

City of New York

OFFICE OF THE COMPTROLLER

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MANAGEMENT AUDIT

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Audit Report on the New York City
Department of Health and Mental
Hygiene's Follow-up on Health Code
Violations at Restaurants

MJ14-058A

June 30, 2015

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June 30, 2015

To the Residents of the City of New York:

My office has audited the Department of Health and Mental Hygiene (DOHMH) to determine whether it has adequate controls to ensure that food service establishments resolve health code violations in a timely manner. We perform audits such as this as a means of increasing accountability and ensuring that agencies appropriately enforce applicable City rules and regulations.

The audit concluded that DOHMH needs to strengthen its controls to ensure that food service establishments resolve health code violations in a timely manner, consistent with established policies, rules and procedures. The audit also found that during Fiscal Years 2013 and 2014, DOHMH Bureau of Food Safety and Community Sanitation (BFSCS) supervisors failed to consistently perform supervisory field inspections at the level established by their inspection procedures. Further, DOHMH does not require documentation of the justifications for allowing restaurants with repeated poor inspection results to continue to remain open—even though inspectors had determined that there were conditions that warranted their closure. Such a control would enhance DOHMH's efforts to deter fraud and corruption in the inspection process.

To address these weaknesses, the audit recommended that DOHMH management review its current productivity requirements and resource estimates to assess the number of inspectors required to complete inspections in a timely manner and strategically plan to address issues contributing to delays. In addition, the audit recommended that DOHMH ensure that BFSCS supervisors conduct the required number of field inspections in accordance with BFSCS supervisory inspection and review procedures. Lastly, DOHMH should ensure that the reasons for not closing a food service establishment with poor inspection results following an inspector's determination that its conditions warranted its closure are appropriately documented in its database.

The results of the audit 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.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the New York City Department of Health and Mental Hygiene’s Follow-up on Health Code Violations at Restaurants

MJ14-058A

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the Department of Health and Mental Hygiene (DOHMH) has adequate controls to ensure that food service establishments resolve health code violations in a timely manner.

DOHMH’s Bureau of Food Safety and Community Sanitation (BFSCS) is directly responsible for enforcing the New York State (NYS) Public Health Law¹ and Sanitary Code,² the New York City Health Code,³ and related rules governing food service and handling. Accordingly, DOHMH inspects approximately 25,000 food service establishments (FSEs, also referred to as restaurants in this report) each year to monitor compliance with food safety regulations.

City rules require each FSE to undergo at least one unannounced sanitary inspection by a BFSCS inspector each inspection cycle. The inspection cycle represents a period of up to approximately one year in which a series of related inspections consisting of at least one initial inspection and, if necessary, subsequent inspections within that cycle, including re-inspections and compliance inspections, takes place. A numeric point value is assigned to each violation observed during an inspection. The point value represents the seriousness of each violation—the higher the point value, the more serious the violation.

The FSE point and grade parameters are as follows: 0–13 violation points result in an “A” grade; 14–27 violation points results in a “B” grade; and 28 or more violation points results in a “C” grade. If 14 or more violation points are assessed at the time of the initial inspection, the FSE is given the opportunity to improve its sanitary conditions and will be re-inspected in no less than 7 days.

If at the time of an initial- or re-inspection the inspector observes one or more violations that represent an imminent (public health) hazard that cannot be corrected by the end of the inspection, DOHMH may order the restaurant to temporarily close to correct those violations. If

¹New York State Public Health Law Title 8, Article 13, Food Handling

²New York State Sanitary Code, Subpart 14-1, Food Service Establishments

³New York City Administrative Code Title 17- commonly referred to as the City Health Code.

an FSE is closed, DOHMH may conduct monitoring visits to ensure that establishment remains closed until authorized to reopen.

Audit Findings and Conclusions

DOHMH needs to strengthen its controls to ensure that FSEs resolve health code violations in a timely manner. Although DOHMH has established controls designed to foster the timely scheduling of follow-up health inspections and the resolution of rules violations, those controls are weakened because DOHMH's inspection attempts are not consistently conducted in accordance with established time standards. For the period of March 2013 through June 2014, DOHMH did not consistently attempt follow-up inspections in a timely manner, and exceeded the agency's informal 30-day target more than a quarter of the time. For establishments that received a score of 14 or more violation points during an initial inspection, DOHMH exceeded the mandated time requirements for beginning the next inspection cycle approximately 50 percent of the time.

