(I) Table A. Interaction of pH and a_ for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged. Figure: 25 TAC §229.661(b)(8)(B)(i)(I)

(II) Table B. Interaction of pH and a_ for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged. Figure: 25 TAC §229.661(b)(8)(B)(ii)(I)

(C) Potentially hazardous food (time/temperature control for safety food) does not include:

(i) an air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

(ii) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(iii) a food that because of its pH or a_ value, or interaction of a_ and pH values, is designated as a non-PHF/non-TCS food in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph;

(iv) a food that is designated as PA in Table A or B in subparagraph (B)(ii)(I) and (II) of this paragraph and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(I) intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients; 

(II) extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use; or

(III) a combination of intrinsic and extrinsic factors; or

(v) a food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the clauses (i) - (iv) of this subparagraph even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(c) Complaints. The department shall maintain a record of a complaint made by a person against a cottage food production operation.

(d) Labeling requirements for cottage food production operations. All foods prepared by a cottage food production operation must be labeled.

(1) The label information shall include:

(A) the name and physical address of the cottage food production operation;

(B) the common or usual name of the product;

(C) if a food is made with a major food allergen, such as eggs, nuts, soy, peanuts, milk or wheat that ingredient must be listed on the label; and

(D) the following statement: "This food is made in a home kitchen and is not inspected by the Department of State Health Services or a local health department."

(e) Sales by cottage food production operations through Internet prohibited. A cottage food production operation may not sell any of the foods described in these rules through the Internet. No health claims may be made on any of the advertising medium of the finished products because they are conventional foods.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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CHAPTER 265. GENERAL SANITATION
SUBCHAPTER N. CAMPUS PROGRAMS FOR MINORS
25 TAC §§265.401 - 265.405

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§265.401 - 265.405, concerning sexual abuse and child molestation training and examination for employees of certain programs for minors operated by or held on campuses of institutions of higher education or private or independent institutions of higher education. Sections 265.402 - 265.404 are adopted with changes to the proposed text as published in the February 3, 2012, issue of the Texas Register (37 TexReg 471). Sections 265.401 and 265.405 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new sections implement the legislative requirements of Senate Bill 1414, 82nd Legislature, Regular Session, 2011, codified at Education Code, Chapter 51, Subchapter Z, §51.976, Training and Examination Program for Employees of Campus Programs for Minors on Warning Signs of Sexual Abuse and Child Molesta-

SECTION-BY-SECTION SUMMARY

Section 265.401 establishes the scope and purpose of the rules. Section 265.402 defines terms used in this new subchapter. Section 265.403 imposes a requirement for all employees in a position involving contact with campers at a campus program for minors to successfully complete an approved training and examination program on sexual abuse and child molestation. Section 265.404 establishes criteria found in Health and Safety Code, §141.009(e), Youth Camps, for a training and examination program on sexual abuse and child molestation, and requires a training and examination program on sexual abuse and child molestation to be approved by the department. Section 265.405 provides civil penalties and injunctive relief in accordance with Health and Safety Code, §141.015, for a person violating the
Education Code, §51.976 (Act), a rule, or an order adopted under the Act.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepted. The commenters were individuals, associations, and/or groups, including the following: Praesidium Inc., The University of Texas at Austin, The University of Texas System, The University of Texas Health Science Center, Texas Tech University System, and The University of North Texas System. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §265.402(5), several commenters had concerns that the definition of an employee could be construed as broad, vague or ambiguous.

Response: The commission agrees and the definition of an employee was reworded to "A person of any age who receives compensation for work or service at a campus program for minors."

Comment: Concerning §265.402(7), a commenter recommended revision to the definition of Program Operator so that a "person" would be replaced with "an individual or entity."

Response: The Government Code, §311.005 definition of "person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. The commission disagrees with the change to the definition of Program Operator, but agrees to include the definition of "person" for clarification. The remaining paragraphs of the section were renumbered to accommodate the new definition.

