

Retail Food Inspection and Grading Case Study: Kern County, California



This case study examines Kern County's Food Facility Grading Ordinance. To better understand the grading ordinance, NACCHO interviewed representatives from the Environmental Health Division of the Kern County Public Health Services Department, the County Board of Supervisors, and the Kern County restaurant industry. The industry representative served as a member of the restaurant advisory group that provides guidance on the evaluation of the food scoring and grading system.

Background

In 2014, Kern County, CA, which includes the Bakersfield metropolitan area, had an estimated population of 874,589. At the time of the 2014 Census, the county's population was 82.7% White, 6.3% African American, 5.0% Asian, 2.6% Native American, 0.3% Pacific Islander, and 3.0% of mixed descent. Of the total population, 36.2% were Hispanic or Latino of any race.¹

Kern County has a unique and diverse geography with a number of climate zones that are affected by rapid elevation changes in the county. At 8,161.42 square miles, it is the third largest county in California and covers an area larger than many states. It spans the southern end of the Central Valley, ranging west to the southern slope of the Coast Ranges and east into the Mojave Desert.²

Kern County Public Health Services Department's Environmental Health Division (EHD), located in Bakersfield, employs approximately 50 full-time employees (FTEs). EHD oversees several programs: Food, Land, and Water; Hazardous Materials; and Solid Waste. The Food, Land, and Water Division provides consumer protection in retail food, land use practices and environmental quality, drinking water safety, and safe and healthy operation of hotels, motels, and organized recreational camps. The programs derive legal authority from federal, state, and local statutes that include the California Retail Food Code; Sherman Food, Drug, and Cosmetic Law; California Food and Agriculture Code; California Health and Safety Code; Uniform Housing Code; and Uniform Plumbing Code.³

Kern County's Food Program ensures that food has been produced in a safe and sanitary manner. Program staff review and inspect retail food facilities for proper food handling practices, the personal health and hygiene of food service employees, methods of food protection, the source of food products, and general sanitation of food facilities. Staff ensure that all retail food facilities are inventoried, permitted, and regularly inspected. They handle food-related complaints and solicit and investigate incidents involving food contamination. The Food Program also reviews and inspects plans for new or remodeled food facilities to ensure they are in compliance with the California Health and Safety Code.⁴

More than 1,800 retail food facilities are located throughout Kern County. According to EHD, Kern County's large geographic area and varied climates poses a challenge to routine food facility inspections because of the long travel time between facilities. EHD uses a risk-based approach to determine the number of routine inspections a licensed retail food facility should receive. Low-risk facilities are inspected once per year, medium-risk twice per year, and high-risk three times per year. A facility's level of risk is based on the types of food served, preparation processes used, and the population served. When fully staffed, 12 FTE inspectors conduct routine inspections of licensed retail food facilities, special events, vendors, and temporary food events. On average, one FTE inspector is responsible for 250–300 licensed retail food facilities; each FTE conducts approximately 600 total inspections of licensed retail food facilities per year. Inspectors are also responsible for establishments with night, weekend, and special hours such as clubs, bars, and concession stands. Occasionally,

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inspectors work overtime on weekends to assist neighboring districts that have fallen behind on their routine retail food facilities inspections.

Kern County is governed by a five-member Board of Supervisors (BOS). Each member is elected for a four-year term from five separate geographical districts of the county. The BOS enacts legislation governing the county and determines policies for operation of the county within the authority and limits prescribed by the California State Constitution and various state statutes.⁵

Nature of Kern County's Scoring and Grading Policy

Key Elements of Policy

Kern County's Food Facility Grading Ordinance requires all retail food facilities to be inspected by a health inspector and graded uniformly using their Inspection Report Form. Upon completion of the inspection, the inspector is required to post the Inspection Grade at or near each entrance of the retail food facility used by its patrons or in a conspicuous place. The Kern County ordinance considers it a misdemeanor to deface, mar, camouflage, hide, or remove the Inspection Grade. It is also unlawful to operate a retail food facility without a posted Inspection Grade.

