

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Department of Health and Mental Hygiene Oversight Of the Correction of Health Code Violations at Restaurants

ME09-074A

July 20, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has conducted an audit to determine whether the Department of Health and Mental Hygiene (DOHMH) adequately ensured that conditions that led to health code violations being issued to restaurants are corrected in a timely manner.

DOHMH is charged with protecting and promoting the health and mental well-being of all City residents through health-promotion and disease-prevention programs, and through the enforcement of City health regulations. The DOHMH Bureau of Food Safety and Community Sanitation is the unit responsible for enforcing the City Health and Administrative Codes, the State Sanitary Code, and various local laws of the City of New York. We audit City agencies such as this to ensure that they efficiently and effectively meet their enforcement responsibilities.

The results of our audit, which are presented in this report, have been discussed with DOHMH officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in black ink, appearing to read "Will C. Thompson, Jr.", written over a horizontal line.

William C. Thompson, Jr.
WCT/ec

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ADDENDUM DOHMH Response

*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on the Department of Health and
Mental Hygiene Oversight of the Correction of
Health Code Violations at Restaurants**

ME09-074A

AUDIT REPORT IN BRIEF

This audit determined whether the Department of Health and Mental Hygiene (DOHMH) had adequate internal controls to ensure that conditions that led to health code violations being issued to restaurants are corrected in a timely manner. The scope of the audit was Fiscal Year 2008 (July 1, 2007, through June 30, 2008).

DOHMH is charged with protecting and promoting the health and mental well-being of all City residents through health-promotion and disease-prevention programs, and through the enforcement of City health regulations. The DOHMH Bureau of Food Safety and Community Sanitation (BFSCS) is the unit responsible for enforcing the City Health and Administrative Codes, the State Sanitary Code, and various local laws of the City of New York.

During Fiscal Year 2008, BFSCS conducted 79,170 inspections in 32 different types of facilities. For this audit, we reviewed one type of facility—restaurants—for which there were 61,848 (78%) inspections during that period. According to DOHMH records, BFSCS was responsible for conducting inspections at 25,755 restaurants during Fiscal Year 2008.

Audit Findings and Conclusions

DOHMH's internal controls for ensuring that health code violations at restaurants are corrected in a timely manner need to be strengthened. Follow-up inspections of sampled restaurants were often not conducted in a timely manner; DOHMH did not ensure that all restaurants were inspected annually; and documentation was inadequate on why restaurants that repeatedly failed sanitary inspections were allowed to remain open. Furthermore, DOHMH did not adequately track its inspectors or supervisors to ensure that inspections were being properly conducted and monitored.

However, for our sampled restaurants, we determined that the reinspections were conducted by a different inspector than the inspector who conducted the initial visit. In addition,

we confirmed that the restaurants in the Golden Apple program, which is aimed at encouraging food safety, were removed from the program if they failed an inspection.

Audit Recommendations

To address these issues, the audit recommends, among other things, that DOHMH:

- Ensure that all permitted restaurants are given a full sanitary inspection at least once a year in accordance with its procedures.
- Consistently conduct compliance inspections of restaurants in a timely manner.
- Ensure that those restaurants that have failed three or more consecutive regular sanitary inspections or two or more consecutive Accelerated Inspection Program (Program) inspections are reinspected in a timely manner.
- Ensure that reasons for not closing restaurants that fail a minimum of three consecutive regular sanitary inspections or two consecutive Program inspections are documented in the DOHMH tracking system.
- Analyze inspection data to ascertain whether significant variances exist with respect to inspection scores given by inspectors. If such variances exist, determine the reasons for the variances and, if needed, make modifications (e.g., increase training) to ensure that inspections are performed in a consistent manner.
- Ensure that supervisors conduct supervisory inspections as required to ensure that sanitary inspections are being properly conducted and to minimize the risk of corruption in the inspection process.

Agency Response

In its response, DOHMH officials disputed many of the audit's findings but agreed or partially agreed with seven of the audit's recommendations and stated that it would consider implementing the other recommendation.

INTRODUCTION

Background

The Department of Health and Mental Hygiene is charged with protecting and promoting the health and mental well-being of all City residents through health-promotion and disease-prevention programs, and through the enforcement of City health regulations. The DOHMH Bureau of Food Safety and Community Sanitation is the unit responsible for enforcing the City Health and Administrative Codes, the State Sanitary Code, and various local laws of the City of New York.

BFSCS educates the public about food-borne illnesses and regulates, issues permits to, and inspects a variety of food service establishments (FSEs), such as restaurants, mobile food units, and senior-center and school cafeterias. An FSE is a place where food is provided in individual portions directly to the consumer to be eaten on or off the premises.

BFSCS's main responsibility is to inspect FSEs in an effort to protect the public's health and safety. These inspections are conducted by Public Health Sanitarians (PHSs), who are trained public health professionals with college degrees who have earned at least 30 credits in the physical sciences.

PHSs conduct unannounced inspections of FSEs. During an inspection, the PHS inspector evaluates the FSE's conditions and practices and identifies risk factors for food-borne illnesses. Based on the inspection results, the PHS may issue a Notice of Violation (NOV), which is an administrative summons for a violation of the City Health Code, the State Sanitary Code, or other applicable laws.

In 2005, DOHMH amended Title 24 of the Rules of New York to change the way in which FSE inspections are evaluated. Inspections are now scored using a point system to reflect the overall sanitary conditions of an establishment. A point value is assessed for each violation. On a full sanitary inspection, DOHMH issues an NOV when an FSE has one or more critical violations or has accumulated more than 14 points in general violations.¹ A total of 28 or more points in either critical or general violations is considered a failed inspection. If an FSE fails the initial inspection, a compliance inspection is conducted to determine if the violations have been corrected and the FSE adequately complies with the health code. If an FSE fails two consecutive inspections (initial and compliance), a final inspection is performed. Restaurants may be closed at any time for failing an inspection, but closure is more likely after two or three such failures.

During Fiscal Year 2008, BFSCS conducted 79,170 inspections in 32 different types of facilities. For this audit, we reviewed one type of facility—restaurants—for which there were 61,848 (78%) inspections during that period. According to DOHMH records, BFSCS was responsible for conducting inspections at 25,755 restaurants during Fiscal Year 2008.

¹ Critical violations relate directly to the protection of the public from food-borne illness and general violations relate to maintenance of food service operations and cleanliness.

Objective

The audit's objective was to determine whether DOHMH has adequate internal controls to ensure that conditions that led to health code violations being issued to restaurants are corrected in a timely manner.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of the audit was Fiscal Year 2008 (July 1, 2007, through June 30, 2008).

To accomplish our audit objective, we interviewed DOHMH officials, including the Assistant Commissioner, Bureau of Food Safety & Community Sanitation. We reviewed the procedures for operating a food service establishment in New York City and the inspection scoring system for food service establishments. To understand the regulations governing food establishments and the responsibilities of DOHMH, we reviewed Article 81 of the City Health Code and Subpart 14-1 of the State Sanitary Code. We also reviewed Chapter 23 (Food Service Establishment Inspection Procedures) and Chapter 24 (Fines for Food Service Establishment Violations) of Title 24 of the Rules of the City of New York.

As part of our review of controls, we assessed the reliability of the data obtained from DOHMH on the inspections conducted during Fiscal Year 2008. We met with officials from the Information and Technology Unit, conducted data-entry observations, reviewed documentation of record layouts and field names for the Food Safety & Community Sanitation Tracking System (FACTS) database, and performed limited tests of the accuracy, completeness, and reliability of information in the database.

To determine whether all the restaurants were inspected during Fiscal Year 2008, we requested a list of all inspections conducted during that period. In addition, we requested a list of all permitted restaurants (see Audit Scope Limitation section of this report). We then matched the list of permitted restaurants to a FACTS database file that listed the 61,848 inspections performed by DOHMH during Fiscal Year 2008 to determine whether the restaurants were inspected during Fiscal Year 2008. We randomly selected a sample of 50 restaurants that were not inspected during Fiscal Year 2008 to determine if or when they were eventually inspected and the results of any such inspections.