Our review also found that during Fiscal Years 2013 and 2014, BFSCS supervisors failed to consistently perform supervisory field inspections at the level established by inspection procedures. Finally, we found that DOHMH does not require documentation of the justifications for allowing restaurants with repeated poor inspection results to continue to remain open—even though inspectors had recommended closure. By not requiring that justifications be documented, DOHMH foregoes a strong control in its efforts to monitor FSEs with poor inspection records. Such a control would enhance DOHMH's efforts to deter fraud and corruption in the inspection process.

Audit Recommendations

To address these issues, this report makes the following four recommendations:

- DOHMH management should review its current productivity requirements and resource estimates to assess the optimum number of inspectors required to complete inspections on-time within normal working hours. In performing its assessment, management should account for and strategically plan to address those issues it attributes to the delays in performing inspections, e.g., employee turnover, and time allocated to training.
- Based on its analysis, management should consider either expanding or reassigning inspection staff wherever possible to cover the backlog of past due required inspections and to improve its on-time performance of inspections.
- DOHMH should ensure that each inspection supervisor conducts field inspections of at least five percent of the inspections performed each month by each public health sanitarian or inspector under their supervision, in accordance with BFSCS supervisory inspection and review procedures.
- DOHMH should ensure that the reasons for not closing an FSE with poor inspection results following an inspector's recommendation that it be closed are appropriately documented in the Food and Safety & Community Sanitation Tracking System II (FACTS II).

Agency Response

DOHMH officials disagreed with the audit's findings and disagreed with three of the audit's four recommendations. Officials, however, did agree with the recommendation that the agency

document the basis for not closing restaurants with poor inspection results following an inspector's recommendation that it be closed.

From its response, it is apparent that DOHMH misunderstood the audit objective and, consequently, misinterpreted the audit's findings. DOHMH stated in its response that the audit findings "demonstrate a fundamental misunderstanding of how the restaurant inspection program works" and that "every indicator shows that restaurants continue to become cleaner and safer." However, the audit did not assess the merits of DOHMH's inspection process or grading system. Instead, we reviewed the inspection process and the results of inspections for restaurants cited with health code violations and the agency's efforts to follow up on those restaurants. Specifically, we sought to assess DOHMH's internal processes and compliance with its internal procedures for addressing restaurants cited with health code violations.

In fact, DOHMH misstates the audit objective in its response, stating that it was "to ensure that food service establishments resolve health code violations in a timely manner." However, the objective was not to ensure that food service establishments resolve health code violations in a timely manner but *to determine whether DOHMH has adequate controls* to ensure that violations are resolved in a timely manner. This is an important distinction. The inspection is a primary control towards ensuring the timely resolution of violations and the improvement of conditions that lead to violations. Accordingly, we assessed whether DOHMH conducted these inspections in a timely manner, in accordance with established rules and guidelines.

After carefully considering DOHMH's arguments, we find no basis for altering our audit's findings or recommendations.

AUDIT REPORT

Background

DOHMH is charged with protecting and promoting the health and well-being of all New Yorkers. DOHMH's BFSCS is directly responsible for enforcing the NYS Public Health Law and Sanitary Code, the New York City Health Code, and related rules governing food service and handling. The Health Code grants DOHMH the authority to conduct inspections of any premises or matters within its jurisdiction.⁴ Accordingly, DOHMH inspects approximately 25,000 FSEs (also referred to as restaurants in this report) each year to monitor compliance with City and State food safety regulations. FSEs include restaurants, coffee shops, bars, nightclubs, and most cafeterias and fixed-site food stands.

Since July 2010, the Health Code has required FSEs to conspicuously post letter grades that reflect the total number of violation points scored during an unannounced onsite sanitary inspection performed by a DOHMH public health sanitarian (PHS), commonly referred to as a health inspector.⁵ City rules require each FSE to undergo at least one unannounced sanitary inspection by a BFSCS inspector each inspection cycle. An inspection cycle can range from a few months up to 13 months based on an FSE's level of compliance, which is determined through inspections.

