

Retail Food Inspection and Grading Case Study: New Jersey



This case study describes New Jersey's retail food establishment evaluation placard system. NACCHO interviewed representatives from the Monmouth County Health Department (MCHD) and the New Jersey Department of Health (NJDOH) to understand how the placard system is used in local jurisdictions in New Jersey. To gain historical insight on the placard system, NACCHO interviewed two additional individuals. The first individual is a member of the New Jersey Association for Food Protection who currently works as a food safety consultant. The other individual NACCHO interviewed is a forensic sanitarian with experience working at NJDOH and several local health departments during the initial implementation of the placard system and is also a Diplomate Laureate of the American Academy of Sanitarians.

Background

New Jersey has an estimated population of 8.9 million and covers 7,354 square miles of land. At the time of the 2010 census, the state's population was 73.4% White, 14.7% African American, 9.2% Asian, 0.6 Native American, 0.1% Pacific Islander, and 2.0% of mixed descent. Of the total population, 18.9% were Hispanic or Latino of any race. Located in the Northeast and Middle Atlantic regions of the United States, New Jersey consists of 21 counties and 565 municipalities.

NJDOH's Food and Drugs Safety Program regulates food, drug, and cosmetic safety and provides information to consumers and the regulated industry. Under this program, the Retail Food Project provides technical resources to local health departments and the food service and retail food industries regarding the uniform interpretation and enforcement of New Jersey's retail food rules (found at NJAC 8:24-1 and entitled "Chapter 24 Sanitation in Retail Food Establishments and Food and Beverage Vending Machines") for approximately 55,000 retail food establishments. In addition, the project oversees New Jersey's Food Manager's Sanitation Certification program and works closely with the Communicable Disease Service and local health departments to coordinate and investigate foodborne outbreaks.¹

Monmouth County is located in the central part of the state

and is the northernmost county along the Jersey Shore. It has a population of 629,279. There are six individual health departments within Monmouth County. MCHD is the largest health department in the county and covers 26 towns with a total population of 352,000. According to the 2014 census, the county's population was 84.7% White, 7.7% Black or African American, 5.5% Asian, 0.3% Native American, 0.1% Pacific Islander, and 1.7% mixed races. Hispanic or Latinos of any race were 10.5% of the population. MCHD's jurisdiction includes the majority of the shore towns located in the county.²

The Environmental and Consumer Health division of MCHD includes programs such as air and noise control, body art procedures, food service and sanitation, hazardous materials response, household hazardous water facility, lead-based paint abatement program, mesothelioma awareness, pet care facilities, public health nuisance complaints, public recreational bathing and youth camps, Royal Flush Pump-Out Boat, rabies control, regulated underground storage tank inspection, smoke-free air act initiative, solid waste enforcement and management, geographic information systems, and water pollution control.³ MCHD's food service and sanitation program requires food establishments to operate in accordance with New Jersey's retail



food rules provided by NJDOH's Food and Drug Safety Program.

There are approximately 1,865 retail food establishments within MCHD's jurisdiction. The number of facilities fluctuates because there are many seasonal operators located along the Jersey Shore. MCHD follows the state policy that requires all food establishments to be inspected at least once per year. However, MCHD also has an internal list of establishments that may receive additional inspections based on previous inspection history. The department employs 12 full-time equivalent (FTE) inspectors and three part-time inspectors to conduct routine inspections of facilities, special events, vendors, and temporary food events. On average, one FTE inspector is responsible for 160 licensed retail food facilities and each FTE conducts approximately 200 total inspections per year. Inspectors are also responsible for inspecting establishments with night, weekend, and special hours such as clubs and bars.