We reviewed information in FACTS for a randomly selected sample of 62 of the 5,838 restaurants that the database file of 61,848 inspections indicated had failed at least one regular

(non-accelerated) sanitary inspection in Fiscal Year 2008,² to determine whether there was a compliance or follow-up inspection and the timeliness of the reinspection. In addition, we determined whether different inspectors conducted the initial and compliance inspections.

In addition, we reviewed information in FACTS for a randomly selected sample of 39 of the 678 restaurants that failed three or more consecutive regular sanitary inspections in Fiscal Year 2008 to determine whether the restaurants remained open after the third consecutive failed inspection. (As stated earlier, closure of a restaurant for failing a sanitary inspection is more likely after two or three such failures.)

We also reviewed information in FACTS for a randomly selected sample of 21 of the 454 restaurants that were in the Accelerated Inspection Program (Program) to determine whether the restaurants remained open after failing two consecutive Program inspections.

Furthermore, we reviewed information in FACTS for a sample of restaurants that were identified as Golden Apple establishments by DOHMH to determine whether there were any restaurants in this program that failed an inspection. The Golden Apple program is aimed at increasing food safety in restaurants. DOHMH awards a one-year Golden Apple certificate to establishments that meet the highest food safety standards. To become eligible for a Golden Apple, a restaurant must meet certain criteria, which include passing two consecutive initial sanitary inspections with no critical violations and having four or fewer general violations.

In order to assess DOHMH's oversight of its inspectors' and supervisors' restaurant inspection efforts and determine whether there was a significant variation among inspectors with respect to how they scored inspections, we reviewed the database of 61,848 inspections to determine the number of inspections that were performed by each inspector and the average number of points that those inspectors who conducted at least 100 inspections during Fiscal Year 2008 assigned to the restaurants they inspected. We also determined the number of supervisory inspections that were performed by each supervisor during Fiscal Year 2008 to determine whether there was an adequate level of supervisory review of inspectors' efforts.

The results of the above tests, while not statistically projected to their respective populations, provided a reasonable basis for assessing DOHMH internal controls to ensure that conditions that led to health code violations being issued to FSEs were corrected in a timely manner.

Audit Scope Limitation

During the course of this audit, DOHMH officials were unable to produce a list of all permitted restaurants during Fiscal Year 2008 so that we could determine how many of them had sanitary inspections during the year. DOHMH officials informed us, however, that they could

² DOHMH officials may place a restaurant in the Accelerated Inspection Program (Program) for more intensive monitoring by BFSCS after the restaurant fails two consecutive regular cycle inspections and passes a third regular cycle inspection. Once in the Program, a restaurant must pass two consecutive Program inspections within one year before being returned to the regular cycle of inspections and may be closed after failing two consecutive Program inspections.

produce a list of the restaurants that were in an active status at the beginning of each fiscal year. They provided us with a list of restaurants that were open as of July 1, 2007, and a list of restaurants that were open as of July 1, 2008. We, therefore, could not determine whether any restaurants that both opened and closed during the year had been properly inspected.

On a related matter, when we asked for a second list of inspections to include additional fields of information, DOHMH officials provided us with a database that identified 110 fewer restaurant inspections than were in the first database they provided. However, DOHMH was unable to explain the difference between the two lists.

Discussion of Audit Results

The matters covered in this report were discussed with DOHMH officials during and at the conclusion of this audit. A preliminary draft report was sent to DOHMH officials on April 23, 2009, and was discussed at an exit conference held on May 12, 2009. On June 1, 2009, we submitted a draft report to DOHMH officials with a request for comments. We received a written response from DOHMH officials dated June 17, 2009.

In its response, DOHMH officials disputed many of the audit's findings but agreed or partially agreed with seven of the audit's recommendations and stated that it would consider implementing the other recommendation. DOHMH stated that the report "failed to recognize that the year evaluated was not representative of prior years or the subsequent year." The response also stated that DOHMH will begin "in July 2010 to post letter grades at all restaurants and further increase inspections of poorer performing restaurants." In addition, DOHMH stated that because it "provided a complete dataset of all inspections, there is no reason for the Comptroller to create a sample of restaurants. An analysis of the full dataset could have been performed."

The scope period for this audit was Fiscal Year 2008. Our detailed audit testing was focused on this time period. Therefore, we are unable to comment on DOHMH's assertion that Fiscal Year 2008 was not a representative year. At the exit conference, DOHMH did discuss its plans to begin to implement a new system for grading the sanitary conditions at restaurants in Fiscal Year 2010. However, DOHMH did not provide us with any documentation on the new system or any explanation of how the new system would address the concerns expressed in this report. Furthermore, as previously noted in the Audit Scope Limitation section and elsewhere in this report, the "complete dataset" provided to us by DOHMH was not reliable. Therefore, we properly confined our analysis to randomly selected samples of restaurants.

Of lesser import, but nonetheless puzzling, DOHMH repeatedly stated in its response that "the report fails to indicate that BFSCS conducted 61,848 inspections of food service establishments" in Fiscal Year 2008. However, this information was clearly presented in both the preliminary draft and draft versions of this report.

The full text of the DOHMH response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOHMH's internal controls for ensuring that health code violations at restaurants are corrected in a timely manner need to be strengthened. Follow-up inspections of sampled restaurants were often not conducted in a timely manner; DOHMH did not ensure that all restaurants were inspected annually; and documentation was inadequate on why restaurants that repeatedly failed sanitary inspections were allowed to remain open. Furthermore, DOHMH did not adequately track its inspectors or supervisors to ensure that inspections were being properly conducted and monitored.

However, for our sampled restaurants, we determined that the reinspections were conducted by a different PHS than the PHS who conducted the initial inspection. In addition, the restaurants in the Golden Apple program, which is aimed at encouraging food safety, were removed from the program if they failed an inspection.

DOHMH Did Not Inspect Some Restaurants Annually

The DOHMH Food Service Establishment Inspection Policy states that PHSs should conduct unannounced annual inspections of all permitted restaurants to ensure the ongoing safety of food service operations. These sanitary inspections focus on food safety and are full reviews of the food establishment's operations and facilities.

As noted in our Audit Scope Limitation section, DOHMH officials were unable to produce a list of all permitted restaurants during Fiscal Year 2008 so that we could determine how many of them had received inspections during the year. We were given a list of restaurants that were in an active status at the beginning of Fiscal Year 2008 and another list of restaurants that were active at the beginning of Fiscal Year 2009.

We analyzed these lists and determined that there were 23,659 restaurants operating at the beginning of Fiscal Year 2008 and 23,521 restaurants at the beginning of Fiscal Year 2009. (We assume that if a restaurant is on both lists, it was in operation during Fiscal Year 2008.) Our analysis identified 19,321 restaurants that were on both lists and were therefore in operation during Fiscal Year 2008. Of these, 4,267 (22.1%) restaurants were not inspected during that year.

We randomly selected a sample of 50 of the 4,267 restaurants that were not inspected in Fiscal Year 2008 and reviewed information on them in FACTS to determine if or when they were eventually inspected and the results of any such inspections. Of the 50 restaurants, 8 went out of business or changed ownership. For the remaining 42, we found that only 36 were inspected in Fiscal Year 2009 (through February 13, 2009). Of the remaining six, inspectors reported they could not gain access to four, and no inspection attempt at all was made for two. For the 36 where an inspection took place, seven (14%) of them failed their first inspection. The time between the prior inspections in Fiscal Year 2007 and the subsequent inspections in Fiscal Year 2009 for these seven restaurants ranged from 380 days to 699 days, with an average of 538

days. Consequently, it is possible that the conditions at these restaurants leading to the failed inspections had been allowed to continue for a very long time without detection by DOHMH.

Extensive periods of time between inspections may encourage the restaurant to relax its sanitary practices. As a result, there is an increased risk that unsanitary conditions at restaurants continued for long periods without detection, which in turn increase the likelihood that food-borne illnesses could occur.

Recommendations

DOHMH should:

1. Immediately take steps to inspect the six restaurants identified in this report for which an inspection has not been performed since Fiscal Year 2007.

DOHMH Response: “Those steps have been taken, and all six facilities were inspected or otherwise accounted for before the end of May, 2009. (See Table 2, ... [on page 9 of 12 of the Addendum].) Additionally, the 50 restaurants referenced in the report as not having been inspected in FY 2008, have all been inspected, otherwise accounted for, or are on schedule for inspection in the current inspection cycle of FY 2009.”

