



**NEW YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE**

Thomas Farley, MD, MPH
Commissioner

May 2010

Proposed Letter Grading Rules for Sanitary Inspections

What They Would Mean for Food Service Establishments

Beginning in July 2010, the New York City Health Department will require certain types of food service establishments to post letter grades that correspond to their sanitary inspection scores. The agency has proposed a set of rules to govern the setting and posting of grades and is seeking public comments through May 26. These questions and answers summarize the proposed rules and explain how they would affect restaurant operators.

Where can I read the proposed grading rule?

Anyone can read the Health Department's proposed rules by visiting www.nyc.gov/html/nycrules/html/proposed/proposed.shtml. General information about New York City's new restaurant grading system is available at www.nyc.gov/html/doh/downloads/pdf/notice/2010/Article-81.pdf.

How can I comment on the proposed rule or testify about it?

The first page of the rules document has instructions for submitting comments or testifying at the public hearing. You can also submit your comments at www.nyc.gov/html/nycrules/html/proposed/proposed.shtml.

Under the proposed rules, which food service establishments would be graded?

Under the proposed rules, some food service establishments that require Health Department permits would have to post letter grades reflecting their sanitary inspection scores. These establishments include restaurants, coffee shops, bars, nightclubs, most cafeterias and fixed-site food stands.

Which establishments would not be graded?

Letter grades would not be issued to mobile food vending units, temporary food service establishments, food service establishments operated by primary or secondary schools, hospital-operated cafeterias, correctional facilities, charitable organizations (including soup kitchens or other prepared food distribution programs), or food service establishments that not-for-profit membership organizations operate and that serve food only to their members.

How would the grade be determined?

The letter grade would be based on an establishment's score (total points issued for sanitary violations) after certain inspections. A score of 0-13 would trigger a grade of A, 14-27 points a grade of B, and 28 or more points, a grade of C.

Would the inspection process change?

No, the proposed grading rule would not change the way the Health Department conducts sanitary inspections. The inspector would still record violations during an inspection. At the end of the inspection, the inspector would still give the operator a printed report listing the cited violations, the points for each violation and the total number of points.

Is the Health Department proposing any changes to violations?

Yes. The agency is proposing several changes so that inspections and scored violations more precisely target practices that undermine food safety.

Proposed changes include:

- Deleting the violation for an inadequate workspace.
- Allowing employees to have beverages in food-preparation areas so long as they drink from covered containers.
- Removing citations for unshielded or non-shatterproof light bulbs from the sanitary score, so that these would not count toward the grade.

There are many other proposed changes. To review them all, read the proposed rule at www.nyc.gov/html/nycrules/html/proposed/proposed.shtml.

Which inspections would result in a grade?

Every food service establishment is placed on a Health Department inspection cycle. If the proposed rule is adopted, a food service establishment that scores 0 to 13 violation points on its first inspection of the cycle will receive an A grade.

Under the proposed rule, an establishment that does not score an A on its initial inspection will not have to post a grade until it has had the opportunity to improve its sanitary conditions and be re-inspected, about two weeks later. The grade will be issued after this re-inspection.

Would the Health Department grade new establishments before allowing them to open?

No. The agency would not grade food service establishments during pre-operational and pre-permit inspections. A new establishment would receive its first grade at its first “initial” (operational) inspection or re-inspection.

When would the establishment receive its grade card?

An establishment that got an A on either its initial inspection or re-inspection would receive a grade card from the inspector at the end of the inspection. The A grade card would have to be posted immediately.

An establishment that got a B or C on its *re-inspection* would receive two cards: one showing the letter grade that was issued at the re-inspection, one that says Grade Pending. The establishment would have to post one of those cards immediately. The establishment could post either card until it had the opportunity for a hearing at the Administrative Tribunal, where the final grade would be determined.

Where would I have to post the grade card?

The Grade Pending or letter-grade card would have to be posted in a “conspicuous place,” where it is easily seen by people passing by. A “conspicuous place” is defined as a front window, door or outside

wall. The card would have to be within 5 feet of the front door or other entrance and within 4 to 6 feet of the ground or floor.

Would I still be able to contest violations cited by the Health Department at the Administrative Tribunal?

