

SNUR for the chemical substance being withdrawn was established at EPA–HQ–OPPT–2008–0918. That record includes information considered by the Agency in developing the rule and the notice of intent to submit adverse comments.

### III. How Do I Access the Docket?

To access the electronic docket, please go to <http://www.regulations.gov> and follow the online instructions to access docket ID no. EPA–HQ–OPPT–2008–0918. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** document of February 1, 2010 (75 FR 4983). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### IV. What Statutory and Executive Order Reviews Apply to this Action?

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** document of February 1, 2010 (75 FR 4983). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

### V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### List of Subjects

##### 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

##### 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 25, 2010.

**Barbara A. Cunningham,**

*Acting Director, Office of Pollution Prevention and Toxics.*

■ Therefore, 40 CFR parts 9 and 721 are amended as follows:

#### PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by removing under the undesignated center heading “Significant New Uses of Chemical Substances” § 721.10182.

#### PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

#### § 721.10182 [Removed]

■ 4. Remove § 721.10182.

[FR Doc. 2010–7194 Filed 4–1–10; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2008–0089; FRL–9132–3]

#### Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Voiding of Permits and Extension of Permits

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking a direct final action to approve severable portions of a submittal from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), on September 25, 2003, to revise the Texas Major and Minor New Source Review (NSR) State Implementation Plan (SIP). EPA is approving the State’s repeal of a paragraph of the SIP rule pertaining to Texas Major and Minor NSR SIP and to approve the consequent renumbering of

the SIP rule’s paragraphs. We also are approving the new replacement rule as meeting the Minor and Major NSR SIP requirements for voiding of permits.

We are approving the portion of the revision that addresses the recodification of the provision relating to the granting of one 18-month extension of a permit as meeting the Minor and Major NSR SIP requirement for extensions of permits. The revision imposes requirements on permittees, requiring a review of the permit’s underlying permit determinations before this SIP-approved extension can be granted. Finally, the revision provides for a second permit extension if certain conditions are met, including a health effects review. EPA is approving the new replacement rule for this second permit extension as meeting the Major and Minor NSR and NNSR SIP requirements.

EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being proposed under section 110 and parts C and D of the Act.

**DATES:** This direct final rule is effective on *June 1, 2010* without further notice, unless EPA receives relevant adverse comment by May 3, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0192 by one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at [robinson.jeffrey@epa.gov](mailto:robinson.jeffrey@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 “Contact Us” Web site:* <http://epa.gov/region6/r6comment.htm>. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such

deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2008-0192. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melanie Magee, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7161; fax number (214) 665-6762; e-mail address [magee.melanie@epa.gov](mailto:magee.melanie@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever any reference to "we," "us," or "our" is used, we mean EPA.

**Table of Contents**

- I. The State's Submittals
- II. What Action Is EPA Taking?

- III. EPA's Evaluation
  - A. How Does the Current SIP Address the Voiding of Permits?
  - B. What Revisions Did Texas Submit Relating to the Voiding of Permits?
  - C. How Does the Current SIP Address the Extension of Permits?
  - D. What Revisions Did Texas Submit Relating to the Extension of Permits?
- IV. Final Action
- V. Statutory and Executive Order Reviews

**I. The State's Submittals**

On September 25, 2003, Texas submitted a SIP revision that included an amended section 116.115 that delete the language in the SIP's section 116.115(b)(2)(A) relating to the voiding of permits and extensions of time to begin construction, renumber the paragraphs because of the deletion of (A), and transfer the substance to a new section 116.120. The new section 116.120 addresses the voiding of permits and the first 18-month permit extension and contains language from the SIP-approved section 116.115 with revisions. It is EPA's position that the Texas Permit Voiding Program is severable from all the other elements in the September 2003 submittal, including the Texas Permit Extension Program because it addresses the voiding and extensions of permits. The new section also adds criteria that must be met for the first permit extension to be granted and adds the opportunity for a second extension if certain conditions are met.

The table below summarizes the changes that are in the September 25, 2003 SIP submittal that EPA is addressing in today's action. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in section III of this preamble. The Technical Support Document (TSD) includes a detailed evaluation of the referenced SIP submittal.

Summary of each regulation that is affected by this action:

Section	Title	Date submitted	Date adopted by the State	Changes adopted by State	Comments
<b>Chapter 116—Control of Air Pollution by Permits for New Construction of Modification Subchapter B—New Source Review Permits Division 1—Permit Application</b>					
30 TAC 116.115 .....	General and Special Conditions.	9/25/03	8/20/03	Revisions and Recodification of 30 TAC 116.115.	Removed Section (b)(2)(A). Renumbered Section (b)(2)(B)-(I) to Section (b)(2)(A)-(H) as a consequence of the removal.