2. Ensure that all permitted restaurants are given a full sanitary inspection at least once a year in accordance with its procedures.

DOHMH Response: “The Department of Health and Mental Hygiene (DOHMH) was aware that some restaurants operating at the start of FY 2008 did not receive a full sanitary inspection by the end of the fiscal year and had reported it in FY 2008 Mayor’s Management Reports (MMR.). The DOHMH, at the time of the audit, had already begun implementing measures to address the issue.

“The inspection shortfall in FY 2008 is attributable to a number of factors. As a result of the DOHMH’s efforts to better protect public health, like looking more closely at conditions that contribute to pest infestations and improving staff training to achieve better standardization in inspection results, inspections times increased. Additionally, fewer staff than were needed were available at the start of the fiscal year.

“In the current year, priority has been given to inspecting those restaurants that were not inspected in FY 2008, inspectors have become increasingly familiar with the new requirements leading to decreases in inspection times in FY 2009 and authorization was received to hire a substantial number of new inspectors (20).

“Over the last six months, the BFSCS has run and utilizes a weekly report listing all restaurants that have not had an inspection within 13 months of their last inspection, and tracks a monthly indicator of the number and percent of restaurants meeting this criterion.

For FY 2009, the BFSCS has inspected 93.4% of permitted restaurants as of June 6, 2009, and is on track to inspect 99% of restaurants by the end of June 2009. These findings are presented in Table 3,” (see page 10 of 12 of the Addendum).

Some DOHMH Compliance Inspections Were Untimely

According to DOHMH Food Service Establishment Inspection Policy, a compliance inspection is a follow-up inspection conducted when an FSE fails an initial inspection due to the finding of critical or general violations leading to a score of 28 or higher. In a compliance inspection, which is to be conducted by a different PHS than the one who conducted the initial inspection, the inspector performs a full sanitary reinspection. This means that the PHS will determine whether the violations found during the initial inspection have been corrected and whether there are any new violations.

According to DOHMH policy, establishments that fail an initial inspection must receive a timely reinspection. This compliance inspection should be performed 15 to 45 days after the failed initial inspection. Similarly, establishments that fail an initial compliance inspection should receive a final compliance inspection in 15 to 45 days after a warning letter has been sent to the restaurant.

During Fiscal Year 2008, 5,838 restaurants failed at least one regular (non-accelerated) sanitary inspection. We randomly selected 62 restaurants that failed at least one sanitary inspection to determine whether there was a compliance inspection and the timeliness of the reinspection. From our analysis, we found that DOHMH did not conduct a compliance inspection of two of the 62 restaurants that failed the initial inspection. For one of these restaurants, an inspection was not even attempted. This restaurant failed an initial inspection on June 2, 2008, but had not had a compliance inspection as of February 13, 2009, 251 days later. After we brought this matter to DOHMH’s attention, the restaurant was visited on April 20, 2009, at which time the inspector determined that there had been a change of ownership. The other restaurant failed the initial inspection on July 21, 2007, but inspectors did not gain access to the facility on five subsequent visits. On the sixth visit to the facility on April 4, 2008, the inspector noted that there was a change in ownership and conducted a full inspection, which the restaurant failed. (DOHMH closed the restaurant that same day.)

For the 60 restaurants that received a compliance inspection, although the average length of time between the failed initial inspection and the subsequent compliance inspection was an acceptable 32 days, 12 (20%) restaurants received the compliance inspection more than 45 days after the failed initial inspection, ranging from one to 159 days late, and were, on average, 32 days late. It is important to ensure that compliance inspections are performed timely. Otherwise, the danger that food-borne illness could occur as a result of unsanitary conditions being allowed to continue is increased.

Of the 60 restaurants that received an initial compliance inspection, sixteen (27%) failed this compliance inspection, including three restaurants for which the initial compliance inspection was performed beyond the 45-day standard. Fifteen of the 16 restaurants that failed

the initial compliance inspection had a timely final compliance inspection. The other restaurant failed its initial compliance inspection on June 5, 2008, and went out of business as of July 16, 2008.

According to DOHMH officials, if an FSE fails the final compliance inspection, but is not closed, another final compliance inspection should be conducted within 15-20 days. For the 19 restaurants that remained open after failing three consecutive sanitary inspections, we found that 8 (42%) were not inspected within 20 days, ranging from 1 to 14 days late, and were on average 4 days late.

Recommendation

3. DOHMH should consistently conduct compliance inspections of restaurants in a timely manner.

DOHMH Response: “Compliance inspections of restaurants are already conducted in a timely manner. In FY 2008 the median time between an initial inspection requiring a compliance inspection and the first attempt to re inspect was approximately 18 days with less than 1% occurring at or above 45 days. As previously stated, the Comptroller’s flawed methodology led it to make erroneous estimates and conclusions about the extent of timely compliance inspections. Additionally, the Department’s review of FY 2008 inspections found that 90% of final compliance inspections are conducted within 20 days of the previous compliance inspection, and 95.7% within 45 days.” (See Table 4 on page 10 of 12 of the Addendum.)

Auditor Comment: DOHMH did not explain its methodology in calculating its compliance inspection rates. Therefore, we could not assess its validity. As stated earlier, the “full data set” received from DOHMH was unreliable. As a result, we properly confined our analysis to randomly selected samples of restaurants. It should be noted that the report has consistently stated that the results of our audit tests of randomly selected samples were not statistically projected to their respective populations. However, we believe that these tests provided a reasonable basis for assessing DOHMH’s internal controls for ensuring the timely correction of health code violations at restaurants.

DOHMH Documentation Was Inadequate on Why Restaurants with Multiple Failed Sanitary Inspections Were Allowed to Remain Open

According to DOHMH policy, a restaurant can be closed if it fails the final compliance inspection. All restaurants that fail a compliance inspection must undergo a reinspection or final compliance inspection between 15 and 45 days of that failure. If a restaurant fails this final compliance inspection, the establishment may be closed by DOHMH. Closure requests are initiated by inspectors and authorized by supervisors. Supervisors may also seek guidance from higher-level BFSCS officials before closing a restaurant. Regardless of the reason for closing a

restaurant, a PHS must conduct a full sanitary inspection to ensure that violations have been corrected before the restaurant can be authorized to re-open.

From our review of FACTS data, we determined that 678 restaurants failed three or more consecutive sanitary inspections in Fiscal Year 2008. To determine whether there were any restaurants that remained open after failing three consecutive inspections, we randomly selected 39 of the 678 restaurants to review their status. We found that 19 (49%) of the 39 restaurants remained open after failing three consecutive sanitary inspections. Inspectors recommended that five of the 19 be closed, but these requests were denied by supervisors or BFSCS officials. There were explanations in FACTS as to why these restaurants were not closed. For example, for one of the restaurants, a request from the inspector to close the restaurant after the second failure was denied by a BFSCS official because even though the inspector observed extensive mice infestation in the establishment, it was noted in FACTS that “there was no food contamination, as all food items were stored in vermin proof containers.” (The restaurant failed the next inspection one week later and still remained open. It was not until the fourth sanitary inspection, five weeks later, that the restaurant received a passing score.)

However, the inspectors did not report in FACTS the reason a closure was not requested for the remaining 14 restaurants that had three consecutive sanitary inspection failures. For example, one restaurant failed four consecutive sanitary inspections, with mice detected on two of these inspections, but was not closed because closure was not requested by the inspector. Although this restaurant received a passing score on the fifth sanitary inspection, this did not occur until three weeks later.

DOHMH officials may place a restaurant in the Accelerated Inspection Program for more intensive monitoring by BFSCS if the restaurant fails two consecutive regular cycle inspections and passes a third inspection. Once in the Program, a restaurant must pass two consecutive Program inspections within one year before being returned to the regular cycle of inspections. A restaurant may be closed after failing two consecutive Program inspections.