A numeric point value is assigned to each violation observed during an inspection. The point value represents the seriousness of each violation—the higher the point value, the more serious the violation. The number of points assessed depends on the degree and the frequency of the violation (condition level). Some violations have more condition levels and more parameters than others. Administrative violations only have one condition level and one set of parameters, however, they are unscored and do not count toward an FSE's overall inspection score. Critical violations and public health hazards may have up to five condition levels, from "Condition I," the least serious condition with the lowest point value, through "Condition IV," the most serious condition with the highest point value because they pose a substantial risk to the public health. These violations generally involve food conditions, cooking and storage temperatures, food workers' sanitary practices, water and sewage, pest contamination, and the use of toxic materials. "Condition V" violations, in most instances, are reserved for a failure to correct any Public Health Hazard condition noted by the health inspector at the time of the inspection.

The inspection cycle (shown in Appendix I of this report) represents a period of up to 13 months in which a series of related inspections consisting of at least an initial inspection and, if necessary, subsequent inspections within that cycle, which include re-inspections and compliance inspections, takes place. The cycle begins with an initial inspection (Appendix II details the various lengths of an FSE's inspection cycle and when required follow-up inspections must take place based on an FSE's overall inspection results.) BFSCS inspectors use handheld computers to record conditions observed during inspections.

At the end of the inspection, the inspector reviews the results with the FSE operator and issues a printed report detailing the conditions observed, violation points assessed, and the inspection

⁴Title 24 Section 3.01(a) of the Rules of the City of New York (RCNY), Food Service Establishment Inspection Procedures.

⁵ Chapter 23 of Title 24 of the RCNY

score—the lower the score, the better the grade. If a critical or unscored⁶ violation is cited during an inspection, or if the overall score is 14 or more violation points, the inspector will also issue a Notice of Violation (NOV). The NOV informs the FSE operator of the law or rules violated, the scheduled hearing date and provides information about the hearing process. The inspector and the food service operator sign this notice electronically. The inspection results are then transmitted wirelessly to DOHMH's computer database application, FACTS II. NOV's are also transmitted directly to the Health Tribunal at the City's Office of Administrative Trials and Hearings (OATH), which is responsible for adjudicating NOV's issued by DOHMH inspectors.⁷

The FSE grade and point parameters are as follows:

- “A” 0 – 13 violations points
- “B” 14 – 27 violation points
- “C” 28 or more violation points

If the FSE's inspection results in a score of less than 14 violation points, it receives an “A” grade and will not require additional inspections until the next inspection cycle in approximately one year. If 14 or more violation points are assessed at the time of the initial inspection, no grade is issued. Instead, the FSE is given the opportunity to improve its sanitary conditions and will subsequently be re-inspected in no less than 7 days.

If at the time of the re-inspection the FSE scores an A, it must post the grade card promptly. In general, the FSE will not be required to undergo additional inspections until the initial inspection of the next inspection cycle, which should occur within 90 to 210 days of the date of final inspection of the previous inspection cycle. The actual timeframe depends on the FSE's poorest score (highest violation points assessed) from either the initial or re-inspection in the current cycle. However, if the FSE scores a B or a C, it is provided with a corresponding grade card and a “Grade Pending” card, one of which must be conspicuously posted. The grade assessed during the re-inspection is final, unless the FSE challenges the assessment. The FSE may then post the “Grade Pending” or grade card and present its case at the hearing scheduled before the OATH Health Tribunal, at which time the attending administrative law judge will render a decision that may affect the final grade for the inspection cycle and/or the status of a contested NOV. As noted above, based on the poorest score of the initial or re-inspection in the current cycle, an FSE's next inspection cycle will begin and an initial inspection attempt is required within 90 to 210 days of the final inspection of the previous inspection cycle.

If at the time of an initial- or re-inspection the inspector observes one or more violations that represent an imminent public health hazard that cannot be corrected by the end of the inspection, DOHMH may order the restaurant to temporarily close to correct those violations. If an FSE is closed, DOHMH may conduct monitoring visits to ensure that establishment remains closed until authorized to reopen.