Section	Title	Date submitted	Date adopted by the State	Changes adopted by State	Comments
30 TAC 116.120 .....	Voiding of Permits and Extensions of Permits.	9/25/03	8/20/03	New 30 TAC 116.120	New Section. Subsection 116.120(a) is substantially the same as the SIP rule codified in Subsection 116.115(b)(2)(A). Part of subsection (b) is substantially the same as the SIP rule codified in subsection 116.115(b)(2)(A). Subsections (b) and (c) add new authority; they provide for the granting of more than one 18-month extension to a permit.

## II. What Action Is EPA Taking?

We are approving the Texas Permit Voiding Program, as submitted by TCEQ on September 25, 2003, in Title 30 of the Texas Administrative Code (30 TAC) at 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This includes the following under Chapter 116: removal of 30 TAC 116.115(b)(2)(A) from the Texas SIP; renumbering of the SIP's 30 TAC 116.115(b)(2)'s subparagraphs as a consequence of the removal of subparagraph (A); and approval into the Texas SIP of the new 30 TAC 116.120(a) and (b). The existing Texas SIP at 30 TAC 116.115(b)(2)(A) and the newly submitted rule at 30 TAC 116.120(a) both require that persons issued a NSR permit under Chapter 116 begin construction of the facility within 18 months of permit issuance or the permit will be voided. Consequently, this action is merely a recodification of the SIP Permit Voiding requirements. It is EPA's position that the Texas Permit Voiding Program is severable from all the other elements in the September 2003 submittal, including the Texas Permit Extension Program.

In addition, the current SIP provision at 30 TAC 116.115(b)(2)(A) authorizes the Executive Director to grant an 18-month extension to this period. This language was transferred to this new subsection and relates to the grant of authority to the Executive Director to extend permits for 18 months. Thus, this action is a recodification of the SIP Permit Extension requirements.

The new 30 TAC 116.120(b) and (c) add new criteria that must be met before the Executive Director may issue the first 18-month extension. The new criteria are that the permit will be reviewed for its underlying best available control technology (BACT), lowest achievable emission rate (LAER), offsets, and netting determinations

before the first extension will be granted.

The two new subsections also add new authority for the Executive Director to issue a second 18-month extension. EPA interprets section 116.120(b) to require that the permit holder will comply with all the rules and regulations of the commission, Texas Clean Air Act, including protection of public health and physical property before this second permit extension may be granted. This second permit extension would be available in the case of a construction delay caused by litigation, not of the permit holder's initiation regarding the issuance of the permit. The Executive Director could also issue an extension if the permit holder has spent, or has committed to spend, 10% of the estimated cost of construction to a maximum of \$5 million. As part of the Texas Permit Extension Program, EPA is approving 30 TAC 116.120(b) and (c), as meeting the Major and Minor NSR and NNSR SIP.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on *June 1, 2010* without further notice unless we receive relevant adverse comment by *May 3, 2010*. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment,

paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. EPA's Evaluation

### A. How Does the Current SIP Address the Voiding of Permits?

The current SIP includes 30 TAC 116.115 as adopted by the TCEQ on November 20, 2002, and approved by EPA on September 6, 2006 (71 FR 52664). This section addresses the voiding of permits under 30 TAC subsection 116.115(b)(2)(A). This SIP rule provides that a permit or permit amendment under 30 TAC Chapter 116 is automatically void if the permit holder does one of the following: (1) Fails to begin construction within 18 months of the date of issuance; (2) discontinues construction for more than 18 consecutive months prior to completion of the project; or (3) fails to complete the project within a reasonable time.

### B. What Revisions Did Texas Submit Relating to the Voiding of Permits?

On August 20, 2003, TCEQ adopted revisions to 30 TAC Section 116.115, and submitted them to EPA for SIP approval on September 25, 2003. This amendment recodifies the language relating to the voiding of permits and transfers this rule language from 30 TAC Subsection 116.115(b)(2)(A) to a new 30 TAC Subsection 116.120(a). The new 30 TAC Section 116.120(a) is located in 30 TAC Chapter 116, Subchapter B, Division 1, Permit Application.<sup>1</sup> The

<sup>1</sup> A separate and unrelated 30 TAC Section 116.120 as adopted by TCEQ on June 17, 1998, Division 2: Compliance History, and approved by EPA on September 18, 2002 (67 FR 58697) remains in the SIP. The State has not requested that EPA remove this SIP rule from the Texas NSR SIP. There is no legal impediment to having two separate unrelated SIP requirements, each with the same rule number. If this action is finalized as proposed,

Continued

new 30 TAC 116.120(a) addresses the voiding of permits and contains language that already was SIP approved in 30 TAC 116.115(b)(2)(A). Because this is merely a recodification of an existing SIP requirement, EPA is approving the recodification of 30 TAC 116.115(b)(2)(A) in the Texas NSR SIP, as the new 30 TAC 116.120(a).