There were 1,871 restaurants in the Program during Fiscal Year 2008. Of those, 454 restaurants had at least one failed Program inspection. We randomly selected a sample of 21 of these 454 restaurants and reviewed the information in FACTS to determine whether restaurants that failed two consecutive Program inspections remained open. Eleven of the 21 restaurants failed two consecutive Program inspections. We found that three (27%) of the eleven restaurants remained open after failing two consecutive sanitary inspections while in the Program. One of the three restaurants failed Program inspections on September 17, 2007, and again one month later on October 16, 2007, with scores of 34 and 39, respectively. A request from the inspector to close the restaurant was denied by a supervisor who simply stated that closure was “not warranted.” Although the restaurant received a passing score on the next Program inspection, it was conducted almost two months later, on December 10, 2007. For the other two restaurants, the inspectors did not recommend closure after two failed Program inspections and did not indicate in FACTS why a closure was not requested. One of these two restaurants failed a Program inspection on November 13, 2007, and again one month later on December 12, 2007,

with scores of 52 and 42, respectively. Although the restaurant received a passing score on the next Program inspection, it was conducted more than a month later, on January 15, 2008.

DOHMH procedures do not call for a mandatory closing of a restaurant if it fails three or more consecutive sanitary inspections or two Program inspections. In fact, an inspector can make a closure request at any time, even after only one inspection, depending on the severity of the conditions observed. Conversely, a restaurant may fail several consecutive inspections but still not be closed if in BFSCS's judgment the restaurant does not present a public health hazard. Nevertheless, consecutive failed inspections are recognized as a concern by DOHMH, as indicated by its procedures which note that consecutive failed inspections may be grounds to close an establishment. As such, one would expect that inspectors would note the mitigating circumstances that may preclude the closing of a restaurant after multiple sanitary inspection failures. However, we found that this was generally not the case. By not documenting the reasons for allowing restaurants with multiple consecutive sanitary inspection failures to remain open, DOHMH is hindered in its ability to oversee and evaluate the appropriateness of these decisions.

DOHMH Response: In their response, DOHMH stated that “the auditors state that ‘... restaurants that repeatedly failed inspections were often not closed.’ This statement is misleading and demonstrates a lack of understanding regarding how DOHMH determines the need to close a restaurant.”

Auditor Comment: DOHMH is quoting the preliminary draft report. Had DOHMH officials read the draft report carefully, they would have noticed that we had deleted this statement from the report.

Recommendations

DOHMH should:

4. Ensure that those restaurants that have failed three or more consecutive regular sanitary inspections or two or more consecutive Accelerated Inspection Program inspections are reinspected in a timely manner.

DOHMH Response: “The Department is considering the merits of this recommendation as it re engineers its inspection processes.”

5. Ensure that reasons for not closing restaurants that fail a minimum of three consecutive regular sanitary inspections or two consecutive Program inspections are documented in FACTS and approved by a supervisor.

DOHMH Response: “As there is no established regulation or rule that requires the DOHMH to close a restaurant after three inspections and, in fact, many other food safety considerations are included in the decision to close, the DOHMH does not see a reason to justify why a restaurant is allowed to remain open. In fact, the more important issue is to have enough justification to close a restaurant. However, DOHMH does document why a

restaurant was allowed to remain open after an inspector has recommended closure if that decision was overturned by the supervisor or other BFSCS official for cause. DOHMH, as always, continues to justify the reason(s) for recommending a restaurant closure by the violations cited.”

Auditor Comment: We continue to believe that by not documenting the reasons for allowing restaurants with multiple consecutive sanitary inspection failures to remain open, DOHMH is compromised in its ability to effectively oversee and evaluate the appropriateness of these decisions. Accordingly, we reaffirm this recommendation.

DOHMH Oversight of Inspectors and Supervisors

DOHMH does not adequately track its inspectors or supervisors to ensure that inspections are being properly conducted and monitored. As a result, the agency cannot ensure that its inspectors conduct sanitary inspections in a consistent manner.

To determine whether there was a significant variation among inspectors with respect to how they scored inspections, we analyzed inspection data and calculated the average number of violation points assigned by inspectors. According to the FACTS database file that DOHMH provided to us, 161 inspectors conducted 20,776 regular sanitary inspections³ at restaurants during Fiscal Year 2008. To ensure that our analysis results were not skewed by inspectors who did not conduct many inspections, we identified those inspectors who conducted a minimum of 100 inspections during Fiscal Year 2008 and calculated their average score. For the year, 67 of the 161 inspectors met this criterion. These inspectors conducted 19,434 inspections during the year and assigned an average of 25 points per inspection. Our review further revealed that there were some inspectors who gave an average score as low as 15 points while others had averages as high as 50 points. These variances in and of themselves are not necessarily a sign that inspectors are not performing their jobs correctly, or that corruption exists in the inspection process. However, these variances do merit further investigation by DOHMH to discover the causes for the variances and, if necessary, make modifications to better ensure that inspections are performed in a uniform manner. DOHMH officials informed us that they periodically review the inspectors’ average scores; however, there was no evidence that this information is tracked or that there are guidelines on how to proceed with inspectors who consistently give low or high scores.

In an effort to prevent corruption in the inspection process, DOHMH officials told us that five percent of all inspections should be supervisory inspections. Most supervisory inspections involve supervisors inspecting restaurants soon after an inspection has been conducted in order to compare their results to those of the inspectors. DOHMH records indicate that there were 37 supervisors on staff during Fiscal Year 2008. During the year, inspectors conducted 30,204 regular

³ By definition, this excludes non-sanitary inspections such as transfat, smoke-free air, and permit inspections, as well as Program sanitary inspections. For purposes of this test, we also excluded regular sanitary inspections for which no point score was assigned (because, for example, the inspector was unable to gain access to the restaurant). In addition, we excluded pre-permit and inter-agency task force inspections, which are also considered to be types of regular sanitary inspections.

sanitary inspections at restaurants.⁴ Accordingly, supervisors should have conducted a minimum of 1,510 (5%) supervisory inspections, or approximately 40 inspections each. However, the 37 supervisors conducted an average of about 15 food service inspections each during Fiscal Year 2008, for a total of 553 supervisory inspections, or 1.8 percent of the total number of inspections. Furthermore, there was no evidence in the FACTS database file that 14 supervisors conducted any supervisory inspections during the year, and eight other supervisors conducted fewer than ten supervisory inspections during the year.

Sharing the results of supervisory inspections with inspectors is an excellent tool for improving inspector performance. In addition, when inspectors know that a supervisor may inspect the same restaurant soon after they complete their inspection, the risk of fraud or corruption in the inspection program is reduced. DOHMH should more closely monitor its supervisors to ensure that a sufficient number of supervisory inspections are conducted.

On a related matter, DOHMH officials provided a list of 194 inspectors for Fiscal Year 2008. However, the FACTS database file identified 280 inspector codes for inspections conducted during Fiscal Year 2008. DOHMH explained that the difference was the result of data-entry errors. Similarly, the FACTS database file only identified 429 regular sanitary inspections for the 37 supervisors listed on DOHMH's record of supervisors for Fiscal Year 2008. This suggests that the codes entered for the remaining 124 regular sanitary inspections performed by supervisors in Fiscal Year 2008 were also erroneous. To more effectively track inspector and supervisor performance, DOHMH needs to enhance its efforts to ensure that inspector and supervisor codes are entered in FACTS correctly.

Recommendations

DOHMH should:

6. Analyze inspection data to ascertain whether significant variances exist with respect to inspection scores given by inspectors. If such variances exist, determine the reasons for the variances and, if needed, make modifications (e.g., increase training) to ensure that inspections are performed in a consistent manner.

DOHMH Response: "The report implied that there was wide variation, in mean scores for inspectors and asserted that this was due to inadequate supervision of field staff. DOHMH already analyzes inspector variability just as the report recommends. The capacity for such analyses resides in the Division of Environmental Health's Bureau of Environmental Surveillance and Policy. As needed by management, various analyses of inspection data are done and used for targeted training. Additionally, the report reaches a conclusion that there is too-great variability among inspector's average scores. The auditor's support for this statement is a presentation of the maximum average score (50) and the minimum score (15), along with the mean (24). This analysis is somewhat

⁴ For this test we included all regular sanitary inspections and monitoring visits (which are less than full sanitary inspections) whether or not the inspector assigned a point score to the restaurant. We continued to exclude pre-permit and interagency task force inspections, which are also considered to be types of regular sanitary inspections.

misleading. DOHMH's own analysis for the period from July 1, 2007 to October 31, 2008 (FY2008 and part of FY2009) found only one individual's average inspection score exceeded 34 (with a score of 50). In fact, we found that 99% of inspectors had average scores within plus or minus 9 points of the mean (24.4) and 63% had scores within plus or minus 5 points of the mean."