In addition to conducting an initial inspection and any necessary re-inspections for the purpose of issuing a letter grade, DOHMH may conduct compliance inspections: (1) whenever any inspection

⁶ An unscored violation, generally referred to as an “Administrative” violation, is one that may result in a Notice of Violation, fine and/or follow-up inspection, but is not counted toward an FSE's inspection score because they do not address food conditions, storage, handling, and sanitary practices. Such unscored violations, for example, include permit violations and calorie-labeling violations.

⁷Fines are determined by the Health Tribunal and can range from \$200 to \$2,000 per violation and may be higher for repeated violations.

results in a score of 28 points on one or more inspections; (2) when imminent health hazards are found on sanitary inspections, such as in the case of food borne illness outbreaks; and (3) when conditions require frequent DOHMH follow up to monitor an FSE's efforts to improve its sanitary conditions. The score received on a compliance inspection, however, does not change an FSE's letter grade for that inspection cycle.

For Fiscal Year 2014, BFSCS had a budget of \$18.2 million consisting of \$15.6 million for Personal Services (PS) and \$2.6 million for other than personal services (OTPS). At the start of Fiscal Year 2014, there were 24,841 licensed FSEs. According to DOHMH, the agency employed 76 inspectors during the year.

Objective

To determine whether DOHMH has adequate controls to ensure that food service establishments resolve health code violations in a timely manner.

Scope and Methodology Statement

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 based on our audit objectives. 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 audit scope initially covered Fiscal Year 2013 (July 1, 2012 – June 30, 2013). However, because of interruptions in the inspection process that occurred in the direct aftermath of Hurricane Sandy in October 2012, we modified the scope of tests involving the timeliness of DOHMH inspection attempts to cover March 2013 through June 2014. This audit did not review the quality of DOHMH's inspections or the outcome of violations issued. The Detailed Scope and Methodology section at the end of this report describes the specific procedures and tests that were conducted.

Discussion of Audit Results with DOHMH

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 May 14, 2015, and was discussed at an exit conference held on June 1, 2015. On June 9, 2015, we submitted a draft report to DOHMH officials with a request for comments. We received a written response from DOHMH officials on June 23, 2015.

In its response, DOHMH disagrees with the audit's findings, stating:

DOHMH strongly disagrees with the auditors' findings, which demonstrate a fundamental misunderstanding of how the restaurant inspection program works. The flawed findings lead to the erroneous conclusion that the timing of inspection cycles has placed the public's health at risk, but in fact every indicator shows that restaurants continue to become cleaner and safer.

From its response, it is apparent that DOHMH misunderstands the objective of this audit and, consequently, misinterprets the audit's findings. The audit did not venture to assess the merits of DOHMH's inspection process or its grading system. Instead, we reviewed the inspection process and the results of inspections for restaurants cited with health code violations and the agency's efforts to follow-up on those restaurants. Specifically, we sought to assess DOHMH's internal processes and compliance with its internal procedures for addressing restaurants cited with health code violations.

Additionally, DOHMH misstates our conclusion regarding risk. No inspection process, no matter how well implemented, could completely eliminate the risk that a restaurant could have conditions leading to health code violations. However, we do contend that where reportable conditions exist, a delay in conducting an inspection also delays the opportunity for DOHMH to ensure that such conditions are corrected. Consequently, as we state in the report, when DOHMH does not perform its inspections in a timely manner there is an increased risk that restaurants will not promptly take actions to correct conditions that lead to violations.

DOHMH also misstates the audit objective in its response, stating:

The stated objective in this audit was 'to ensure that food service establishments resolve health code violations in a timely manner.' The goal of the restaurant inspection program's inspection cycles and their frequency is not to ensure that Health Code violations are timely resolved but rather to discover deficiencies, correct those that pose immediate risk to the public, and instruct operators how to avoid such violations in the future. The resolution of violations occurs during an inspection. A restaurant's ability to operate without violations is evaluated over time, and the proper method for determining whether that occurs is to track progress over time in restaurants' collective abilities to improve conditions.

