA require that states must ensure RACT is in place for each source category for which EPA has issued a CTG, and for any major source not covered by a CTG. The EPA has not issued CTGs for sources of NO<sub>x</sub>, so the NO<sub>x</sub> RACT requirement applies to all major sources of NO<sub>x</sub>. As a part of its July 10, 2015 DFW SIP submittal, TCEQ conducted RACT analyses to demonstrate that the RACT requirements for affected NO<sub>x</sub> sources in the DFW 2008 8-Hour ozone nonattainment area have been satisfied, relying on the NO<sub>x</sub> RACT rules EPA had previously approved for the DFW area for its classification as Serious for the 1997 8-Hour ozone standard. See March 27, 2015 (80 FR 16292), and 40 CFR 51.1112. The RACT analysis is contained in Appendix F of the TCEQ July 10, 2015 SIP submittal as a component of the DFW 2008 8-Hour ozone attainment demonstration plan.

### **B. Is Texas' RACT determination for NO<sub>x</sub> sources approvable?**

The requirements for RACT are included in 182(b)(2) of the Act and further explained in our "SIP Requirements Rule" of March 6, 2015 (80 FR 12279), which explains States should refer to existing CTGs and ACTs as well as all relevant technical information including recent

technical information received during the public comment period to determine if RACT is being applied. States may conclude, in some cases, that sources already addressed by RACT determinations to meet the 1-Hour and/or the 1997 8-Hour ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. The EPA has previously found that Texas NO<sub>x</sub> rules meet RACT for the 1-Hour and the 1997 8-Hour standards. See March 27, 2015 (80 FR 16291).

Texas adopted new rules for wood-fired boilers in the DFW area, and new rules for major sources in the added county, Wise County, and determined they were RACT. We have reviewed the wood-fired boilers rules and the rules for major sources in Wise County and are proposing that those rules are RACT for the covered sources. In addition, we are proposing to determine that the State's certification that the applicable control requirements Texas has in place for all other affected NO<sub>x</sub> sources as identified in Table F-4 of the submittal (including the proposed conditional approval for the Martin Marietta cement manufacturing plant in Ellis County) meet the RACT requirement for the 2008 8-Hour ozone standard. See part 3, section 5 of the TSD.

Table 1 below contains a list of affected source categories, EPA reference documents, and the corresponding sections of 30 TAC Chapter 117 that TCEQ determined were RACT for sources of NO<sub>x</sub> in the DFW area for the 2008 NAAQS. See Table F1, Appendix F of the July 10, 2015 DFW SIP submittal.

Table 1 –Source Categories, EPA Reference Documents, and Corresponding Section of 30 TAC Chapter 117 Fulfilling RACT

<b>Source category</b>	<b>EPA Reference Documents</b>	<b>30 TAC Chapter 117 Fulfilling RACT</b>
Glass Manufacturing	NO <sub>x</sub> Emissions from Glass Manufacturing (EPA-453/R-94-037, June 1994)	§117.400 – §117.456
Industrial, Commercial, and Institutional Boilers	NO <sub>x</sub> Emissions from Industrial, Commercial and Institutional Boilers (EPA-453/R-94-022, March 1994)	§117.400 – §117.456

<b>Source category</b>	<b>EPA Reference Documents</b>	<b>30 TAC Chapter 117 Fulfilling RACT</b>
Iron and Steel Mills	NO <sub>x</sub> Emissions from Iron and Steel Mills (EPA-453/R-94-065, September 1994)	§117.400 – §117.456
Process Heaters	NO <sub>x</sub> Emissions from Process Heaters (EPA-453/R-93-034, September 1993)	§117.400 – §117.456
Stationary Internal Combustion Engines	NO <sub>x</sub> Emissions from Stationary Internal Combustion Engines (EPA-453/R-93-032, July 1993, Updated September 2000)	§117.400 – §117.456
Stationary Turbines	NO <sub>x</sub> Emissions from Stationary Combustion Turbines (EPA-453/R-93-007, January 1993)	§117.400 – §117.456
Utility Boilers	NO <sub>x</sub> Emissions from Utility Boilers (EPA-453/R-94-023, March 1994)	§117.1300 - §117.1356

On April 13, 2016 (81 FR 21747), we approved revisions to 30 TAC Chapter 117 (NO<sub>x</sub> rules) for control of NO<sub>x</sub> emissions for affected sources in the DFW area as part of the SIP, but did not make the determination whether these rule revisions met RACT at 81 FR 21747. See docket No. EPA-R06-OAR-2015-0497 at [www.regulations.gov](http://www.regulations.gov).

We have reviewed the emission limitations and control requirements for the above source categories, Table 1, in 30 TAC Chapter 117, and compared them against EPA's ACT documents, available technical information, and guidelines. Based on our review and evaluation we found the emission limitations and control requirements in 30 TAC Chapter 117 for the above source categories to be consistent with our guidance and ACT documents, and based upon available technical information that the corresponding sections in 30 TAC Chapter 117 provide for the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. For more information, see part 3, section 6

of the TSD prepared in conjunction with this action. Also, see part 4 of the TSD for the March 27, 2015 (80 FR 16291) at [www.regulations.gov](http://www.regulations.gov), docket ID No. EPA-R06-OAR-2013-0804.