Auditor Comment: Although DOHMH claims that our analysis "is somewhat misleading", it fails to say why. More importantly, although requested, DOHMH provided no evidence to show that it has taken any action in response to its analyses of average inspector scores or that it determined the reasons for the variances it identified.

7. Ensure that supervisors conduct supervisory inspections as required to ensure that sanitary inspections are being properly conducted and to minimize the risk of corruption in the inspection process.

DOHMH Response: "To ensure that food inspections are being properly conducted, supervisors within the Bureau of Food Safety and Community sanitation (BFSCS) conduct supervisory follow-up inspections as well as inspections where they accompany the sanitarian. To ensure that these inspections occur, the Department maintains a separate office, the Office of Regulatory Quality Assurance (RQA) that monitors the number of supervisory inspections and the findings of those inspections. On a monthly basis, BFSCS supervisors submit the RQA Supervisor's Monthly Report of Field Staff (EH112) along with supporting quality control information for each inspector. To ensure that food inspections are being properly conducted, the Department maintains a separate office that monitors the number of supervisory inspections and the findings of those inspections. On a monthly basis, BFSCS supervisors submit the RQA Supervisor's Monthly Report of Field Staff (EH112) along with supporting quality control information for each inspector. EH112 provides information regarding the supervisor, the number of inspections done by each field inspector for the month, the total number of viable accompanied or unaccompanied inspections done by the supervisor for each field inspector and their results and an explanation for why viable follow-up inspections were not conducted, if applicable. RQA will follow up with the program if supervisors have not submitted the EH112 in an appropriate timeframe.

"As we continually strive to improve oversight of field operations, Regulatory Quality Assurance processes are being assessed to determine how they may be re-engineered to better serve the needs of the Division of Environmental Health as a whole, and the Bureau of Food Safety and Community sanitation specifically. A consultant has been engaged to help catalog the existing QA processes, work with programs to assess gaps and redundancies, and to develop a work plan for revamping the processes to fully meet the division's needs.

"Essential to preventing corruption is the BFSCS' creation and maintenance of a culture that does not tolerate it. The history of this program over the past twenty years speaks for itself as to the success of our efforts in this area. Additionally, DOHMH inspectors have

been instrumental in the arrest of at least five restaurant operators that attempted to offer bribes to inspectors over the past two years.”

Auditor Comment: DOHMH provided the auditors with a report at the exit conference indicating that 5 percent of inspections were performed by supervisors during Fiscal Year 2008. However, the report was only a tabulation of the numbers of inspections that supervisors reported that they had conducted. In addition, our analysis was based on food service inspections, but DOHMH’s report included window guard inspections and possibly other types of non-food-service inspections. Furthermore, there was no evidence to show that the information provided by the supervisors had been validated. Relying on self-reported figures, as DOHMH has done in this case, is an internal control weakness because there is a high risk of obtaining misinformation through this approach. The evidence on supervisory inspections that we present in the report is based on food service inspection information in FACTS.

8. Enhance its efforts to ensure that inspector and supervisor codes are entered in FACTS correctly.

DOHMH Response: “The DOHMH does not agree with the conclusion that data entry in FACTS is a problem for inspectors. However, supervisors have not consistently entered their monitoring and accompaniment inspections into FACTS. Supervisors report these inspections on their “Daily” reports, which are sent to the Division of Environmental Health’s RQA office and to the DOHMH Inspector General. The DOHMH has now explicitly instructed supervisors to make sure that every inspection they perform is also entered into FACTS. Additionally, the BFSCS has recognized deficiencies in its current system of OCR scanning technology that depends on handwriting recognition technology to lift. Planning for enhancements in inspection procedures, which included rebuilding the FACTS database, began as early as October 2008 and was fully independent of this audit’s recommendations. The DOHMH commenced the project to reengineer the food establishment inspection processes, data capture, maintenance, and public access in March 2009. Design elements, including front end edits, to improve data quality are envisioned and will be incorporated. Deployment of new data systems is scheduled for July 2010.”

Auditor Comment: As stated earlier, DOHMH officials provided a list of 194 inspectors for Fiscal Year 2008. However, the FACTS database file identified 280 inspector codes for inspections conducted during Fiscal Year 2008. When we previously asked DOHMH for an explanation of this discrepancy, agency officials stated that some of the inspector codes had been input errors. While DOHMH now inexplicably states that it “does not agree with the conclusion that data entry is a problem for inspectors,” it fails to present any other explanation for this discrepancy.

Golden Apple Initiative

The Golden Apple quality improvement initiative is a program aimed at increasing food safety in restaurants. DOHMH recognizes restaurants that have maintained excellent food safety

practices. The award consists of a one-year certificate and decal that can be prominently displayed to the public, allowing potential patrons to immediately identify establishments that meet DOHMH's highest food safety standards. To become eligible for a Golden Apple, a restaurant must meet certain criteria, which include passing two consecutive initial sanitary inspections with no critical violations and four or fewer general violations.

During Fiscal Year 2008, there were 56 restaurants that received Golden Apple certificates. We selected the six restaurants that were designated as Golden Apple restaurants but had subsequently received a failed score. We reviewed the information on FACTS to determine whether these restaurants that had a failed inspection remained in the Golden Apple program. We found that all six restaurants had previously met the criteria to be recognized as a Golden Apple establishment but had lost that designation after the failed inspection.



NEW YORK CITY DEPARTMENT OF
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June 17, 2009

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Re: Audit Report on the Department of Health
and Mental Hygiene Oversight of the
Correction of Health Code Violations at
Restaurants ME09-074A

Dear Mr. Graham:

Thank you for the opportunity to respond to the draft report on the "Oversight of the Correction of Health Code Violations at Restaurants." We maintain that there are vast problems with the audit that discredit its value in accurately representing the performance of the New York City Department of Health and Mental Hygiene Bureau of Food Safety and Community Sanitation (BFSCS). The problems with the report include distortions in presentation of the program's activities, failure to recognize that the year evaluated was not representative of prior years or the subsequent year, methodological limitations, and a misunderstanding of the goals of the program. Moreover, the auditors were advised of a new program to conduct enhanced inspections of poorest performing facilities to be implemented in July 2009 and additional enhancements, to be implemented in July 2010 to post letter grades at all restaurants and further increase inspections of poorer performing restaurants, but failed to recognize that initiative in the report.

The report focuses on the fact that a number of restaurants were not inspected in the fiscal year 2008. However, the report fails to indicate that BFSCS conducted 61,848 inspections of food service establishments (FSE), approximately 4,000 more inspections than were performed in fiscal year 2007. The auditors were also advised that in fiscal year 2008, the BFSCS decided to prioritize follow-up inspections, recognizing that until staffing issues were resolved, there would be a need to prioritize. Clearly, closing 1,507 food service establishments in FY 2007, 1,057 in FY 2008 and 1,371 through May of FY 2009 indicates the aggressive actions taken by

BFSCS to close restaurants that fail to correct their violations. It also should be noted that BFSCS had conducted inspections of approximately 99% of all restaurants in each fiscal year between 2004 and 2007, that fiscal year 2008 was an exception and that in fiscal year 2009, we had inspected 92.4% of restaurants by May 31, 2009.

BFSCS's policy goal is to conduct a compliance inspection within 14 to 45 days of an initial inspection with 28 or more points. BFSCS's analysis of FY 2008 inspections found that 95.7% of compliance inspections occurred between 14 and 45 days of the inspection that triggered it. However, the audit incorrectly states that: "follow-up inspections of sampled restaurants were *often* not conducted timely." In their sample of 60 out of 5,838 restaurants that failed their initial inspection, the auditors found that 12 of the 60 restaurants were not inspected within 45 days of the failed inspection. This suggests that 20% were not inspected in a timely manner which is clearly substantially discrepant with the 4.3% indicated by analysis of the full set of data and suggests real concern with the methodology for selecting the 60 restaurants.

