

**Salt Lake Valley Health Department**

**Health Regulation**

**#35**

**RESIDENTIAL  
CHILDCARE FOOD SERVICE  
REGULATION**

**Adopted by the Salt Lake Valley Board of Health  
December 7, 2006**

**Under Authority of Section 26A-1-114  
Utah Code Annotated, 1953, as amended**

**1. PURPOSE.** The purpose of this regulation is to establish food service inspection standards for individuals seeking to obtain licensure or certification to provide child care for 16 or fewer children. This rule applies to food service provided in certified or licensed child care facilities, including residences, which provide care for 16 or fewer children, notwithstanding the provisions of Utah Administrative Code Rule R392-100. R392-100 governs food service provided in facilities that care for more than 16 children.

**2. DEFINITIONS.**

For the purposes of this regulation, the following terms, phrases, and words shall have the meanings herein expressed:

2.1. “Child” shall mean:

2.1.1. a child of a person other than the provider of child care;

2.1.2. a child of a licensed or certified residential child care provider who is under the age of four; and

2.1.3. a child of an employee or owner of a licensed child care center who is under the age of four.

2.2. “Child care” shall mean continuous care and supervision of at least 5 children but no more than 16 children through age 12 and children with disabilities through age 18, in lieu of care ordinarily provided by parents in their own home, for less than 24 hours a day, for direct or indirect compensation.

2.3. “Child care provider” shall mean an individual who seeks to obtain a “Residential Child Care Certificate” or a license by the State of Utah pursuant to Title 26 Chapter 39, Utah Code Ann., 1953 as amended to provide child care as defined in subsection 2.2 of this regulation.

2.4. “Department” shall mean the Salt Lake Valley Health Department (SLVHD).

2.5. “Residential child care” shall mean child care provided in the home of a provider.

**3. GENERAL PROVISIONS**

**3.1. Jurisdiction of the Department.**

3.1.1 This regulation is promulgated by the Salt Lake Valley Board of Health as authorized by Section 26A-1-121(1), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.

- 3.1.2 The Department is empowered to enforce this regulation as authorized by Section 26A-1-114(1)(a), in all incorporated and unincorporated areas served by the Department, Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.2. It shall be unlawful for any person not to comply with any regulation promulgated by the Department unless granted an express variance by the Salt Lake Valley Board of Health.
- 3.3. Compliance with this regulation does not constitute a defense if charged with any environmental crime or violation of any local, state, or federal law.
- 3.4. Legal action taken by the Department under this Regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.
- 3.5. Nothing in this regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance issued by Salt Lake County or any municipality located within Salt Lake County, or any state or federally issued law, including common law. However, Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are inconsistent.
- 3.6. **Severance.** If any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this regulation.

#### 4. **SUBSTANTIVE PROVISIONS**

##### 4.1. **Department Approval Required**

- 4.1.1. Pursuant to Utah Administrative Code R392-110, as a condition for approval from the Utah Division of Child Care Licensing to provide child care, a child care provider shall obtain a report from a Department inspector stating that the food service provided by the child care provider poses no serious sanitation or health hazard to children.
- 4.1.2. To obtain the report required in part 4.1.1 of this regulation, a child care provider shall contact the Department in writing and request a Child Care Food Service Inspection. The request shall specify that a Child Care Food Service Inspection is sought and shall contain the child care provider's name, phone number, and address. The request shall also include a check or money order in the amount stated in subsection 5.2 of this regulation.

4.1.3. Upon conducting the inspection and making a determination that food service conditions are satisfactory, the Department inspector shall issue a report to the child care provider stating that the food service provided by the child care provider poses no serious sanitation or health hazard to children.

4.2. **Standards For Inspection.** The Department shall issue a report to the child care provider upon a satisfactory determination that:

4.2.1. The child care food is obtained from sources that comply with law and are approved as outlined in Health Regulation No. 5, parts 4.3.2 – 4.3.20.

4.2.2. Food in a hermetically sealed container is obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

4.2.3. Food is protected from contamination by storing the food in a clean, dry location where it is not exposed to splash, dust, or other contamination and at least 6 inches above the floor.

4.2.4. Food is not stored in toilet or mechanical rooms, under sewer lines, under leaking water lines or under any source of contamination.

4.2.5. Food brought in by parents to serve to other children in the facility is from approved sources that comply with law and are approved as outlined in Health Regulation No. 5, parts 4.3.2 – 4.3.20.

4.2.6. Food brought in by a parent or guardian for specific use of that person's child is labeled with the name of the child.