The objective of this audit was not "to ensure that food service establishments resolve health code violations in a timely manner" but *to determine whether DOHMH has adequate controls* to ensure that violations are resolved in a timely manner. This is an important distinction. The inspection is a primary control towards ensuring the timely resolution of violations and the improvement of conditions that lead to violations. As DOHMH states in its response, the agency attempts to track restaurants' ability to improve conditions and operate without violations. This tracking is accomplished through the inspection process. Accordingly, we assessed whether these inspections were conducted timely, in accordance with established rules and guidelines.

After carefully considering DOHMH's arguments, we find no basis for altering our audit's findings or recommendations.

Of the four recommendations made in this audit, DOHMH officials disagreed with three of them but agreed to implement our recommendation that the agency document the basis for not closing restaurants with poor inspection results following an inspector's recommendation that it be closed.

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

FINDINGS AND RECOMMENDATIONS

DOHMH needs to strengthen its controls to ensure that FSEs resolve health code violations in a timely manner. DOHMH has established controls designed to foster the timely scheduling of follow-up health inspections (i.e., re-inspections and compliance inspections), facilitate the prompt resolution of code violations, and ensure scheduling of next cycle initial inspections. However, those controls are weakened because DOHMH's inspection attempts are not consistently conducted in accordance with established timeframes. Specifically, for the period of March 2013 through June 2014, DOHMH exceeded the agency's informal 30-day target more than a quarter of the time in its follow-up inspection attempts. For establishments that received a score of 14 or more violation points during an initial inspection, DOHMH exceeded the mandated time requirements for beginning the next inspection cycle approximately 50 percent of the time.

Our review also found that during Fiscal Years 2013 and 2014, BFSCS supervisors failed to consistently perform supervisory field inspections at the level established by inspection procedures. Consequently, DOHMH did not provide effective inspector supervision.

Finally, we found that DOHMH does not require documentation of the justifications for decisions to allow restaurants with repeated poor inspection results to remain open in cases where inspectors had recommended closure. By not requiring that the justification for allowing these FSEs to remain open be documented, DOHMH foregoes a strong control over its FSEs with poor inspection records. Such a control would enhance DOHMH's efforts to deter fraud and corruption in the inspection process. These findings are discussed in greater detail in the following report sections.

DOHMH Does Not Consistently Attempt Follow-up Inspections for FSEs with Violations in a Timely Manner

DOHMH does not consistently re-inspect FSEs cited with violations within established timeframes. Instead, our review found that DOHMH's attempts to perform such inspections exceeded the agency's informal 30-day target more than 25 percent of the time. Additionally, for FSEs that received 14 or more violation points in their initial inspections, DOHMH did not meet its mandated timeframes for beginning the next inspection cycle 50 percent of the time.

According to the City Health Code, if an FSE scores 14 or more violation points on its initial inspection it must undergo a re-inspection no sooner than 7 days after the initial inspection; however, it does not specify by which time the re-inspection must be performed. Nevertheless, DOHMH has established an informal policy whereby such re-inspections are to occur no later than 30 days following the initial inspection.

Depending on the number of violation points an FSE is assessed in a re-inspection, DOHMH may subsequently conduct compliance inspections, which the Health Code defines as those conducted within a cycle but not for grading purposes. Compliance inspections may occur after any inspections that result in a score of 28 or more violation points. If DOHMH orders an FSE to close because of a critical violation that cannot be immediately corrected, it may conduct a monitoring inspection to ensure that the FSE remains closed.

DOHMH data showed that there were 23,050 re-inspections (out of the total 39,369 measurable inspections⁸) due between March 1, 2013 and June 10, 2014 for FSEs that were assessed 14 or more violation points on their initial inspections. Of those, 22,621 represented total re-inspection attempts. Only 16,549 (73 percent) of those attempts occurred within 30 days of the initial inspection date. Our analysis showed that 6,072 (27 percent) of DOHMH's 22,621 re-inspection attempts exceeded the agency's informal 30-day target by an average of 15 days, with the longest delay being 300 days. The remaining 429 of 23,050 re-inspections due had not been conducted at all as June 10, 2014 (representing the data cut-off date). A summary of our analysis is shown in Table I below.

