



Texas Commission on Environmental Quality
Form OP-REQ2 - Instructions
Negative Applicable Requirement Determinations

General:

The purpose of this form is to document negative applicability from potentially applicable requirements for units, groups, and processes when a permit shield is requested. Negative applicability when a permit shield is NOT requested may be documented on this form OR the appropriate OP-UA form.

A negative applicability determination is any regulatory citation that provides the basis whereby one or every operating condition of a device is not subject to a regulation. For example; Title 40 Code of Federal Regulation § 60.110b(a) [40 CFR § 60.110b(a)] could be the regulatory basis for a negative applicability determination for a VOC storage tank of less than 75 cubic meters; therefore, the storage tank is completely exempt from 40 CFR Part 60, Subpart Kb.

Note: Numerous regulatory citations appear to authorize exemptions to qualifying units from those regulations. However, closer examination typically reveals that there are still some requirements which must still be met (such as recordkeeping). For example, 30 TAC Chapter 117, § 117.203(a)(12)(A) authorizes an exemption to the ICI division for a stationary diesel engine in Houston-Galveston area (after October 1, 2001) which operates < 100 hr/yr in other than emergency situations. However, § 117.213(I) specifies that an owner/operator claiming an exemption under § 117.203(a)(12)(A) shall record the operating time with an elapsed run time meter.

For certain emission units subject to certain MACT (40 CFR Part 63) standards, other federal regulations may apply. In many instances one of the overlapping regulations may specify which rule supersedes the other. Although superseded rules do not qualify as negative applicability determinations, it has been determined that these instances can be documented on the Form OP-REQ2, if the applicant elects to comply only with the superseding requirement. For example; a Group 1 or Group 2 Storage Tank, subject to MACT G, may not be required to comply with NSPS Kb due to rule overlap of MACT G. In this case, the permit applicant may request a permit shield from NSPS Kb. In this case, the applicant must submit the superseding requirement citation, § 63.110(b), and a textual description of the superseding determination, if they elect to comply with only the superseding requirement.

When this form is used for an emission source which has one or more potential applicable requirements, the applicant must list all the requirements for which negative applicability determinations can be made. Once the negative determinations have been made, indicate the citation and reason for non-applicability in the appropriate columns. Indicate the determinations for all potentially applicable requirements for each emission source before listing the next source.

Negative applicability determinations for potentially applicable requirements, confirmed by the TCEQ, may be approved as a permit shield (see instructions outlined in Area Wide Applicability Determinations, Form OP-REQ1, to request a permit shield). However, if a permit shield is requested, an OP-REQ2 is always required. For additional information relating to permit shields, refer to the TCEQ guidance document entitled "Permit Shield Guidance (www.tceq.texas.gov/assets/public/permitting/air/Guidance/Title_V/permit_shield.pdf)".

The Company Name and Area Name (from Form OP-1, Section I and X, respectively) must appear in the header block of each page for purposes of identification. The date of submittal must also be included, and should be consistent throughout the application (MM/DD/YYYY). Any subsequent submittals must show the date of revision. Also enter the Regulated Entity Number (RNXXXXXXXX) and Permit Number (OXXXX), if assigned.

Specific:

Unit Action Indicator (AI): Only complete this section for the permit revision/renewal. Enter “A” if the entry is a permit addition. Otherwise, enter “D” to indicate a deletion.

Revision No.: Complete this section only for the permit revision/renewal. Enter the number identified on Form OP-2 (Application for Permit Revision). This number will link the specific negative applicable requirement determination to the appropriate revision.

Unit/Group/Process:

ID NO.: Enter the identification number (ID No.) (maximum 10 characters) of the unit, group, or process as listed on Form OP-SUM (Individual Unit Summary).

Applicable Form: Enter the number of the UA form which contains the specific information for the corresponding emission unit, emission point, or process (i.e., for flares enter “OP-UA7” entitled “Flares”) if the unit/emission point, process has other applicable requirements. If negative applicability determinations are only being substantiated on this form by a textual description of the reason, and the emission unit, emission point, or process has no other positive applicability, enter “OP-REQ2.” The Applicable Form entered on OP-REQ2 must match the applicable form entered on OP-SUM for the emission unit, emission point, or process.

Potentially Applicable Regulatory Name: Enter the name of the potentially applicable requirement (maximum 25 characters) for which negative applicability is being demonstrated.

Note: Permit shields cannot be granted for permit authorizations of any kind (i.e. - PSD, NSR permit, Acid Rain, etc.).

Negative Applicability Citation: Enter the citation of the paragraph of the rule that was used to determine negative applicability. Provide the citation detail to the level of the paragraph allowing the exemption, exclusion, or non-applicability. If there is more than one citation for determining negative applicability, select the most appropriate or the clearest (least likely to be misinterpreted). Negative applicability determinations by the applicant are subject to auditing during the permit application review. The applicant must always indicate the negative applicability citation on the OP-REQ2. For examples on the level of detail for citations, see table below (maximum 36 characters).

Example Applicable Regulatory Requirements*		
Regulation	Name (Input Format)	Citation (Input Format)
30 TAC Chapters 111, 112, 113, 115 and 117	Chapter 111	§ 111.XXX(x)(yy)(zz)
	Chapter 112	§ 112.XXX(x)(yy)(zz)
	Chapter 113	§ 113.XXX(x)(yy)(zz)
	Chapter 115, Storage of VOCs	§ 115.XXX(x)(yy)(zz)
	Chapter 117, ICI	§ 117.XXX(x)(yy)(zz)
40 CFR Part 60, Subparts A-WWW, New Source Performance Standards (NSPS)**	NSPS XXX	§ 60.XXX(x)(yy)(zz)
40 CFR Part 61, Subparts A-FF National Emission Standards for Hazardous Air Pollutants (NESHAP)	NESHAP XX	§ 61.XX(x)(yy)(zz)
40 CFR Part 63, Subparts A-Y+, NESHAP by source category, including hazardous organic NESHAP (HON)	MACT XX	§ 63.XXX(x)(yy)(zz)

* This list is not intended to be exhaustive

** The inclusion of 40 CFR Part 60, Subpart A is only for those requirements contained in 40 CFR § 60.18

Negative Applicability Reason: Enter a textual description indicating the reason for the negative applicability determination. If a permit shield is requested, the textual description provided will be recreated as the *Basis of Determination* for the permit shield in the permit. The description may include rule text, rule preamble, or other text resulting from a historical rule interpretation, EPA applicability determination Index (ADI), or case law. Use multiple lines if necessary (maximum 250 characters).