4.2.7. Bottled or canned baby food, upon opening, is labeled on the outside of the container with the date and time of opening.

4.2.8. Opened baby food containers are refrigerated and kept at 41 degrees F or below.

4.2.9. Baby food is discarded if not used within 24 hours of opening.

4.2.10. Infant formula or breast milk is discarded after feeding or within two hours of initiating a feeding.

4.2.11. Refrigerators used to store food for children is maintained and cleaned to prevent contamination of stored food.

4.2.12. Food products stored inside the refrigerator are stored at 41 degrees F or below as outlined by Health Regulation No. 5, part 4.3.59.

4.2.13. A calibrated thermometer is stored in the refrigerator to verify the temperature of food products.

- 4.2.14. Food prepared at the day care facility meets the critical cooking, hot holding, cold holding, and cooling temperatures as outlined in Health Regulation No. 5, parts 4.3.46 – 4.3.64.
- 4.2.15. Each caregiver who prepares or serves food is trained in food safety and has a copy of a current child care food handler card on file at the facility.
- 4.2.16. Food is served on clean plates, single service plates, or a clean and sanitized high chair tray.
- 4.2.17. If napkins are used at meals or snacks, then they must be single-service.
- 4.2.18. Clean cups or single service cups are provided at each beverage service.
- 4.2.19. Before each use, reusable food holders, utensils, and preparation surfaces are washed with hot water and detergent solutions, rinsed with clean water, and sanitized as outlined in Health Regulation No. 5, part 4.4.76.
- 4.2.20. Food employees clean their hands and exposed portions of their arms:
- (i) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single service and single use articles;
  - (ii) after touching bare human body parts other than clean hands and clean exposed portions of arms;
  - (iii) after using the toilet room;
  - (iv) after caring for or handling service animals or aquatic animals;
  - (v) when switching between working with raw food and ready to eat food; and
  - (vi) as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.
- 4.2.21. Hand washing facilities are located to allow convenient use by employees in food preparation, food dispensing, and ware washing areas; and in or immediately adjacent to toilet rooms.
- 4.2.22. When preparing food, employees wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens, and unwrapped single service and single use articles.

- 4.2.23. Food employees wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single service and single use articles.
- 4.2.24. Poisonous or toxic chemicals in the food service area are identified by their commonly understood name.
- 4.2.25. Procedures are in place to ensure that poisonous or toxic chemicals are safely stored to prevent access by children.
- 4.2.26. Poisonous or toxic materials are stored so they can not contaminate food, equipment, utensils, linens, and single service and single use articles.
- 4.2.27. Only those poisonous or toxic materials that are required for the operation and maintenance of food storage, preparation, and service areas such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents are stored in the food storage, preparation, and service areas.
- 4.2.28. Menus for the current week are posted in plain sight and accessible for public review.

## **5. LICENSES, PERMITS, & REGULATORY FEES**

- 5.1. The Department may collect appropriate fees as set out in this regulation for the performance of services, including plan reviews. If information stated on an inspection request changes, the applicant shall notify the Department.
- 5.2. **Child Care Food Service Inspection Fee.** The fee for a Child Care Food Service Inspection required in part 4.1.2 of this regulation shall be paid to the Department at the time of inspection request. It shall be based upon the Department's reasonable expenses incurred by conducting an inspection. The fee for a Child Care Food Service Inspection is \$60.

## **6. INSPECTIONS & INVESTIGATIONS**

- 6.1. To ensure compliance, the Department has the authority to perform inspections, investigations, reviews, and other actions as necessary.
- 6.2. **Authority for Department to Enter Premises.**
  - 6.2.1. **Regulated Commercial Premises.** Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ensure compliance with rules, standards, regulations, and ordinances adopted by the Department, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the Division of Occupational and Professional Licensing.

6.2.2. **Unregulated Commercial Premises.** The Department may enter upon the premises of unregulated commercial properties upon the consent of the owner or otherwise responsible party or upon a warrant issued by a court.

6.2.3. **Private Dwellings.** Inspections of private dwellings are made by consent of owner or otherwise responsible party or upon a warrant issued by a court.

6.3. The owner or other responsible person may request information gathered by the Department during an investigation, inspection or review as authorized by the Government Records Access and Management Act, §§ 63-2-101 to 63-2-1001 Utah Code Ann., 1953 as amended.