We are proposing to find that the control requirements for the source categories identified in Table 1 are RACT for all affected sources in the ten County DFW area under the 2008 8-Hour ozone NAAQS. See part 3, sections 5-7 of the TSD.

**C. Are there negative declarations for Categories of NO<sub>x</sub> sources within this nonattainment area?**

States are not required to adopt RACT limits for source categories for which no sources exist in a nonattainment area and can submit a negative declaration to that effect. Texas has reviewed its emissions inventory and determined that there are no nitric and adipic acid manufacturing operations in the DFW area. See Table F-1, page 8 of the Appendix F, titled “State Rules Addressing NO<sub>x</sub> RACT Requirements in ACT Reference.” We are also unaware of any such facilities operating in the DFW nonattainment area, and thus we are proposing to approve the negative declarations made for the nitric and adipic acid manufacturing operations in the ten County DFW area under the 2008 8-Hour ozone NAAQS.

**D. RACT and Cement Manufacturing Plants:**

As detailed in Table 2 below, EPA has issued guidance on NO<sub>x</sub> emissions from Cement Manufacturing Plants and Texas has adopted rules for the control of NO<sub>x</sub> emissions from Cement Manufacturing Plants codified at 30 TAC Chapter 117. The rules establish NO<sub>x</sub> emissions by adopting a NO<sub>x</sub> cap on each of the cement manufacturing plants in the area.

Table 2 - Cement Manufacturing, EPA Reference Documents, and Corresponding Section of 30 TAC Chapter 117 Fulfilling RACT

Source category	EPA Reference Documents	30 TAC Chapter 117 Fulfilling RACT
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Cement Manufacturing	NO <sub>x</sub> Emissions from Cement Manufacturing (EPA-453/R-94-004, 1994/03); and NO <sub>x</sub> Control Technologies for the Cement Industry: Final Report (EPA-457/R-00-002, 2000/09)	§117.3100 - §117.3145
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The source cap provision is a NO<sub>x</sub> emission limitation expressed in tons per day (tpd) for cement kilns in Ellis County (thereafter, Cap<sub>8hour</sub>, cap). The Cap<sub>8hour</sub> was established based on a formula that included average annual tons of clinker produced for the three-year period of 2003, 2004, and 2005 plus one standard deviation. See 30 TAC §117.3123. The addition of one standard deviation to the average annual clinker production rates was intended to provide further operational flexibility for the sources as they calculated their production rates for the wet and dry kiln systems, “N<sub>w</sub>” and “N<sub>D</sub>”, in order for TCEQ to determine a tpd numerical value for the Cap<sub>8hour</sub> emission limitation. See Equation 117.3123(b). The formula for establishing the Cap<sub>8hour</sub> includes an emission factor of 3.4 lbs of NO<sub>x</sub>/ton of clinker produced for wet kilns, and an emission factor of 1.7 lbs of NO<sub>x</sub>/ton of clinker produced for dry kilns. Compliance with the 30-day rolling average cap must be shown starting March 31<sup>st</sup> of each calendar year, and the NO<sub>x</sub> cap limitation in section 117.3123 applies from March 1<sup>st</sup> through October 31<sup>st</sup> of each calendar year. See part 4, sections 8 and 9 of the TSD for more information. Each cement manufacturing plant in Ellis County has been allocated a specific value in tons per day as its cap. Once established based on 2003, 2004, and 2005 production rates the calculated emission rate is not changed. We approved this rule on January 14, 2009 (74 FR 1927) as part of the DFW SIP, and as meeting the NO<sub>x</sub> RACT requirement for cement kilns operating in the DFW 1997 8-Hour ozone nonattainment area. Since that time, there are no longer any wet kilns in the area.

**E. Ellis County Cement Manufacturing Plants:**

Currently, three companies operate four cement kilns in Ellis County. Below we evaluate whether RACT is in place for these plants.

Ash Grove Cement Company (Ash Grove) operated three kilns in Ellis County. A federally enforceable 2013 consent decree, not a part of this SIP submittal, required by September 10, 2014 shutdown of two kilns and reconstruction of kiln #3 with Selective Noncatalytic Reduction (SNCR) with an emission limitation of 1.5 pounds of NO<sub>x</sub> per ton of clinker produced (lb NO<sub>x</sub>/ton of clinker), and a 12-month rolling tonnage limit for NO<sub>x</sub> of 975 tpy. A May 11, 2016 letter from Ash Grove to TCEQ confirms decommissioning of the kilns # 1 and 2. We have made this letter available in docket for this action. The reconstructed kiln #3 is a dry kiln subject to the 1.5 lb NO<sub>x</sub>/ton of clinker emission standard per 40 CFR 60 subpart F (New Source Performance Standard - NSPS) for Portland Cement Plants. A review of NO<sub>x</sub> emission limits in place across the country is included with the TSD for this action, and it can be seen that this limit is well within the range of the most stringent controls currently in place. This NO<sub>x</sub> emission limit is the lowest emission limitation through application of control techniques (SNCR) that is reasonably available considering technological and economic feasibility, and therefore the NSPS satisfies RACT for Ash Grove in Ellis County. The TCEQ has the delegated authority to enforce this federal standard through the agency's general NSPS delegation. The TCEQ air permit for this plant is available in the docket for this action. Further, we are proposing to remove our approval of the cap rules as being RACT for Ash Grove and finding that the NSPS applicable to Ash Grove meets RACT for the 2008 ozone NAAQS.