It is necessary to point out that within the framework of protecting the public health and enforcing applicable regulations, the Department exercises its professional judgment and orders food operations to cease where a violation or collection of violations represents an imminent public health hazard. The report states that 19 restaurants in their sample remained open after three consecutive failures and questions why no explanations were given for not closing 14 of the restaurants. This comment reinforces the auditors' failure to understand BFSCS's role in promoting food safety. Failing a compliance inspection or multiple compliance inspections does not automatically mean a restaurant should or will be closed. There is no need to document the negative of why a restaurant does not need to be closed. All of the 19 restaurants that remained open showed significant improvement, were in the process of addressing the issues, and were not cited with any violation constituting an imminent health hazard that warranted closure.

The audit report incorrectly states that DOHMH does not adequately track and monitor its inspectors and supervisors to ensure that inspections are being properly conducted and monitored. DOHMH's Regulatory Quality Assurance unit monitors the number of supervisory inspections and findings. The auditors were provided with a Quality Assurance unit report indicating that 5.03% of BFSCS inspections were performed by supervisors that either accompanied the inspector or performed a follow-up inspection as part of BFSCS's efforts to assure quality control, in accordance with the agency's corruption control protocol during fiscal year 2008. The auditors were provided this report at the exit conference and opted not to include it in the draft audit report. Concerning variances in scoring, DOHMH's own analysis found that 99% of inspectors had average scores within 9 points of the mean (24.4) and 63% had scores within 5 points of the mean. Only one inspector had an average score of greater than 34, with a score of 50.

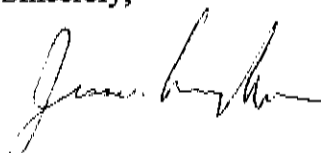
John Graham

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June 17, 2009

The attached response provides more detailed comments on the report and the recommendations. We appreciate the courtesy and professionalism of your staff in the performance of this audit. If you have any questions or need further information, please contact Thomas Hardiman, Director, Internal and External Audits, at (212) 219-5285.

Sincerely,



Jessica Leighton, PhD, MPH
Deputy Commissioner
Division of Environmental Health

Attachment

cc: T. Farley, M.D., MPH
A. Rein
E. Marcus
R. Edman
S. Packman
T. Hardiman

**RESPONSE TO NEW YORK CITY COMPTROLLER'S
AUDIT REPORT ON DEPARTMENT OF HEALTH AND MENTAL HYGIENE
OVERSIGHT OF THE CORRECTION OF HEALTH CODE VIOLATIONS RESTAURANTS
(ME09-074A)**

The Department of Health and Mental Hygiene (DOHMH) disagrees with the auditors' assessment of the performance of the Bureau Food Safety and Community Sanitation's (BFSCS) in maintaining "adequate internal controls to ensure that conditions that led to health code violations being issued to restaurants are corrected in a timely manner." The report misrepresents the program's goals and effectiveness, fails to recognize that the year evaluated was not representative of prior years or of the current year, and has methodological limitations.

The auditor's report does not adequately indicate the program's overall effectiveness in adequately dealing with restaurants that "fail" inspections. The report focuses on the fact that a number of restaurants were not inspected in the fiscal year assessed, but fails to indicate that BFSCS conducted 61,848 inspections of food service establishments (FSE), which were approximately 4,000 more inspections than were performed in fiscal year 2007. It should be noted that BFSCS had conducted inspections of approximately 99% of all restaurants in each fiscal year between 2004 and 2007. Through May 31, 2009 of the current fiscal year, 93% of restaurants had been inspected, already a significant improvement over last fiscal year which was clearly an anomaly. In fiscal year 2008, the auditors were advised that BFSCS had prioritized follow-up inspections as agency data indicated an increase in the number of inspections requiring a compliance inspection. Clearly, this indicates the aggressive actions taken by BFSCS to ensure that either restaurants correct their violations or they risk being closed.

The Comptroller's methodology for evaluating inspection protocol observance is deeply flawed, and does not support its broad, general statement of findings. The auditors state that they randomly sampled different categories of restaurants to conduct its analysis. Because DOHMH provided a complete dataset of all inspections, there is no reason for the Comptroller to create a sample of restaurants. An analysis of the full dataset could have been performed. Sampling is appropriate when the burden of full data analysis is too great, and is called for when paper records are being reviewed. That was not the case in this audit. A selection of just 50 of 4,267 restaurants to determine follow-up (1.17%) and 67 of 7,141 restaurants that had 28 or more points on an inspection (0.8%) are sample sizes that are far too small to have the statistical power to make reasonable estimates.

Response to Specific Recommendations:

- **Ensuring that all restaurants are inspected annually:** The auditors claim that: "BFSCS is not ensuring that all restaurants are inspected annually." However, the auditors failed to recognize that:
 - a) The BFSCS consistently inspected more than 99% of all restaurants in prior fiscal years, as indicated above and that 92% of restaurants were inspected by May 31, 2009 of the current fiscal year. These findings are summarized in Table 1, below.

Table 1

# Restaurants	20,954	22,188	19,444	22,389	23,665	23,521
% Inspected	99.20%	99.90%	99.90%	99.60%	80.10%	95.55%

- b) The BFSCS had prioritized the need to focus on an increased number of required follow-up inspections during fiscal year 2008 and had explained that to the auditors. Even still, the BFSCS performed 4,000 more inspections in fiscal year 2008 in comparison to fiscal year 2007.
- c) If BFSCS had mainly focused on performing at least one inspection of each restaurant, its target for that indicator could have been accomplished. BFSCS conducted 61,848 inspections in relation to 23,521 restaurants, an average of approximately 2.6 inspections per restaurant. Instead, the BFSCS prioritized the correction of violations where they had been cited during fiscal year 2008.
- **Timeliness of follow-up inspections:** The auditors indicate that: "follow-up inspections were often not conducted of sampled restaurants in a timely manner..." The auditors found that only 12 of the 60 restaurants that required a compliance inspection for their sample of 60 restaurants, out of a population of 5,838 restaurants, were not inspected within 45 days. (BFSCS' policy goal is to re-inspect 14 to 45 days after the initial inspection when a compliance inspection is necessary). Analysis of the full data set of restaurants shows that 95.7% of the follow-up inspections occurred between 14 and 45 days compared to the auditors' finding of only 80% in the sample. Small samples rarely yield precise estimates, and our findings confirm the essential flaw in the audit's methodology. Given that the data were available for all restaurants, there was no need for a sample from which skewed conclusions were drawn. But even in the sample, the auditors note that the average response time for all 60 restaurants was 32 days, which is more indicative of BFSCS' response time for follow-up inspections and should not lead to the conclusion that "follow-up inspections were often not conducted."
 - **Closure of restaurants with failed inspections:** The auditors state that "...restaurants that repeatedly failed inspections were often not closed." This statement is misleading and demonstrates a lack of understanding regarding how DOHMH determines the need to close a restaurant. The BFSCS policy is to close any restaurant that presents too high a risk for food borne illness at any point in the inspection cycle. Its goal is not to close restaurants, but to promote safe conditions and practices. The auditors misunderstand the program's mission if the assumption is that if restaurants are not being closed, this should be documented. Inspectors, their supervisors and a manager consider the existing conditions and exercise their professional judgment in ordering food operations to cease where a violation or collection of violations represent an imminent public health hazard that remains uncorrected at the end of an inspection. Closing a restaurant is not based upon a fixed number of compliance inspections, but is a carefully considered, multi-faceted

decision based on factors that speak to a restaurant's ability to serve food safely. There is no reason to document why a restaurant should not be closed.

The report also states that 19 restaurants, or less than 3% of the 678 restaurants with three consecutive inspections with a score of 28 or more points, remained open after the third compliance inspection. All of the 19 restaurants that were not closed after a third inspection showed significant improvement over previous inspections, were in the process of addressing outstanding issues, and were not cited with any violations constituting an imminent health hazard that warranted closure. While the BFSCS uses three consecutive inspections with 28 or more violation points as a trigger for further examining the efficacy of and need to close a restaurant, the decision is not based on this alone. The types of violations issued weigh heavily on the decision and the auditors made no effort to examine the basis for such a decision. The incorrect assumption about closure decisions extends to the Comptroller's sampling of restaurants in the "Accelerated Inspection Program (AIP)," to look for restaurants that remained open "after failing two consecutive" AIP inspections.