#### *C. How Does the Current SIP Address the Extension of Permits?*

The current SIP includes 30 TAC 116.115 as adopted by the TCEQ on November 20, 2002, and approved by EPA on September 6, 2006 (71 FR 52664). This section addresses the granting of an 18-month extension of the date to begin construction under 30 TAC subsection 116.115(b)(2)(A). The Executive Director may grant a one-time 18-month extension of the date to begin construction if the permit holder fails to begin construction within 18 months of the date of issuance of the permit.

#### *D. What Revisions Did Texas Submit Relating to the Extensions of Permits?*

On August 20, 2003, TCEQ adopted revisions to 30 TAC Section 116.115, and submitted them to EPA for SIP approval on September 25, 2003. This amendment recodifies the language relating to the granting of the additional 18-month extension of a permit and transfers this rule language from 30 TAC Subsection 116.115(b)(2)(A) to a new 30 TAC subsection 116.120(b), introductory paragraph, third sentence. The language relating to the Executive Director's authority to grant an 18-month extension of the permit was transferred to this new subsection, third sentence in the introductory paragraph. Because this is merely a recodification of an existing SIP requirement, EPA is approving the removal of 30 TAC 116.115(b)(2)(A) from the Texas NSR SIP, approving the consequent renumbering of the paragraphs in 30 TAC 116.115(b)(2), and approving the new 30 TAC subsection 116.120(b) as part of the Texas NSR SIP.

The new section 116.120 subsections (b) and (c), would allow more than one 18-month extension, as is currently provided for in the Texas NSR SIP. First, the permit holder may be granted a second extension to begin construction in the case of a construction delay caused by litigation, not of the permit holder's initiation, associated with the issuance of a permit. The Executive Director also can issue a

second extension if the permit holder has spent, or has committed to spend 10% of the estimated cost of construction to a maximum of \$5 million.

EPA interprets this revision to require that before a permit holder can obtain this second extension, however, the State must perform a new health effects analysis and the permittee must demonstrate that emissions from the facility will comply with all rules and regulations of the commission and the intent of the TCAA, including protection of the public's health and physical property. The State will also review again the present permit's BACT, LAER, netting or offsets as applicable, determinations.

EPA is also interpreting subsection 116.120(b) to subject a permit for which a second extension is requested to public notice and comment as a permit amendment if the health effects analysis or original determination regarding BACT, LAER, netting or offsets as applicable, is changed.

#### **IV. Final Action**

EPA is taking direct final action to approve revision of the SIP Texas submitted on September 25, 2003, that relate to Voiding of Permits, as part of the Texas NSR SIP. EPA is approving the revisions that relate to Extensions of Permits as part of the Texas NSR SIP for Major and Minor NSR and are merely the recodification of the existing SIP requirement. EPA also is approving some substantive portions of the revisions that add new criteria for the granting of the first permit extension as part of the Texas Major and Minor NSR and NNSR SIP. Finally, we are approving the new substantive portions of the revisions that add the authority to grant a second extension as part of the Texas NSR SIP for Major and Minor NSR and NNSR.

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, 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, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

the CFR regulatory language will show there are two 30 TAC 116.120's in the Texas SIP; the State adoption date and EPA's approval date will inform the public which 30 TAC 116.120 relates to Permit Voiding and Permit Extensions.

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 2010.

**Lawrence E. Starfield,**  
*Acting Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart SS—Texas**

■ 2. The table in § 52.2270(c) entitled “EPA Approved Regulations in the Texas SIP” is amended under Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, Subchapter B—New Source Review Permits, Division 1—Permit Application, to read as follows:

■ a. By revising the entry for Section 116.115, General and Special Conditions; and

■ b. Immediately following the entry for Section 116.116, by adding a new entry for Section 116.120, Voiding of Permits, under Division 1.

The revision and addition read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	<b>Chapter 116—Control of Air Pollution by Permits for New Construction or Modification</b>	* * *	* * *	*
* * *	<b>Subchapter B—New Source Review Permits Division 1—Permit Application</b>	* * *	* * *	*
Section 116.115 .....	General and Special Conditions .....	8/20/2003	4/2/2010 [Insert <i>FR</i> page number where document begins].	*
Section 116.120 .....	Voiding of Permits .....	8/20/2003	4/2/2010 [Insert <i>FR</i> page number where document begins].	*
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[FR Doc. 2010–7214 Filed 4–1–10; 8:45 am]