EHD uses letter grades and color graphics to communicate the results of an inspection. Each retail food facility inspection begins with 100 points. The point value from each marked violation is then summed and the total is deducted from the initial 100 points. Inspection results include the following:

- "A" score and Blue Placard: 90 to 100 points. Good food handling practices and overall food facility maintenance and sanitation.
- "B" score and Green Placard: 80 to <90 points. Adequate food handling practices and overall food facility maintenance and sanitation.
- "C" score and Yellow Placard: 75 to <80 points. Minimally acceptable food handling practices and overall food facility maintenance and sanitation. A mandated re-inspection will be conducted in seven days to ensure improved food handling practices and overall food facility maintenance and sanitation. The "C" grade will remain posted until the next routine inspection.
- Notice of Closure and Red Placard: 0 to <75 points. Poor food handling practices and overall poor food facility maintenance and sanitation. The facility's Environmental Health Permit will be suspended and a Notice of Closure will be posted until the Environmental Health Permit is reinstated. A new Inspection Grade will be posted following the inspection to reopen the facility and will remain until the next routine inspection. No rescore inspection will be conducted following a Notice of Closure.⁶

EHD uses the California Retail Food Code (CRFC) and the Centers for Disease Control and Prevention's (CDC's) report, "Surveillance for foodborne-disease outbreaks—United States, 1993–1997" that identified the most significant contributing factors to foodborne illness to help categorize certain violations as major, minor, and non-critical.^{7,8} (Page 548 of the Food Code Annex provides more information regarding the relationship between the CDCs "contributing factors" and the Food and Drug Administration's (FDA's) "foodborne illness risk factors." The CDC report identifies the most significant contributing factors to foodborne illness. Five of these broad categories of contributing factors directly relate to food safety concerns within retail and food service establishments and are collectively termed by the FDA as "foodborne illness risk factors.")



EHD borrowed and customized Los Angeles County's and San Bernardino County's policies to determine point values for violations. EHD split the point difference between the two county's violation point values down the middle. Los Angeles assigned six points for major violations, four points for minor violations, and one point for non-critical violations. San Bernardino had four points for major, two points for minor, and one point for good retail practices. EHD proposed five points for major, three points for minor and other risk factors, and one point for non-critical violations. The proposal was presented to the restaurant advisory group, which expressed concern that if the point values were too high, facilities would more likely to receive a "B" grade. Therefore, EHD changed non-critical violations from 1 point to half of a point.

The inspection report contains 73 potential violations, separated into three sections. Section 1 of the inspection form is used to document major violations that directly pose a high risk of transmitting foodborne illness and are health hazards that warrant immediate correction. The major foodborne illness risk factors category includes large deviations from acceptable holding temperatures of potentially hazardous foods and food handler health and hygiene standards, approved source, and protection from contamination. An example of a large deviation is when cold holding of potentially hazardous food is found to be held at improper temperatures measured equal to or above 50°F; acceptable cold holding temperatures should be maintained at or below 41°F.⁹

Section 2 of the inspection form is used to document minor violations that pose a lower risk to the spread of disease or are less likely to lead to a foodborne illness and warrant correction. The minor foodborne illness risk factors category includes smaller deviations from acceptable holding temperatures, food preparation, food handler health and hygiene, and equipment and utensils standards as well as "other factors" such as the presence of a designated person in charge of the facility and possession a valid food safety certification or demonstration of knowledge. EHD considers the minor violations as "shades"

of major violations and states that it is unable to completely remove the "shades of gray" from their inspections. As much as EHD would like to use "black and white" grading criteria, the division instead relies on the judgment of its inspectors. An example of a small deviation is when cold holding of potentially hazardous food is found to be held at improper temperatures such as 43°F when acceptable cold holding temperatures should be maintained at or below 41°F.⁶ EHD inspectors would likely consider such a scenario as a minor violation because they would be comfortable that the two-degree deviation would not pose significant food safety risks.

Section 3 of the inspection form is used to document non-critical violations that present a low risk to public health. The non-critical factors category includes dirty floors or missing ceiling tiles.

Risk factors associated with imminent health hazards require immediate closure and are assigned 26 points. Imminent health hazards include inadequate or nonfunctioning refrigeration equipment, no operable toilet facilities, sewage overflow, no potable pressurized hot and cold water, and severe vermin infestation.