Comment: Concerning §265.403(a), a commenter recommended the use of the term "employee" instead of "individual."

Response: The commission disagrees as the language currently reads "A program operator may not employ an individual in a position involving contact with campers at a campus program for minors," which clearly indicates the individual is an employee. No change was made as a result of this comment.

Comment: Concerning §265.403(a), a commenter recommended adding a provision to clarify that an individual who works at several different (or successive) camps sponsored or run by different institutions of higher education can easily transfer proof of having successfully completed the training program.

Response: The commission agrees but determined that the new provision would be more appropriate in §265.404 and a new §265.404(a) was added stating that "Training and examination program providers shall issue a certificate or similar record indicating successful completion of the program training to individuals who have successfully completed a campus program for minors training and examination program on sexual abuse and child molestation. For individuals employed by campus programs overseen, managed, operated or run by different institutions of higher education, such certificate, or similar record, shall be presumptive proof that the named individual has successfully completed the training required under these rules."

Comment: Concerning §265.403(b), a commenter recommended changing "who visits" to "whose attendance at the campus program for minors is."

Response: The commission agrees and this sentence was reworded to read "For purposes of this section, the term "contact with campers" does not include an employee acting as a guest speaker, an entertainer, or fulfilling any other role whose attendance at the campus program for minors is for a limited purpose or a limited time if the employee has no direct and unsupervised interaction with campers."

Comment: Concerning §265.403(c), several commenters recommended adding a provision that would clarify that campus personnel who may have incidental contact with campers while performing their jobs are exempted from the requirements.

Response: The commission agrees and a clarification was added to §265.403(c) that employees of the institution of higher education or private or independent institution of higher education who are not employees of the campus program for minors are not subject to the training and examination requirement of subsection (a). It was also clarified that when the institution of higher education or private or independent institution of higher education is itself the program operator, then its employees, agents, or contractors who have only limited or incidental contact with campers are not subject to the training and examination requirement.

Comment: Concerning §265.403(d)(2), several commenters recommended clarification that a scanned or other electronic record of completion is permissible.

Response: The commission agrees and the words "an electronic or paper" were added.

Comment: Concerning §265.404(a), commenters recommended revision to the training requirements not to address the need to minimize one-on-one contact between two minors, but rather to include more information on the risk of sexual activity between campers, steps to prevent sexual activity between campers, and how to respond if sexual activity between campers occurs.

Response: The commission agrees and the training requirements were added as new §265.404(a)(6).

Comment: Concerning §265.404(a)(5), a commenter recommended deleting the words "or between two minors."

Response: The commission agreed with a previous comment, and these words have been deleted.

Comment: Concerning §265.404(b), several commenters recommended the deletion of a minimum length for a training program.

Response: The commission disagreed, as a minimum of one hour was felt to be necessary to adequately cover all of the subjects required in §265.404(a). No change was made to this section of the rules.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new sections are adopted under the Texas Education Code, §51.976, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules to implement the Training and Examination Program for Employees of
§265.403. Program Operators.

(a) A program operator may not employ an individual in a position involving contact with campers at a campus program for minors unless:

(1) the individual submits to the program operator or the campus program for minors has on file documentation verifying that within the preceding two years of the beginning date of employment, the individual successfully completed the required training and examination program on sexual abuse and child molestation; or

(2) the individual successfully completes during the individual's first five days of employment the required training and examination program on sexual abuse and child molestation.

(b) For purposes of this section, the term "contact with campers" does not include an employee acting as a guest speaker, an entertainer, or fulfilling any other role whose attendance at the campus program for minors is for a limited purpose or a limited time if the employee has no direct and unsupervised interaction with campers. A program operator may require training and an examination for visitors, including parents, if it chooses.

