

**Testimony of Melissa Fleischut  
New York State Restaurant Association  
Department of Health and Mental Hygiene  
February 5, 2010**



*We serve you*

I am Melissa Fleischut and I am the Director of Government Affairs for the New York State Restaurant Association (NYSRA).

Founded in 1935, the New York State Restaurant Association is the leading business association for the restaurant industry in New York State. NYSRA and its chapters work to represent, educate and promote the restaurant industry in every segment from quick service to fine dining.

The New York State Restaurant Association disagrees with two of the primary assumptions behind this proposal that posting of grades is associated with improved compliance by restaurants and will lead to a decline in foodborne illness.

First of all, the New York City Department of Health & Hygiene does not track foodborne illness and has no statistics on the number of foodborne illnesses attributed to restaurants. In the proposal the Department cites an estimate of national foodborne illness cases and then extrapolates the number to come up with a percentage that is likely attributable to restaurant dining in NYC. So, let's apply this mathematical logic to the restaurant industry. The National Restaurant Association estimates that the industry nationwide will provide 70 billion snacks or meals in 2009 at its 945,000 locations. So, on average that is 74,000 meals or snacks served per restaurant per year and the Department estimates there are more than 20,000 restaurants in New York City. Therefore New York City restaurants serve 1.4 billion meals or snacks a year and there might be 10,000 emergency room visits attributable to restaurant dining in New York City. That amounts to an illness rate of .00067% (six ten thousandths of 1%). Such a ridiculously low illness rate does not require any regulatory change by the industry, but in fact speaks volumes about the excellent job most restaurants are doing.

Since the Department does not track foodborne illness it will never be able to study the effectiveness of this program. There also isn't any any real and actual, data, not assumptions, that a restaurant that would receive a B or C score is responsible for any of that fraction of the 1%. Given that a B or C score means that the Department of Health has concluded that the establishment is safe for consumers to eat the food; we must assume that those restaurants are safe, otherwise they would have been closed by the Department. Surely you are not allowing consumers to eat at unsafe establishments.

So where then is this tiny illness rate coming from? Isn't it logical to assume that the illness rate comes from those establishments that fail inspections, which the letter grading proposal does not address. Or perhaps that number comes from those establishments that are not part of this proposal such as mobile food vendors, those well known bastions of clean and safe food. By all means, deal swiftly with unsafe establishments, but let us not pretend, as your proposal does, that this justification for letter grading has anything to do with the restaurants that are passing inspections.

Secondly, there is no proven track record that a letter grading proposal will reduce foodborne illness. If this were true, it would be a widely used method by health departments across the country and that is not the case. There is no national movement to adopt letter grades. In fact, it is quite the opposite. In 1993, the Food and Drug Administration removed scoring from the model food code citing problems with the system. As recently as 2008, FDA was asking for research to evaluate and assess scoring methodologies. The national trend among the majority of public health professionals generally has been to avoid the use of scores or grades, which are considered to be misleading and inaccurate. In a 2004 study published by the Center for Disease Control, it was concluded after studying over 167,000 restaurant inspection reports, that there was no difference in average letter grades given to restaurants experiencing outbreaks compared to those that were not. Moreover, the study found that where letter grades are used, none of the most commonly cited violations were actual 'risk factors' for foodborne illness. (The most commonly cited item was improper storage of cleaning items stored next to packaged foods.) **In other words, the CDC report concluded that there is no evidence that letter grading increases the identification of risk factors for foodborne illnesses, as your proposal implies it does.**

So what about the example of Los Angeles? In the 12 years since it was started in Los Angeles, you can count on your hands the number of local or state jurisdictions that have joined in. Wichita, Kansas tried letter grading but dropped it in 2003 calling letter grading "misleading". Orange and Sacramento counties considered it but said no. Richard Sanchez, Orange County's Director of Environmental Health, said another reason the county's board of supervisors decided on the pass/fail system as opposed to letter grades was because "there is no proven correlation between health and posting placards." Tennessee does not have letter grading as you claim they do, leaving only 3 states in the nation that see this as a good idea. Not to mention that it was considered and rejected by our own City Council in 1998 as well as in Westchester County in 2001, where a County legislator was quoted as saying "Concerns were raised that the grading plan could leave the system open to corruption, with inspectors demanding payments for doling out good grades." The county legislator went on to cite the scandal which rocked your agency in the 1980's "when inspectors were accused of extorting bribes so restaurant violations would not appear in a weekly department list published in newspapers." (Journal News May 5, 2001)

It is also worth noting that mandatory foodhandler certification was also adopted in Los Angeles at the same time as letter grading. This fact coupled with an emphasis on education by the County Health Department must have had some effect on increasing the cleanliness of restaurants in LA. And since New York City has had mandatory foodhandler certification for years, we are already dealing with a better educated restaurateur.

But if the point of letter grades is to inform the public about the level of food safety at restaurants, then how can you possibly justify including non food safety related items in the score? A leaky faucet, a sign, a light bulb not covered, an uncovered waste receptacle in a bathroom, and dozens of other non-critical items included in the inspection report cannot be part of a letter grade system. By including these non critical items, your current proposal will mislead the public when it sees a B or C in the window into thinking that the food here is not safe, when the difference between an A or B grade may have nothing to do with food safety. That is simply unacceptable.

If there are to be letter grades, and we hope there will not be, then we must have a frank discussion about the elephant in the room. Due to this agency's public position for many years now that higher and higher record setting fines is the way to regulate our industry, you have lost the confidence of the industry as a neutral party in the inspection process. You have a vested monetary interest in low grades being assigned in that low grades equal higher fines. It has been widely reported that this new program will cost the Department \$5 million over two years. We have no doubts that the Department is expecting to make up this cost in increased fines. How long will an inspector last if he or she consistently comes back to the office with A grades? If there are to be letter grades, there needs to be a truly independent party conducting these inspections, one whose budget is not based on bringing in fines.

We are also surprised with the broad list of food establishments you regulate that you have chosen to exempt from this proposal. As already mentioned, you have exempted all food vendors, food vending commissaries, school cafeterias, hospitals, soup kitchens, correctional facilities, non for profit membership organizations, and others. We must ask "why"? Aren't parents entitled to this information? Don't we care about the food poor people receive or prisoners? Or is it that you do not want to apply the same standards to your sister government agencies that you want to apply to restaurants?

We urge you to continue to talk with us and not adopt this proposal at this time and in its current form.