Policy Enforcement

EHD does not issue tickets or civil penalties to retail food facilities when violations are observed. Though there are no monetary penalties associated with violations, food facility operators are required to pay for the additional inspection and consultation time it takes their food facilities to gain compliance or the time it takes to review and approve the corrected violations with EHD.

A re-inspection is initiated when an inspector finds serious or repeat violations during a routine inspection. During this process, the only issues addressed are those noted on the original inspection report form. The grade will not be changed until the next routine inspection. Re-inspections cost \$100/hour with an average span of five to seven hours, including administrative and travel time.

Two types of enforcement actions can result in EHD closing a food facility: the suspension or the revocation of an Environmental Health Permit. Suspension occurs when a facility poses an immediate danger to public health and safety or receives an inspection score less than 75 points. Examples of the conditions that are considered an immediate danger to the public health and safety include (1) sewage overflowing in the facility; (2) a lack of potable, pressurized hot and cold water supply; (3) the water temperature at any critical sink (i.e., handwashing, food preparation, utensil washing) is 110°F or less; (4) unsafe food temperatures (e.g., all refrigeration units are inoperable); (5) gross unsanitary conditions; and (6) transmission of communicable disease (e.g., Hepatitis A, Shigella). Revocation of an Environmental Health Permit is reserved for more serious situations, such as repeated serious violations, failure to comply with the orders on the Inspection Report Form, or interference with duties of the health inspector.

The two enforcement action processes are similar. The inspector issues a “Notice of Closure” to a food facility, which suspends its Environmental Health Permit and requires all operations to cease. The food operator is issued two notices: (1) Temporary Suspension Of An Environmental Health Permit that identifies the section(s) of the law applicable to the permit suspension and the food operator’s appeal rights; and (2) A Request For Hearing form, which allows the food operator to request an appeal of the temporary suspension or revocation. Depending on the results of the administrative hearing, the facility must remain closed until the Environmental Health Permit is reinstated.

Re-Scoring and Appeal Process

Food facility operators can request a re-score inspection or appeal inspection findings. The re-score inspection is conducted as a routine inspection and there is no guarantee it will result in a higher grade. EHD will conduct the follow-up with a second unannounced inspection, within 90 days of the requested re-score, to ensure compliance. Facility operators are required to pay a fee of \$340 and are limited to one re-score inspection per fiscal year.

Operators can appeal inspection findings if they disagree with the results of the final inspection summary report. Operators must submit a written request for appeal within five business days following the inspection and the appeal must be heard within three days of receipt of the written appeal request. EHD’s decision will be issued within one business day of the appeal and, depending on the outcome, the new Inspection Grade will be posted within one business day of the final decision. During the appeal process, the previously issued Inspection Grade Form will remain posted.

Since the policy was implemented, EHD estimates that it receives two to three re-score requests per month and less than one appeal per month. The department believes its policy and process on re-scoring and appeals incentivizes better food safety practices because the processes require the operators to be familiar with the issues and violations committed.

Communication of Food Inspection Summary to the Public

Inspection summary reports are available to the general public through several different venues, including EHD’s website, Quick Response (QR) codes posted on the letter grade placards, the food facility operator, and by requesting a paper copy of the inspection summary report. Additionally, the Safe Diner mobile application allows the public to instantly view restaurant locations, inspection reports, and file a complaint; users can upload a picture or video of the complaint to EHD. Inspection reports are also available on the department’s website and are highlighted on the county’s website. Complaints



can also be submitted online or through the Safe Diner app which are subsequently entered into EHD's food safety complaint database.

Policy Formation & Implementation

Kern County's Food Grading Ordinance was proposed and approved by the Kern County's BOS in 2006. The ordinance was designed with the direct input of a local restaurant advisory group and borrowed from other ordinances passed by neighboring jurisdictions. Ten of the 11 incorporated cities within Kern County then adopted the ordinance, with the exception of Maricopa, a city with only two retail food facilities.

Kern County's Food Grading Ordinance was the result of a BOS initiative to proactively create a food inspection scoring and grading system for Kern County. EHD implemented the policy on July 1, 2007. EHD developed a policy manual to educate health inspectors about the new policy. As part of their routine training, all health inspectors are required to pass the certified Registered Environmental Health Specialist exam and go through a standardization process, which includes two weeks of shadowing supervisors, inspecting a variety of food facilities, and participating in at least three supervised inspections. To ensure continued uniformity, EHD holds monthly staff meetings to provide continuing education and refreshers on conducting inspections. A supervisor also reviews a percentage of every inspector's inspections for uniformity with the retail food facility or through a follow-up inspection as part of EHD's annual performance review process.