Table I

Status of FSE Re-Inspection and Next Cycle Initial Inspections: Due and Attempted
March 1, 2013 – June 10, 2014

Inspection Type	a	b	c	d	e	f	g	h	i	j
	Total Inspections Due <i>(Column a=b+c)</i>	# of Inspections Pending – Due But No Attempts Made as of 6/10/14 <i>(range of days delayed as of 6/10/14)</i>	Total Inspection Attempts <i>(Column c = d+e)</i>	# of On-Time Inspection Attempts <i>(% of Total Attempts)</i>	# of Delayed Inspection Attempts <i>(% of Total Attempts)</i>	Breakdown of Delayed (in Days) Inspection Attempts Made Beyond Established Time Intervals- [Number of Delayed Attempts Late N Days]. <i>(% of Total Delayed Inspection Attempts)</i>				
						1-7 days	8-30 days	31-90 days	91-150 days	>150 days
Re-inspection following an initial inspection cited with 14 or more violation points (B)	23,050	429 <i>(1–430 days)</i>	22,621 <i>(100%)</i>	16,549 <i>(73%)</i>	6,072 <i>(27%)</i>	2,198 <i>(36%)</i>	3,148 <i>(52%)</i>	703 <i>(12%)</i>	16 <i>(<1%)</i>	7 <i>(<1%)</i>
Next Cycle Initial Inspection performed for FSEs that were cited with 14 or more violation points in the initial inspection during the previous cycle (A)	16,319*	454 <i>(1 to 318 days)</i>	15,865 <i>(100%)</i>	7,891 <i>(50%)</i>	7,974 <i>(50%)</i>	1,511 <i>(19%)</i>	4,390 <i>(55%)</i>	2,006 <i>(25%)</i>	61 <i>(1%)</i>	6 <i>(<1%)</i>
Totals	39,369	883 <i>(1 to 430 days)</i>	38,486 <i>(100%)</i>	24,440 <i>(64%)</i>	14,046 <i>(36%)</i>	3,709 <i>(26%)</i>	7,538 <i>(54%)</i>	2,709 <i>(19%)</i>	77 <i>(1%)</i>	13 <i>(<1%)</i>

*Represents the number of FSEs for which 14 or more violation points were assessed during an initial inspection and the next inspection cycled (indicated by an initial inspection attempt) was scheduled to begin on or before June 10, 2014.

As shown in Table I, DOHMH did not consistently meet its target for re-inspection attempts. In addition, it was also inconsistent in its attempts to perform initial inspections of these FSEs in the next cycle in a timely manner. As reflected below in Table II, a further analysis of FSEs for which an initial inspection resulted in a score of 14 or more violation points showed that DOHMH was not timely in beginning the next inspection cycle for 50 percent of them.

⁸ For the purpose of our analyses, measurable inspection attempts or records are those that contained inspection dates and next inspection dates from which calculations could be made. Unmeasurable inspection attempts or records included those that could not be analyzed because there is an indicator of "NULL" in the inspection date field, indicating that no inspection was conducted generally because the inspector had been unable to access the FSE to inspect. Unmeasurable inspection attempts also include those records for which the next inspection date occurred after June 10, 2014, and thus beyond the scope of the analysis.

Table II

Status of Next Cycle Initial Inspection Attempts when
Prior Re-inspection Scored >13 Violation Points
March 1, 2013 through June 10, 2014

	<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>	<i>g</i>
Time Interval	Total Inspections Due <i>(Column a=b+c)</i>	# of Inspections Pending – Due But No Attempts Made as of 6/10/14	Total Inspection Attempts <i>(Column c = d+e)</i>	# of On-Time Attempts (%)	# of Delayed Attempts by 6/10/14 or prior (%)	# Days Delayed on Average	Range of the Number of Days Delayed for an Inspection
1. Next Cycle Initial Inspections attempted within 150 days to 210 days (5 to 7 months) of the prior cycle initial or re-inspection, which scored 14 to 27 violation points	7,294	158	7,136	4,911 (69%)	2,225 (31%)	22 days	1 to 141 days
2. Next Cycle Initial Inspections attempted within 90 to 150 days (3 to 5 months) of the prior cycle initial or re-inspection, which scored 28 or more violation points	8,131	285	7,846	2,357 (30%)	5,489 (70%)	22 days	1 to 201 days
3. Next Cycle Initial Inspections attempted within 60 to 120 days (2 to 4 months) after authorized reopening of establishment	894	11	883	623 (71%)	260 (29%)	26 days	1 to 184 days
TOTALS	16,319	454	15,865	7,891 (50%)	7,974 (50%)	22 days	1 to 201 days