- **Monitoring of BFSCS inspectors:**

The DOHMH's Division of Environmental Health incorporates a number of quality control assessments to monitor the work of field staff.

- **Inspection Data Analyses:** The report's contention that the DOHMH "does not adequately track its inspectors or supervisors to ensure that inspections are being properly conducted and monitored" is incorrect. The DOHMH already analyzes inspector variability just as the report recommends and finds this comment puzzling. The Division of Environmental Health's Bureau of Environmental Surveillance and Policy runs regular reports for the BFSCS on the variability in inspector performance. From a report we ran for the period from July 1, 2007 to October 31, 2008, we found that 99% of inspectors had average scores within plus or minus nine points of the mean (24.4) and 63% had scores within five points of the mean. Despite the auditors' contention that the variability is too great, our findings suggest it is reasonable.
- **Supervisory inspections of inspectors:** The auditor's report recommends that "supervisors conduct supervisory inspections as required to ensure that sanitary inspections are being properly conducted and to minimize the risk of corruption in the inspection process". This is already standard practice. DOHMH's Office of Regulatory Quality Assurance (RQA) monitors the number of supervisory inspections and the findings of those inspections. On a monthly basis, BFSCS supervisors submit a report to RQA on the Supervisor's Monthly Report of Field Staff (EH112) along with supporting quality control information for each inspector. EH112 provides information regarding the supervisor, the number of inspections done by each field inspector for the month, the total number of viable accompanied or unaccompanied inspections done by the supervisor for each field inspector and their results and an explanation for why viable follow-up inspections were not conducted, if applicable. RQA will follow up with the

program if supervisors have not submitted the EH112 in an appropriate timeframe.

- **Continued efforts to improve inspector quality assessments and corruption control:** As we continually strive to improve oversight of field operations, regulatory quality assurance processes are being assessed to determine how they may be re-engineered to better serve the needs of the Division of Environmental Health as a whole, and the BFSCS, specifically. A consultant has been engaged to help catalog the existing QA processes, work with programs to assess gaps and redundancies, and to develop a work plan for revamping the processes to fully meet the division's needs. Essential to preventing corruption is the BFSCS' creation and maintenance of a culture that does not tolerate it. The history of this program over the past twenty years speaks for itself as to the success of our efforts in this area. Additionally, DOHMH inspectors have been instrumental in the arrest of at least five restaurant operators that attempted to offer bribes to inspectors over the past two years. BFSCS provided the auditors with a QA unit report indicating that 5.03% of BFSCS inspections were performed by supervisors that either accompanied the inspector or performed a follow-up inspection as part of the BFSCS's efforts to assure quality control, in accordance with the agency's corruption control protocol during fiscal year 2008: The auditors were provided this report at the exit conference and opted not to include it in the draft audit report.
- **Listing of inspectors:** The auditors indicate a discrepancy in the number of inspectors for fiscal year 2008 provided by DOHMH. The first request was for sanitarian/inspection staff on board during fiscal 2008; the second request asked to include dates of promotion for sanitarian/inspection staff. Discrepancies resulted when attempting to create a report that cross-referenced staff start, separation, promotion and leave-of-absence dates. A number of staff that were not on board during fiscal 2008 were erroneously included in the list provided. To prevent unintentional errors in the future, rather than attempt to accommodate such an auditor request within the program, all similar requests will be referred to the Department's Bureau of Human Resources.

Given that there were approximately 61,848 inspections but only 23,521 restaurants in FY 2008, it is clear that BFSCS performs multiple inspections of those restaurants where compliance inspections are indicated to assure that the restaurant is capable of complying with the Health Code. Given that the objective of the audit was to determine whether DOHMH is taking action to ensure that health code violations are addressed, the number of multiple inspections indicates that DOHMH prioritized that goal during fiscal year 2008, understanding that as a result it would not be able to inspect every restaurant with the year. It should be noted that all restaurants identified by the auditors as not having been inspected were inspected during the audit. A better presentation of BFSCS activities and actions would have been to highlight the increased compliance efforts taken during fiscal year 2008, or to at least indicate the extensive enforcement actions taken, such as the total number of violations issued and total number of restaurants closed. The auditors did not even present that information in the background of the

report. In our opinion, those actions are evidence of BFSCS enforcement actions. Rather, the auditors focus on timing issues and limit their presentations to their samples of exceptions.

Generally, the BFSCS completes its inspections in a timely manner. However, as the auditors noted during their review, some food service establishments were not inspected because they were not open when the inspector arrived. Some restaurants/bars are only open in the evening and on weekends for which the Department employs a team of inspectors that work weekends/evenings. While the BFSCS attempts to capture operating hours in its database, sometimes the hours of operation noted on an application by the operator are not those actually observed. Inspectors then update the record from the field and the restaurant that could not be accessed is re-scheduled. On occasion, it is not a matter of arriving for an inspection at the right time, but of a restaurant that has gone out of business, been closed for renovations or is not operating as there is no event taking place (as may be the case for a theater, caterer or arena). In these situations, inspectors attempt to find out from the restaurant's neighbors or from calls made from the BFSCS offices whether and when the restaurant is open.

The audit makes no mention of the DOHMH plan to enhance its regulatory enforcement strategy of FSEs but instead presents a picture of a Bureau that is not thinking critically enough about how to protect health of those that dine out. Since October, the DOHMH has been examining how to reduce the number of violations received by New York City restaurants by making restaurant inspection results more transparent to the public and increasing its inspections of FSEs that do not optimally comply with the Health Code. The plan was presented to the Mayor in January and the City Council in preliminary budget hearings calls for restaurants to post letter grades and for increased inspection of restaurants that receive a "B" (14-27 points) or "C" (28 or more points) and of those that have been closed. Restaurants that receive a "B" grade will receive their next initial cycle inspection approximately six months later, those with "C" grades – four months later, and those that have been closed – three months later. The target date for posting grades is July 1, 2010. The first phase of implementation is set for July 1, 2009, when the DOHMH will begin inspecting twice each year those restaurants that receive 28 or more violation points. Toward that end, the BFSCS has been authorized to hire 20 additional inspectors more than it had in FY 2008, bringing its head count of inspectors to 137. The BFSCS now has 131 inspectors on board. The decision to move in this direction was informed by the impressive results found from a letter grading approach in Los Angeles, which has witnessed dramatically improved inspection scores and reduced incidents of food borne illness since implementing its system 10 years ago.

Below, is the DOHMH response to each of the recommendations made in the audit report.

1. Immediately take steps to inspect the six restaurants identified in this report for which an inspection has not been performed since FY 2007.
 - Those steps have been taken, and all six facilities were inspected or otherwise accounted for before the end of May, 2009. (See Table 2, below) Additionally, the 50 restaurants referenced in the report as not having been inspected in FY 2008, have all been inspected, otherwise accounted for, or are on schedule for inspection in the current inspection cycle of FY 2009.