**7. ENFORCEMENT MECHANISMS.** If the Department has investigated or inspected any property or facility and believes the property owner or other responsible party is in violation of this regulation or the Department has other reasonable grounds to believe that there has been a violation of any part of this regulation or that the property owner or otherwise responsible party is not in compliance with this regulation, the Department may take civil enforcement action as authorized by statute, rule, ordinance, and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

7.1. **Criminal Enforcement Actions.** The Department may recommend criminal prosecution for environmental violations either alone or in conjunction with civil enforcement. Criminal prosecutions for environmental violations of state or federal law may be filed by the District Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors.

7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or environment;

7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance or it involved a pattern of conduct or a common attitude of illegal conduct;

7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the department;

7.1.4. The degree to which prosecution might deter future violations;

- 7.1.5. The person's actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;
- 7.1.6. The person's willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;
- 7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and
- 7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.

## **7.2. Civil Enforcement Actions.**

- 7.2.1. The Department may request that the District Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.

## **7.3. Administrative Actions.**

- 7.3.1. The Department may, at its discretion, issue a Notice of Violation & Order of Compliance (NOV).
- 7.3.2. **Service of NOV.** The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via first class mail to the last known address of the owner of the property or other responsible person. If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.
- 7.3.3. **Contents of NOV.** The NOV shall:
  - (i) Describe the property and the persons believed to be in violation;
  - (ii) Describe the violation;
  - (iii) Describe remedial action that will comply with the provisions of this regulation;
  - (iv) Set a reasonable time for the performance of any required remedial action(s);
  - (v) Describe the procedure to contest the NOV and the time limits for such a contest; and

- (vi) Notify the owner or other responsible person that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. **Challenging an NOV.** As detailed in the SLVHD's Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within ten (10) days of the date of the NOV.

7.3.5. **Departmental Conference, Settlement Agreements, and Stipulations & Orders.**

- (i) After issuance of the NOV, the alleged violator has the option to request and attend a Departmental Conference to discuss the NOV and settlement with the Department and its legal counsel. No hearing officer will be present. The process of requesting a Departmental Conference is more fully described in the SLVHD's Adjudicative Hearing Procedures.
- (ii) If the parties agree to a settlement, the Department will prepare, in conjunction with the District Attorney's Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the Departmental Conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

7.3.6. **Hearings & Appeals.** Parties aggrieved by an NOV may also request a Departmental Hearing or a Departmental Appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the SLVHD's Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the SLVHD's Adjudicatory Hearing Procedures.

7.3.7. **Failing to respond to an NOV.** If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. **Additional Administrative Enforcement Authority.**

7.4.1. The Department may declare unsanitary conditions a nuisance and cause every nuisance affecting the public health to be abated.

- 7.4.2. Any variances allowed by the Department to the requirements of this regulation shall be only by written approval of the Board.
- 7.4.3. **Exercise of Physical Control.** The Department may establish, maintain, and exercise physical control over property and over individuals as the Department finds necessary for the protection of the public health including but not limited to closing theaters, schools, and other public or private places and prohibit public gatherings. The order shall be effective immediately. Any person to whom the order is directed shall comply immediately but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it.
- 7.4.4. **Emergency Enforcement.** If the Director finds that an emergency exists that requires immediate action to protect the public health, he or she may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately; but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

## **8. CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES**

### **8.1. Criminal Penalties.**

- 8.1.1. Any person who is found guilty by a court of violating any of the provisions of this regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26A-1-123, Utah Code Annotated, 1953, as amended.
- 8.1.2. Each day such violation is committed or permitted to continue shall constitute a separate violation.
- 8.1.3. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.

### **8.2. Civil & Administrative Penalties.**

8.2.1. Penalties may be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may be assessed according to the following factors:

- (i) The violator's history of compliance or non-compliance;
- (ii) The violator's economic benefit of non-compliance;
- (iii) The documented costs associated with environmental or health damage;
- (iv) The violator's degree of willfulness or negligence; and
- (v) The violator's good faith efforts to comply and cooperate.

8.2.2. The Director may multiply the penalty by the number of days the violation occurred

**8.3. Recovery of Investigation & Abatement Costs**

8.3.1. The Department may recover its inspection, investigative and abatement expenses and costs from owners or other responsible person.

8.3.2. The Department may record a judgment lien on a violator's property to recover its expenses and costs.

**9. EFFECTIVE DATE.**

9.1. This regulation shall be effective upon its enactment by the Salt Lake Valley Board of Health.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

SALT LAKE VALLEY BOARD OF HEALTH

By: \_\_\_\_\_  
William S. Kidder, D.D.S.

ATTEST:

By: \_\_\_\_\_  
GARY L. EDWARDS, M.S.  
Executive Director  
Salt Lake Valley Health Department