(c) Subsection (a) of this section does not apply to an individual who is a student enrolled at the institution of higher education or private or independent institution of higher education that operates the campus program for minors or at which the campus program is conducted and whose contact with campers is limited to a single class of short duration. The training and examination requirement in subsection (a) of this section does not apply if:

(1) employees of the institution of higher education or private or independent institution of higher education are not employees of the campus program for minors; or

(2) the institution of higher education or private or independent institution of higher education is the operator of the campus program for minors and its employees, agents, or contractors have only limited or incidental contact with campers.

(d) A program operator must:

(1) submit to the department on the form provided by the department and within five days of the start of the campus program for minors verification that each employee of the campus program for minors has complied with the requirements of this section; and

(2) retain in the operator's records an electronic or paper copy of the documentation required or issued in subsection (a) of this section for each employee until the second anniversary of the examination date.

(e) A person applying for or holding an employee position involving contact with campers at a campus program for minors must successfully complete the training and examination program on sexual abuse and child molestation during the applicable period prescribed in subsection (a) of this section.

§265.404. Training and Examination Program on Sexual Abuse and Child Molestation.

(a) A training and examination program on sexual abuse and child molestation must be approved by the department prior to being offered and shall at a minimum include training and an examination on:

(1) the definitions and effects of sexual abuse and child molestation;

(2) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk,

(3) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse;

(4) the recommended rules and procedures to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation;

(5) the need to minimize one-on-one isolated encounters between an adult and a minor; and
CHAPTER 60. COMPLIANCE HISTORY

30 TAC §§60.1 - 60.3

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§60.1 - 60.3. Sections 60.1 - 60.3 are adopted with changes to the proposed text as published in the February 10, 2012, issue of the Texas Register (37 TexReg 622).

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts revisions to Chapter 60 to implement certain requirements of House Bill (HB) 2694, regarding compliance history. HB 2694, 82nd Legislature, 2011, §§4.01 - 4.05 and 4.07, amended Texas Water Code (TWC), Chapter 5, Subchapter Q, requiring the commission to make changes to the compliance history rule. The purpose of this adopted rulemaking is to allow the commission to use new standards instead of the existing uniform standard for evaluating and using compliance history. In addition, the adopted rulemaking modifies the compliance history system in order to provide a more accurate measure of regulated entities’ performance and make compliance history a more effective regulatory tool.

HB 2912, 77th Legislature, 2001, §4.01, amended TWC, Chapter 5, by adding Subchapter Q, TWC, §5.753, that required the commission to “develop a uniform standard for evaluating compliance history.” At the time, the process for measuring or comparing compliance history across the commission’s programs for air, water, and waste was inconsistent. In addition to the traditional use of compliance history in permitting and enforcement decisions, this new performance-based regulation allowed the commission to use compliance history when determining eligibility for voluntary incentive programs. The idea behind these programs was to use compliance history to provide incentives for regulated entities to do more to protect the environment than law requires by making available benefits, such as regulatory flexibility and exemptions from some inspections. In late 2001 and early 2002, TCEQ held stakeholder meetings to develop this new system of compliance history. TCEQ interpreted the uniform standard to mean using an identical objective formula for all entities across all programs. The compliance history system has remained unchanged since implementation.

In calculating an entity’s compliance history classification, TCEQ currently assigns points for multiple components as well as points for a repeat violator classification that, when computed in an equation, produce a numerical score for each regulated entity. Generally, the lower the score, the better the classification. For instance, noncompliance issues, such as enforcement actions taken against a facility, adds points and proactive approaches towards compliance, such as participating in voluntary programs, subtracts points.

The commission currently recalculates compliance history scores annually based on information from the previous five years, and classifies regulated entities as poor, average, or high performers. HB 2912 also required the commission to assess the compliance history of entities for which it does not have compliance information. The commission classifies these entities as average by default.

Section 4.01 of HB 2694 amends TWC, §§5.751 to add TWC, Chapter 32, and Texas Health and Safety Code (THSC), Chapter 375, regarding applicability. Persons and entities covered by those chapters will now be subject to the compliance history rule.