Holcim U.S., Inc. (Holcim) currently has two dry preheater/precalciner kilns equipped with SNCR. There has not been a long wet cement kiln associated with the Holcim operations in Ellis County. The current section 117.3123 source cap is established at 5.3 tpd NO<sub>x</sub> for Holcim.

As discussed above this cap was established based on an emission factor of 1.7 lbs/ton of clinker. Again such an emission rate is among the most stringent emission rates in place across the country. We believe the NO<sub>x</sub> emission limitation established by the section 117.3123 cap is the lowest emission limitation through application of control techniques (SNCR) that is reasonably available considering technological and economic feasibility for this source, and therefore it satisfies RACT for Holcim. Consequently, we are retaining the cap rules as meeting RACT for Holcim for the 2008 ozone NAAQS.

Martin Marietta (MM) currently operates one dry preheater/precalciner kiln #5. The existing section 117.3123 source cap allocated to this kiln is set at 7.9 tpd NO<sub>x</sub>. The permitted capacity of this kiln is 2,800,000 tons of clinker per year, and it has a permitted emissions limitation of 1.95 lb NO<sub>x</sub>/ton of clinker. According to TCEQ, the kiln #5 typically operates well below the source cap, at an average emission factor below 1.5 lbs/ton of clinker. While the NO<sub>x</sub> limit of 1.95 lbs/ton of clinker is somewhat higher than the limits in place at other cement plants in Ellis County, it is still among the most stringent limits in the country. We believe that it is reasonable for the limit to be less stringent than Ash Grove's limit because Ash Grove (kiln #3) is a new source and new sources generally can achieve a lower emission rate than existing sources that must be retrofitted. We also believe it is reasonable that MM's limit be somewhat higher than the emission factor (1.7 lbs/ton of clinker) used to establish the emission cap at Holcim because the emission cap allows for operational flexibility to balance emissions between the two Holcim kilns.

We are proposing to conditionally approve 1.95 lbs/ton of clinker as RACT for MM following the State's written commitment to EPA. The commitment letter states that through an agreed order between TCEQ and MM, certain conditions of MM's air permit, concerning the

NOx emission limitation of 1.95 lb/ton of clinker produced from kiln #5, will be incorporated into a future revision to the Texas SIP. That particular future SIP revision will be submitted to EPA per timeline described in section F below.

We have reviewed the emission limitations and control requirements for the source category listed in Table 2 above, the corresponding sections in 30 TAC Chapter 117, and the Appendix F of the July 10, 2015 DFW SIP submittal, and compared them against EPA's ACT documents and guidelines. Based on our review and evaluation we found the emission limitations and control requirements in 30 TAC Chapter 117 and the Appendix F of the July 10, 2015 DFW SIP submittal for the above source category to be consistent with our guidance and ACT documents. We have also found these limits are among the most stringent in place in the country, at this time. As such, we are proposing that they provide for the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. For more information, see parts 2 and 4 of the TSD prepared in conjunction with this action.

#### **F. What is a conditional approval?**

Under section 110(k)(4) of the Act the Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval, if the State fails to comply with such commitment. If the State does not meet its commitment within the specified time period by 1) not adopting and submitting measures by the date it committed to, 2) not submitting anything, or 3) EPA finding the submittal incomplete, the approval will be converted to a disapproval. The Regional Administrator would send a letter to the State finding that it did not meet its commitment or that the submittal is

incomplete and that the SIP submittal was therefore disapproved. The 18-month clock for sanctions and the two-year clock for a Federal Implementation Plan would start as of the date of the letter. Subsequently, a notice to that effect would be published in the **Federal Register**, and appropriate language inserted in the CFR.

### **III. Proposed Action**

We are proposing to conditionally approve revisions to the Texas SIP addressing NO<sub>x</sub> RACT for the Martin Marietta (formerly, Texas Industries, Inc., or TXI) cement manufacturing plant in Ellis County. We are proposing to approve revisions to the Texas SIP addressing NO<sub>x</sub> RACT for all other affected sources in the ten County DFW 2008 8-Hour ozone nonattainment area. We are also proposing to approve NO<sub>x</sub> RACT negative declarations for the DFW area under the 2008 8-Hour ozone NAAQS.

### **IV. Statutory and Executive Order Reviews:**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 11, 2017.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

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