Nature of New Jersey's Restaurant Placard System

Key Elements of the Placard System

MCHD follows the New Jersey State Administrative Code 8:24-8.11. This requires the department to issue an evaluation placard of the retail food establishment immediately upon the conclusion of the inspection. The department must also provide the original copy of the inspection report form to the person in charge of the establishment. Based on the inspections results, the MCHD website shows the categorization of establishments as the following:

- "Satisfactory": The establishment is found to be operating in substantial compliance with this chapter and food service personnel have demonstrated that they are aware of and are practicing sanitation and food safety principles as outlined in this chapter;
- "Conditionally Satisfactory": At the time of the inspection the establishment was found to be out of compliance with one or more critical violations and if the violation(s) are not corrected while the inspector is onsite. An establishment will also be issued a conditional rating if food service personnel are cited to be improperly handling food or if an establishment commits a repeat violation. Due to the nature of these violations, a re-inspection shall be scheduled. The re-inspection shall be conducted at an unannounced time. A full inspection shall be conducted. Opportunity for re-inspection shall be offered within a reasonable time and shall be determined by the nature of the violation; or
- "Unsatisfactory": Whenever a retail food establishment is operating in violation of this chapter, with one or more violations that constitute gross insanitary or unsafe conditions, which pose an imminent health hazard, the

health authority shall issue an unsatisfactory evaluation. The health authority shall immediately request the person in charge to voluntarily cease operation until it is shown on re-inspection that conditions which warrant an unsatisfactory evaluation no longer exists. The health authority shall institute necessary measures provided by law to assure that the establishment does not prepare or serve food until the establishment is reevaluated. These measures may include embargo, condemnation and injunctive relief.⁴

The NJ Code and inspection policies emphasize the use of the risk-based inspection form. This form is based on the FDA Food Code's model inspection form, which was modeled after an inspection form developed by the Conference for Food Protection (CFP). The MCHD uses the state's recommended inspection form to determine if an establishment is operating in compliance with the rule.

This inspection form is divided into foodborne illness risk factors and good retail practices. If a foodborne illness risk factor is marked out of compliance not corrected on site, then a re-inspection and a "conditionally satisfactory" rating are warranted. If a good retail practice is marked out of compliance, a re-inspection or a less than "satisfactory" rating may not be required.

Policy Enforcement

The state requires all retail food establishments to post the placards in a conspicuous location. MCHD is authorized to issue court summons to establishments that fail to properly post placards. In addition, the department can also require the establishment to display a "Conditionally Satisfactory" or "Unsatisfactory" placard for a longer duration of time if they fail to post the placard and penalize them with additional re-inspection fees. Repeat offenders may also face additional summons and re-inspection fees.

MCHD's Board of Health passed an ordinance that authorized the department to charge a fee for re-inspection of facilities rated "Conditionally Satisfactory". The fee for the first occurrence of a "Conditionally Satisfactory" rating within a two-year period is \$100. The re-inspection fee for the second occurrence, within a two-year period, is \$200, and a third occurrence within a two-year period is \$500. The ordinance requires an establishment to pay the fee within two weeks of receiving the notification.

If the establishment receives an unsatisfactory rating, the department will ask the establishment to voluntarily close. If the establishment refuses to close, the MCHD will go through a municipal or appellate judge to obtain a court order to close. Closure may also be required if a retail food establishment is, or is suspected to be, the source of foodborne disease outbreak.

Inspection summary reports or ratings are available to the general public through several different venues, including through the establishment's placard, upon request by the establishment operator, and through local print media.

In addition to closure, the MCHD may obtain a summons in municipal court to compel the operator to meet with the Board of Health, if the department cannot get an establishment to correct repeat violations or fix critical and imminent health violations. The operator also has the opportunity to voluntarily meet with the Board of Health if they have an issue with the MCHD.

Re-Scoring and Appeal Process

An establishment operator can appeal inspection findings if he or she disagrees with the results of the final inspection summary report. Appeals are conducted over the phone with the department's Chief Registered Environmental Health Specialist. Operators can request an additional inspection with the original inspector and his or her supervisor. The Chief retains discretion to decide whether to grant the request.

Communication of Food Inspection Summary to the Public

Inspection summary reports or ratings are available to the general public through several different venues, including through the establishment's placard, upon request by the establishment operator, and through local print media. A list of establishments that have "Conditionally Satisfactory" ratings are usually posted once a month on MCHD's website.⁵ The department is currently working on a more comprehensive database that will post the ratings and dates of inspection on its website.

