

The commission adopts new §106.102, concerning Comfort Heating. The new section exempts combustion units used exclusively for comfort heating from the preconstruction permitting requirements of the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057 and §382.0518. The new section is adopted with changes to the proposed text as published in the July 12, 1996, issue of the Texas Register (21 TexReg 6412).

This rulemaking action is part of the commission's plan to recodify standard exemptions in a new Chapter 106, concerning Exemptions from Permitting.

This action in the recodification process will create a new §106.102, which is a recodification of current Standard Exemption (SE) 3 in §116.211, with changes to allow for burning distillate fuel oil and to allow for the burning of used oil in comfort space heaters. Space heaters constructed or modified after the effective date of this section will be subject to the requirements of this new chapter; however, current SE 3 may continue to be used until the effective date of this section.

The rule addresses the following problem: a significant opportunity for recycling used oil is to use it for fuel for heating purposes. However, the current standard exemption for comfort heating, SE 3, does not allow for the burning of distillate fuel oil or used oil in space heaters. Thus, the owner/operator of a space heater who wants to burn distillate fuel oil or used oil would be required to obtain a new construction permit. The rule solves this problem by creating §106.102, relating to Comfort Heating.

A public hearing was held in Austin on August 8, 1996. Oral comments were received at the hearing by individuals representing Innovative Resources and Clean Burn, Inc. Written comments were received from the City of Dallas, the Waste Oil Heating Manufacturers Association (WOHMA), and Houston Lighting and Power (HL&P).

WOHMA commented that Texas should adopt regulations that are consistent with the federal regulations, and that the current Texas proposal differs from the federal regulations in two respects: it imposes a combined 1.0 million British thermal units per hour (Btu/hr) limit on each account, and it requires that the combustion gases from the heater be vented through an unobstructed vertical vent.

**The restrictions were imposed to meet the requirements of Texas Clean Air Act, §382.057, which requires a demonstration that the facility will not make a significant contribution of air contaminants to the atmosphere. The commission has mandated that all exemptions be demonstrated to be protective of human health and the environment. These requirements ensure that the exemption meets those stated goals.**

WOHMA and an individual recommended that §106.102(2) be changed to specify the vertical vent height in lieu of an unobstructed stack to avoid conflicts with required fire and safety codes.

**The commission agrees, and has incorporated the proposed language in this adoption.**

An individual commented that the rule does not specify what happens if the owner or operator wants to exceed the 1.0 million Btu limitation at a site.

**The exemption does not authorize the installation of multiple units above 1.0 million Btu limitation utilizing used oil as a fuel. However, additional units could be authorized by applying for a permit.**

The City of Dallas commented that it is concerned about confusion to the public and to the affected agencies about the restructuring of the exemptions, especially during the interim period before all exemptions are codified. It recommended that the old exemption number be included with each standard exemption as it is codified into Chapter 106.

**The commission agrees to include the old exemption number in the recodified exemptions in Chapter 106.**

HL&P commented that the term “distillate fuel oil” should be replaced by “diesel fuel, kerosene, or heating oil (and any other fuels which the commission considers as distillate fuel oil).”

**The commission intends that the term “distillate fuel oil” include diesel fuel, kerosene, and heating oil Grades 4 and lighter. The commission intends for the term to exclude heavier residual oils such as Grades 5 and 6 fuel oil. The commission agrees with this comment and has revised the rule accordingly.**

HL&P commented that it is not necessary to require that distillate fuel oil contain less than 0.3% sulfur to prevent significant emissions of sulfur dioxide (SO<sub>2</sub>), nor is it necessary to prevent adverse impacts on ambient air quality.

**The commission agrees with the comment and has deleted the limitation on sulfur content in distillate fuel oil.**

HL&P commented that approved fuels should be limited to a maximum sulfur content of 0.5% so that all Grade Number 2 diesel fuels can be burned.

**The limitation of sulfur in distillate fuel oil has been removed.**

HL&P commented that §106.102(1) should be rewritten to ensure that total combustion of used oil in space heaters does not exceed 1.0 million Btu/hr while clarifying that there is no limit on the total capacity of space heaters at an account if an owner or operator is not burning used oil.

**The last sentence of §106.102 specifies that the additional requirements in §106.102(1)-(3) are applicable only to space heaters burning used oil as a fuel.**

HL&P commented that §106.102(2) should be rewritten as follows to allow additional operating flexibility while insuring that emissions do not result in adverse off-property impacts:

“(2) the heater(s) must be located at least 100 feet from the nearest property line if the combustion gases from the heater(s) are not vented to the ambient air through an unobstructed vertical vent....”

**Rather than place a distance criteria that could be impractical for some small businesses to meet, the commission is proposing to provide additional flexibility in the rule by allowing an increased stack height if there are caps or obstructions on the stack to insure that the off-property impacts will be acceptable.**

HL&P commented that the commission should clarify what constitutes “used oil” in order to allow diesel fuel to be burned that has been removed from the fuel tanks of other plant equipment such as emergency diesel generators.

**Used diesel taken out of equipment is not used oil, but would be authorized since fuel oil is an authorized fuel now for space heaters.**

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**SUBCHAPTER C : DOMESTIC AND COMFORT HEATING AND COOLING**

**§106.102**

**§106.102. Comfort Heating (Previously SE 3).**

This section exempts combustion units designed and used exclusively for comfort heating purposes employing liquid petroleum gas, natural gas, solid wood, or distillate fuel oil. Distillate fuel oil includes diesel fuel, kerosene, and heating oil Grades 4 and lighter. Distillate fuel oil does not include heavier residual oils such as Grades 5 and 6 fuel oil. Combustion of bark chips, sawdust, wood chips, treated wood, or wood contaminated with chemicals is not included. Used oil that has not been mixed with hazardous waste may be used as fuel in space heaters provided that:

(1) the space heater or combination of space heaters at the same account have a maximum capacity of 1.0 Million Btu per hour (MMBtu/hr) provided each individual heater is not greater than 0.5 MMBtu/hr;

(2) the combustion gases from the heater(s) are vented to the ambient air in accordance with the following requirements:

(A) through an unobstructed vertical vent; or

(B) for a stack with a cap;

(i) for a flat roof, through a minimum of a three-foot stack; or

(ii) for a sloped roof, through a stack that is three feet higher than a point extending ten feet horizontally from the roof; and

(3) the heater(s) burns only used oil that the owner or operator generates on-site or used oil received from household do-it-yourself used oil generators.

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 23, 1996.