Yes, an establishment receiving a notice of violation after a sanitary inspection would still be able to go before a hearing examiner at the Administrative Tribunal and contest violations. Under the proposed rule, the Health Department would continue to automatically schedule a Tribunal hearing date and notify the establishment of the hearing date if a notice of violation is issued at the end of the inspection.

Would I have to post my grade before I had the chance to go before a Tribunal hearing examiner?

Under the proposed rule, an establishment receiving a B or C grade would not have to post the grade until it had the opportunity for a hearing at the Tribunal. It could choose to post the Grade Pending card instead. If the establishment postponed its first hearing date (an “adjournment”) or requested the inspector’s attendance and the Health Department was unable to accommodate the request, a second hearing date would be set. While waiting for the second hearing, the establishment would continue to have the choice of posting the grade card or the Grade Pending card.

What if I couldn’t attend the second hearing date?

If an establishment’s operator or representative could not attend the hearing on the second date, or at the hearing asked for the first time for the inspector to be present, the hearing would be rescheduled. But the establishment would no longer have the option of posting the Grade Pending card. It would have to immediately post the grade card it received at the re-inspection.

Would the grade change if the Tribunal hearing examiner dismissed a violation?

Under the proposal, the inspection score would be recalculated if the hearing examiner dismissed a violation during the hearing. If the recalculated score yielded a different grade than the re-inspection score, the establishment would receive a new grade card. The new grade card would have to be posted immediately.

When would I get a chance to improve my grade?

Any establishment that doesn’t receive an A on its initial inspection can improve its grade on re-inspection. After the re-inspection, the next opportunity to change a grade would be at the start of the next inspection cycle.

How long after my establishment receives its grade would it be before it is graded again?

Under the proposed rule, the frequency of inspections would depend on the establishment’s sanitary score on the initial inspection and any re-inspection. Higher-scoring establishments would be inspected more frequently than lower-scoring establishments. If a Tribunal decision changed an establishment’s score, it would not change the establishment’s inspection schedule.

For establishments that were not closed by the Health Department, here are some examples of how the inspection cycle would vary.

- If an establishment scored 0-13 points on its initial inspection, its next initial inspection would be in about a year.

- If an establishment scored 14-27 points on its initial or re-inspection, and did not score 28 or more points on either of these inspections, it would receive its next initial inspection 150 to 210 days after the re-inspection.
- If an establishment scored 28 or more points on its initial or re-inspection, it would receive its next initial inspection 90 to 150 days after its inspection cycle ends. If the establishment received 28 or more points on that subsequent inspection, the department would continue to inspect it roughly every 30 days until it scored below 28 points.

How would I be able to improve my grade?

There are many ways to improve food safety practices and thereby improve a grade. During an inspection inspectors explain violations and what is required to comply with the Health Code. Additionally, the Health Department’s website will continue to offer the following information free of charge and in several languages:

- Food protection course material
- Food protection fact sheets and booklets
- A violation checklist similar to that used by inspectors, which the operator can use to uncover areas in need of improvement
- A guide to violations that includes examples

The Health Department’s Health Academy will continue to offer the food protection course that leads to the required food protection certificate. The agency will also continue to offer the more advanced Quality Improvement Food Protection Course.

Would the grading rule change the procedures for closing food service establishments?

No. The Health Department would continue to close establishments if it finds serious and persistent violations or an uncorrected public-health hazard.

What would happen to a grade if the Health Department closed the establishment?

The Health Department would remove the grade card and post a closure sign. If the closure occurred on an initial inspection, the establishment would have to post a Grade Pending card when it re-opened, and would receive its grade card at its re-inspection. If the closure occurred on a re-inspection, the establishment would have the choice of posting its re-inspection grade or Grade Pending card when it re-opened, until it has had an opportunity for a hearing at the Tribunal and the grade becomes final for the cycle. If the closing occurred on a compliance inspection, the establishment would have to re-post the grade card that had been posted before the establishment was closed.

Would there be a penalty for not posting a current grade card?

Yes. A notice of violation would be issued for failing to post the required grade or Grade Pending card, or for failing to post the card in the required location.

##