Policy Formation & Implementation

The New Jersey placard system was first introduced in the 1970's. New Jersey borrowed pieces of the policy from other jurisdictions that had a similar system, including Allegheny County, PA. According to NJDOH, approximately 98% of the 96 local health departments in New Jersey are using the placard system, while a couple of jurisdictions have passed local ordinances for a letter grading system. Those jurisdictions post the letter grades on the "Satisfactory" or "Conditionally Satisfactory" placards. At the time of the interview, the state legislature was considering a law that would require all jurisdictions to use the state's placard system.

NJDOH requires an inspector to have a college degree and a license as a Registered Environmental Health Specialist (REHS). In order to maintain their licenses, inspectors need 15 continuing education credits per year. The training includes conducting risk-based inspections, using inspection check sheets, evaluating and rating food facilities, and determining when re-inspection is required. The state also provides local health departments with continuing education such as field standardization of inspectors and train-the-trainer courses. Additionally, the state regularly presents at food safety and professional organization events in New Jersey to help communicate state food program updates to local health departments. For example, during the last big update to the state rule, NJDOH communicated the changes through statewide training meetings held in different regions of New Jersey.

At the local level, MCHD provides continuing education to its staff through regular staff meetings. If there are changes to the food program, the department invites speakers to talk about the changes and invites other local health departments to attend. New staff are required to shadow experienced inspectors and participate in supervised inspections for their first few weeks on the job. The new inspectors are also evaluated by supervisors on various aspects of inspections, including marking violations and placarding, before conducting individual inspections.

MCHD provides mandatory trainings for all staff on ethics and discrimination. Their policies state that inspectors are not allowed to accept any gifts from the establishments they inspect. Additionally, retail food establishment operators are not allowed to pay their re-inspection fees to the inspector. Re-inspection fees must be mailed to the MCHD office. Finally, inspectors may not conduct regulatory inspections in the area in which they reside.

NJDOH provides information to the retail food community whenever there are changes to the food program. When the placard system was implemented, NJDOH sent out letters to all retail food establishments to inform them of the new placard system. Aside from posting information on the state and local health department websites, the state does not currently actively educate the public about the placard system.

Barriers and Facilitators in Implementing the System

The interviewees from NJDOH and MCHD did not have information about barriers and facilitators when the placard

system was first implemented. According to NJDOH, the placard system has been in place for such a long time that inspectors, operators, and consumers all accept it as part of the regulatory process.

Controversial Policy Elements

None noted.

Additional Resources, Technical Assistance, or Guidance to Implement Policy

The forensic sanitarian did not recall the state providing training to local health departments on the policy when the placard system was first implemented. The placard system did not change the way inspectors conducted inspections, it only required inspectors to give the retail food facilities the appropriate placard based on inspection results.

Policy Impact & Evaluation

Policy Impact on Nature of Inspections

According to the representative from NJDOH, assessing whether the placard system impacts the nature of inspections was difficult because the placard system has been in place for a long time.

Representatives from MCHD believed the placard system does not significantly impact how inspections are conducted. However, the representatives believed that if the county used a number grading system, it would impact the nature of the relationship between operators and inspectors. For example if an establishment received a low score (i.e. less than 70), the owners/operators may feel more threatened than they would if they received the “Conditional Rating” because it is common public perception to associate a score less than 70 as failing. Owners/operators that feel threatened are often more adversarial and this limits the opportunities that inspectors have to explain

correct food safety practices and effect meaningful behavioral and procedural changes. The inspectors believed that the placard system allows more room for professional judgment than the number grading system. They felt that a number grading system erodes the value of their professional license by taking away the ability to evaluate the individual circumstances of each inspection. They also felt that the placard system allows inspectors to concentrate more on food safety and consumer protection as opposed to spending valuable time arguing with the operator over each lost point.

Policy Impact on Information-Sharing with Consumers

According to the representative from NJDOH, the state has not made a concerted effort to educate consumers about the placard system. The food safety consultant stated that from his experience, New Jersey consumers have a low awareness and knowledge of the placard system.