EHD delivered a copy of the policy manual to every permitted food facility in Kern County to help facilities understand and comply with the new policy. The manual provides information on how grades are determined, the inspection form, the inspection process, how violations are identified, discussions on issue importance and ways to remain in compliance, and the appeals and rescoring process. Additionally, EHD holds "Going for the Blue," an open-ended training sessions to help food facility owners achieve an "A" score (inspection grade forms are also color coded, "A" grade is colored blue).

Barriers and Facilitators in Implementing the System

Kern County faced several barriers to implementing a scoring and grading system. One, noted by an EHD representative, was central California's business-friendly culture. Supporters of the ordinance learned how to carefully balance economic growth and business development with food safety when forming and advocating for the ordinance. Additionally, Kern County's food facility owners and operators were initially concerned that the Board member who originally proposed instituting the system was motivated to develop and adopt the policy for personal political gain.

The major facilitators for implementing the system in Kern County were the support and endorsement of the Board Supervisor, EHD, and a vocally supportive restaurant advisory group. The three major supporters had a good existing relationship with each other. In addition, EHD presented the initiative to each city council and wrote letters to the city managers about the system's benefits and ways it would add to community food safety.

Controversial Policy Elements

The industry representative stated that the restaurant advisory group had concerns about elements of the policy. One concern was the fairness of the system for poor-performing operators compared to strong-performing operators. The poor performers would be required to make more adjustments than the strong performers to be successful within the new system; thus, they were more likely to be negatively impacted by consequences of the policy (e.g., losing customers after receiving a low grade). The advisory group was also concerned about the impact letter grades would have on strong performers if they were being inspected and graded on "one bad day." This concern was addressed by the possibility of a rescore inspection. Additionally, concern remains about whether the average consumer really understands the inspection summary report due to technical terms and industry jargon.

Additional Resources, Technical Assistance, or Guidance to Implement Policy

The initial implementation of the scoring and grading system required extra time and resources to educate EHD staff, food facility operators, and consumers, but it did not add a significant burden to the routine food facility inspection process. Staff were given several hour-long training sessions about the policy when it was first implemented. However, the design of the scoring and grading system ensured that minimal additional resources would be necessary. The primary difference with the new inspection process is that a computer program tallies and issues a grade at the end of the inspection.

Initial outreach to food facility operators and consumers spanned the course of two years. EHD piloted the system six months prior to implementation and provided participants with mock grades. EHD educated consumers through various forms of public communication, including appearances on local television and news shows and coverage in local newspapers. Ongoing local media interest in the system provides opportunities for EHD to continue educating consumers when there are new innovations or changes to the policy, such as the release of the mobile app.

Policy Impact & Evaluation

Policy Impact on Nature of Inspections

Overall, representatives from EHD and the industry believed that the implementation of the policy in Kern County did not significantly impact how inspections were conducted. However, the industry representative stated that standardized inspections had been one of the biggest issues in the past because “different inspectors had told [operators] different things in regards to food safety/handling during inspections.” The industry representative did not see the policy impact inspectors’ grading behaviors, but now sees inspectors take more time to educate food facility operators.

Policy Impact on Information-Sharing with Consumers

Currently, EHD has only personal and anecdotal comments on how the policy has impacted consumer behavior. The EHD representative believed that the system allows the inspection data to be interpreted in a more meaningful way because a value is placed on a violation. For example, consumers may not understand that when “ground meat is cooked to 150” is written on an inspection report it indicates a violation. However, if a value is assigned it can be more easily interpreted as a violation. The EHD representative also believed that letter grades help the consumer understand the difference between a food safety risk and a food quality issue. However, EHD still encounters the occasional consumer who thinks the letter grade represents cleanliness of the restaurant or food quality.

The industry representative believed the availability of the grades impacts consumer behaviors. He states that if “one [restaurant] has an A, [and] one has a C, they’re going into the A [restaurant]. They’re not going into the C [restaurant]. Some people aren’t going to care, but I guarantee you, it’s going to make a huge difference.”