Table 2

40356151	BRUNOS ON THE BLVD	02/25/09	1085	FSAU
40356151	BRUNOS ON THE BLVD	01/05/09	1101	FSAL
40482592	ROYALE THEATRE	05/13/09	1527	FSAF
40560933	TOWN HALL THEATRE	05/21/09	1518	FSAD
40560933	TOWN HALL THEATRE	05/13/09	1527	FSAZ
40560933	TOWN HALL THEATRE	10/03/08	1102	FSAL
40892845	YAKINIKU WEST RESTAURANT	04/22/09	1524	FSBU
40892845	YAKINIKU WEST RESTAURANT	03/18/09	1546	FSAF
41246771	NEW DRAGON RESTAURANT	03/25/09	1187	FSBU
41246771	NEW DRAGON RESTAURANT	03/04/09	1085	FSAF
41262699	ADVENTURERS AMUSEMENT PARK	05/26/09	1531	FSAK
41262699	ADVENTURERS AMUSEMENT PARK	11/22/08	1173	FSAZ
41262699	ADVENTURERS AMUSEMENT PARK	07/28/08	1368	FSAL

2. Ensure that all permitted restaurants are given a full sanitary inspection at least once a year in accordance with its procedures.
 - The Department of Health and Mental Hygiene (DOHMH) was aware that some restaurants operating at the start of FY 2008 did not receive a full sanitary inspection by the end of the fiscal year and had reported it in FY 2008 Mayor's Management Reports (MMR.). The DOHMH, at the time of the audit, had already begun implementing measures to address the issue.
 - The inspection shortfall in FY 2008 is attributable to a number of factors. As a result of the DOHMH's efforts to better protect public health, like looking more closely at conditions that contribute to pest infestations and improving staff training to achieve better standardization in inspection results, inspections times increased. Additionally, fewer staff than were needed were available at the start of the fiscal year.
 - In the current year, priority has been given to inspecting those restaurants that were not inspected in FY 2008, inspectors have become increasingly familiar with the new requirements leading to decreases in inspection times in FY 2009 and authorization was received to hire a substantial number of new inspectors (20).
 - Over the last six months, the BFSCS has run and utilizes a weekly report listing all restaurants that have not had an inspection within 13 months of their last inspection, and tracks a monthly indicator of the number and percent of restaurants meeting this criterion.

- For FY 2009, the BFSCS has inspected 93.4% of permitted restaurants as of June 6, 2009, and is on track to inspect 99% of restaurants by the end of June 2009. These findings are presented in Table 3, below.

Month	Number of Restaurants Inspected	Percentage of Restaurants Inspected	Days of Year
July, 2008	1,629	6.93%	6.93
August, 2008	1,539	6.54%	13.47
September, 2008	1,639	6.97%	20.43
October, 2008	1,747	7.43%	27.86
November, 2008	1,335	5.68%	33.54
December, 2008	2,486	10.57%	45.11
January, 2009	1,913	8.13%	53.24
February, 2009	2,133	9.07%	62.31
March, 2009	2,396	10.19%	72.50
April, 2009	2,592	11.02%	83.52
May, 2009	2,325	9.88%	93.40

- DOHMH should consistently conduct compliance inspections of restaurants in a timely manner.
 - Compliance inspections of restaurants are already conducted in a timely manner. In FY 2008 the median time between an initial inspection requiring a compliance inspection and the first attempt to re inspect was approximately 18 days with less than 1% occurring at or above 45 days. As previously stated, the Comptroller's flawed methodology led it to make erroneous estimates and conclusions about the extent of timely compliance inspections. Additionally, the Department's review of FY 2008 inspections found that 90% of final compliance inspections are conducted within 20 days of the previous compliance inspection, and 95.7% within 45 days.

Table 4

Days Between Inspections	Number of Restaurants	Percentage of Restaurants	Cumulative Percentage
0-14 days	998	80.94%	80.94%
15-20 days	109	8.84%	89.78%
21-30 days	59	4.79%	94.57%
31-45 days	14	1.14%	95.70%
45+ days	53	4.30%	100.00%
Total Inspections	1,233		

- Ensure that those restaurants that have failed three or more consecutive regular sanitary inspections or two or more consecutive Accelerated Inspection Program inspections are re-inspected in a timely manner.
 - The Department is considering the merits of this recommendation as it re engineers its inspection processes, as previously discussed with the auditors and described on page three of this document

5. Ensure that reasons for not closing restaurants that fail a minimum of three consecutive regular sanitary inspections or two consecutive Program inspections are documented in FACTS and approved by a supervisor.
 - As there is no established regulation or rule that requires the DOHMH to close a restaurant after three inspections and, in fact, many other food safety considerations are included in the decision to close, the DOHMH does not see a reason to justify why a restaurant is allowed to remain open. In fact, the more important issue is to have enough justification to close a restaurant. However, DOHMH does document why a restaurant was allowed to remain open after an inspector has recommended closure if that decision was overturned by the supervisor or other BFSCS official for cause. DOHMH, as always, continues to justify the reason(s) for recommending a restaurant closure by the violations cited.
6. Analyze inspection data to ascertain whether significant variances exist with respect to inspection scores given by inspectors. If such variances exist, determine the reasons for the variances and, if needed, make modifications (e.g. increase training) to ensure that inspections are performed in a consistent manner.
 - The report implied that there was wide variation in mean scores for inspectors and asserted that this was due to inadequate supervision of field staff. DOHMH already analyzes inspector variability just as the report recommends. The capacity for such analyses resides in the Division of Environmental Health's Bureau of Environmental Surveillance and Policy. As needed by management, various analyses of inspection data are done and used for targeted training. Additionally, the report reaches a conclusion that there is too-great variability among inspector's average scores. The auditor's support for this statement is a presentation of the maximum average score (50) and the minimum score (15), along with the mean (24). This analysis is somewhat misleading. DOHMH's own analysis for the period from July 1, 2007 to October 31, 2008 (FY2008 and part of FY2009) found only one individual's average inspection score exceeded 34 (with a score of 50). In fact, we found that 99% of inspectors had average scores within plus or minus 9 points of the mean (24.4) and 63% had scores within plus or minus 5 points of the mean.
7. Ensure that supervisors conduct supervisory inspections as required to ensure that sanitary inspections are being properly conducted and to minimize the risk of corruption in the inspection process.
 - To ensure that food inspections are being properly conducted, supervisors within the Bureau of Food Safety and Community sanitation (BFSCS) conduct supervisory follow-up inspections as well as inspections where they accompany the sanitarian. To ensure that these inspections occur, the Department maintains a separate office, the Office of Regulatory Quality Assurance (RQA) that monitors the number of supervisory inspections and the findings of those inspections. On a monthly basis, BFSCS supervisors submit the RQA Supervisor's Monthly Report of Field Staff (EH112) along with supporting quality control information for each inspector. To ensure that food inspections are being properly conducted, the Department maintains a separate office that monitors the number of supervisory inspections and the findings of those inspections. On a monthly basis, BFSCS supervisors submit the RQA

Supervisor's Monthly Report of Field Staff (EH112) along with supporting quality control information for each inspector. EH112 provides information regarding the supervisor, the number of inspections done by each field inspector for the month, the total number of viable accompanied or unaccompanied inspections done by the supervisor for each field inspector and their results and an explanation for why viable follow-up inspections were not conducted, if applicable. RQA will follow up with the program if supervisors have not submitted the EH112 in an appropriate timeframe.

- As we continually strive to improve oversight of field operations, Regulatory Quality Assurance processes are being assessed to determine how they may be re-engineered to better serve the needs of the Division of Environmental Health as a whole, and the Bureau of Food Safety and Community sanitation specifically. A consultant has been engaged to help catalog the existing QA processes, work with programs to assess gaps and redundancies, and to develop a work plan for revamping the processes to fully meet the division's needs.
 - Essential to preventing corruption is the BFSCS' creation and maintenance of a culture that does not tolerate it. The history of this program over the past twenty years speaks for itself as to the success of our efforts in this area. Additionally, DOHMH inspectors have been instrumental in the arrest of at least five restaurant operators that attempted to offer bribes to inspectors over the past two years.
8. Enhance its efforts to ensure that inspector and supervisor codes are entered in FACTS correctly.
- The DOHMH does not agree with the conclusion that data entry in FACTS is a problem for inspectors. However, supervisors have not consistently entered their monitoring and accompaniment inspections into FACTS. Supervisors report these inspections on their "Daily" reports, which are sent to the Division of Environmental Health's RQA office and to the DOHMH Inspector General. The DOHMH has now explicitly instructed supervisors to make sure that every inspection they perform is also entered into FACTS. Additionally, the BFSCS has recognized deficiencies in its current system of OCR scanning technology that depends on handwriting recognition technology to lift. Planning for enhancements in inspection procedures, which included rebuilding the FACTS database, began as early as October 2008 and was fully independent of this audit's recommendations. The DOHMH commenced the project to reengineer the food establishment inspection processes, data capture, maintenance, and public access in March 2009. Design elements, including front end edits, to improve data quality are envisioned and will be incorporated. Deployment of new data systems is scheduled for July 2010.