Media Involvement and Impact

In some jurisdictions, media outlets publish inspection ratings. The media obtains the ratings from local health department’s online inspection reports. In Monmouth County, newspapers print the ratings and list the establishments that received conditional or unsatisfactory ratings, as well as establishments that have had their satisfactory rating restored.

Impact of the Food Inspection Scoring and Grading System on Food Safety

NJDOH currently does not assess the impact of the placard system on food safety. According to the NJDOH representative, the department is operating on the 2005 FDA Food Code and is focused on updating the proposed rule revisions to reflect the 2013 FDA Food Code and standardizing their inspectors.

The MCHD representative believed that some inspectors do not think the conditional rating makes an impact on establishments’ food safety practices. However, since implementing a re-inspection fee to establishments issued a conditional rating, the MCHD representative noticed that establishments are paying more attention and responding to the placard system.

Impacts of System on Consumer, Owner, and Inspector Behavior

The NJDOH representative did not believe that inspectors are negatively influenced by the placard system because the majority of the inspectors in New Jersey have operated only under this system. In addition, the state representative believed the nature of the placard system does not give businesses a competitive advantage over others and therefore will not influence an inspector’s behavior. Local health departments also require all public servants to attend general ethics training.





As part of MCHD's practice, the county provides trainings on ethics, harassment, and discrimination. The department also provides guidance to new inspectors on accepting gifts from the establishments they inspect. MCHD's policy allows only the environmental health supervisor to collect the fee from establishments issued a conditional rating in order to avoid controversy.

Policy Evaluation and Revision

NJDOH does not currently plan to revise the placard system. However, revisions to the state rules are continuously being evaluated. The New Jersey rules were updated based on the FDA Food Code in 2007. In 2008, the state provided inspectors with a uniform inspection form and marking instructions. Before having the inspection forms, inspectors used a blank sheet of papers and conducted the inspections based on their knowledge of the food code.

At one point, New Jersey's Chapter 24 Committee explored using other systems such as letter grades, but the New Jersey Food Council, an alliance of food retailers and suppliers, and the New Jersey Restaurant Association strongly objected to the change. The industry expressed concern that a letter grading system may be subjective and inconsistencies among inspectors could result in unfair grading. For example, lenient inspectors may give "A's" to retail facilities that do not merit them, while stricter inspectors may not readily give "A's." Therefore, this practice would create a competitive advantage to some operators. The NJDOH representative shared these concerns, noting that inspection uniformity among local inspectors has not yet been achieved.

At the time of the interview, MCHD's health officer set a goal to add extra components to the placard system. The extra component would include recognition that the establishment achieved above and beyond "satisfactory." MCHD's health officer, who previously worked in southern New Jersey with a smaller population, thought the recognition component of their placard system fostered good working relationships with the food facilities. The underlying idea is that giving recognition to top performing establishments would provide extra motivation for facilities to implement sanitation best practices and train their food handlers. In turn, the effort will better protect the public from potential foodborne illnesses.

Guidance on Forming and Implementing a Scoring and Grading System

Representatives from NJDOH and MCHD were receptive to national guidance about forming and implementing a scoring and grading system. In general, NJDOH was amenable to FDA guidance such as the FDA Food Code. The MCHD representative thought it would be useful to have case studies about jurisdictions that use scoring and grading systems and that have recently switched from non-graded systems. Such case studies could compare the pros and cons of both systems and share lessons learned on implementing such a change. The MCHD representative also expressed that guidance on how to assign points to violations would be helpful in explaining to operators why they were given a certain rating.

Lessons Learned and Recommendations for Health Departments Interested in a Scoring and Grading System

The NJDOH representative believed that a scoring and grading system does not accurately capture the risk of eating at a retail food establishment. The interviewee believed that until the regulatory community can assure that all inspections are standardized and inspectors are evaluating facilities based on foodborne risk factors, the scoring and grading system is almost meaningless. The NJDOH representative also disliked the competitive advantage that a scoring and grading system may give an operator if they do not deserve it.

The MCHD representative believed that it would be helpful for those considering implementing a scoring and grading system to be able to read case studies about other jurisdictions' experience with their systems and the pros and cons of having one.

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