Media Involvement and Impact

During the first six months of implementation, media broadcast and interest in the policy was high. Once the initial interest waned, the media’s focus shifted to enforcement actions and restaurant closures rather than letter grades. EHD has heard anecdotally that media and public attention to letter grades and food facility inspections have motivated more food facilities to achieve compliance with food safety requirements. However, they do not have data to support this claim. On the other hand, EHD states that it has not seen health inspectors change their behaviors during inspections as a result of media attention.

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

EHD is currently engaged in a study with a local university on the impact of the scoring and grading system on food safety in Kern County. Staff hope the study will provide data showing the system has increased the number of compliant food facilities in Kern County. Currently, only anecdotal information is available from inspectors, food facility operators, and food employees.

The industry representative believes the scoring and grading system has improved food safety for “middle of the road” food facility operators in particular. He explains how the system impacts different types of food facility operators in various ways: “[T]he ones at the bottom end, they are going to struggle regardless. The ones that are middle of the road ... it is like taking your ‘B’ student and try[ing] to turn him into an ‘A’ student. Well, you give him the incentive and maybe you can help him get up to that ‘A’ ... because it’s going to help your business.”

Impacts of System on Consumer, Owner, and Inspector Behavior

EHD does not believe that inspectors’ behavior has been negatively influenced by the system. As part of Kern County’s practice, it makes county, department, and program-wide trainings available to inspectors to discuss appropriate behaviors, such as not accepting gifts from food facilities. The EHD representative stated that a small percentage of inspectors struggle with adhering to the county’s standards, but these individuals are dealt with swiftly on a case-by-case basis and there has been no increase in these behaviors since implementing the system.

One example of the pressures inspectors face is when food facility employees request inspectors reconsider the letter grade because they fear a low grade will cost them their jobs. These cases have been found in chain restaurants, where a manager’s pay level or job stability can be affected by their letter grade. According to EHD, the policy only allows an adjustment to a food facility’s letter grade if there is a legitimate reason for appeal and the appeal is made within the allotted time frame.

According to the EHD representative, the scoring and grading system has not impacted the number of food facility closures by EHD.

Policy Evaluation and Revision

EHD completed an evaluation and revision of their scoring and grading system in 2015 by looking through inspection data to identify repeated issues. The division spent several months presenting and reviewing the proposed changes with their restaurant advisory group. During that time, they revised the point value of repeat violations so that a food facility could not

retain a higher grade in the system if it failed to correct a repeat violation. Another revision was that points are deducted for violations corrected during the inspections.

Additionally, EHD is in the process of quantitatively evaluating whether the policy and inspections have improved food safety, particularly in light of CDC data that link the presence of certain critical risk factors to foodborne illness outbreaks. However, the EHD representative recognized that many factors will impact the number of critical violations its inspectors find, such as the number of inspections conducted and national stories of foodborne outbreaks that influence consumer complaints.

Guidance on Forming and Implementing Scoring, Grading, or Placarding System

National guidance on forming and implementing a scoring and grading system would have helped EHD in its decision to adopt such a system. The EHD representative states that “the only way we could evaluate what we were proposing was to look at what others were doing and offer some changes to them. But yes, we struggled. So certainly, FDA or guidance from [NACCHO] would have been very helpful. And it would have been a reference point.”

Lessons Learned and Recommendations for Health Departments Interested in Scoring, Grading, or Placarding Systems

From experience, EHD recommends that local health departments interested in forming and implementing a scoring and grading system consider several items and processes, including (1) using the CDC report, *Surveillance for Foodborne-Disease Outbreaks – United States*; (2) allowing for restaurant operators to appeal and ask for re-score; and (3) forming a restaurant advisory group.

The CDC’s contributing factors to foodborne illness are EHD’s backbone for inspection processes and aided in assigning point values to violations. The appeal and re-score process allows the food facility operator to learn about and improve their food safety practices as they strive to be in compliance. Additionally, a small advisory group of eight to 10 restaurant members can provide immediate feedback on the proposed policies before implementation. Having a restaurant advisory group also helps garner wider industry acceptance of the policy since it has been vetted by their industry peers.

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