DOHMH Response: “The assertion of Comptroller’s auditors that next initial inspections are untimely half the time is misleading. The auditors ignored evidence provided by the Department that initial inspection timeframe outliers are often seasonal or part-time restaurants not operating when the next inspection is due. These establishments include restaurants and concession stands located in stadiums and theaters or along the boardwalk at one of the City’s beaches. These establishments cannot be inspected in the usual time frames because of the nature of their operation. In these cases it would be impossible to meet a 5 or 7 month timeline. Unfortunately, the auditors ignored this fact.”

Auditor Comment: Contrary to DOHMH’s assertion, the agency provided no evidence that any of the establishments we cite in this finding were seasonal or part-time restaurants. In the absence of evidence to the contrary, we have no basis to alter our finding.

In the Mayor’s Management Report (MMR) for Fiscal Years 2013 and 2014, DOHMH reported that it had inspected all (more than 99 percent) licensed restaurants each year and that restaurants’ compliance with food safety regulations had improved, citing the 87 percent and 90 percent of restaurants inspected that earned an “A” grade in Fiscal 2013 and 2014, respectively. However, these performance indicators do not disclose DOHMH’s tardiness in its attempts to carry out inspections, especially re-inspections.

As reflected above, DOHMH did not perform timely follow-up of restaurants cited with 14 or more violations during an initial inspection. DOHMH re-inspections accounted for nearly 60 percent

(23,050 out of 39,369) of all the measurable inspection attempts performed during the review period and are supposed to ensure that restaurants resolve conditions that lead to health code violations in a timely manner. However, by failing to carry out timely re-inspections, the risk that some restaurants cited with violations will not promptly take actions to correct the conditions that led to those violations is increased.

For example, FSE #40755172 was initially inspected on September 13, 2013, at which time it scored 63 violation points. Among the critical violations it received were:

- Food not protected from potential source of contamination.
- Evidence of live roaches, mice, and/or flies present in facility's food and/or non-food areas.
- Raw, cooked or prepared food adulterated, contaminated, cross-contaminated, or not discarded in accordance with the establishment's Hazard Analysis and Critical Control Point (HACCP) plan.

On October 31, 2013, DOHMH re-inspected the location (18 days past the 30-day target) and cited the FSE with 46 violation points, some for sanitary violations previously cited and some for new violations found, including:

- Hot food item not held at or above 140 degrees.
- Personal cleanliness inadequate. Outer garment soiled with possible contaminant. Effective hair restraint not used in an area where food is prepared.
- Food contact surface not properly washed, rinsed and sanitized after each use and following any activity when contamination may have occurred.

In another example, FSE #40850055 was initially inspected on October 25, 2013, at which time it scored 32 violation points. Among the critical violations found were:

- Evidence of mice or live mice and live roaches in facilities' food and non-food areas.
- Cold food item held above 41 degrees except during preparation.
- Appropriately scaled metal stem-type thermometer or thermocouple not provided or used to evaluate temperatures of potentially hazardous foods during cooking, cooling, reheating or holding.

On December 24, 2013, DOHMH re-inspected the location (30 days past the 30-day target) and cited the FSE with 26 violation points, some for the sanitary violations previously cited and some for new ones, including:

- Food not cooled by an approved method.
 - Food not protected from potential source contamination during storage, preparation, transportation, display or service.

To further demonstrate the potential risk associated with delayed inspections, we further analyzed the data to determine the outcomes of the re-inspection attempts that were past due. Of the 6,072 delayed re-inspection attempts, BFSCS was able to successfully complete 5,452 re-inspections. The remaining 620 were unsuccessful attempts, meaning that the inspectors could not gain access to the FSE at the time of visit. Of the successful re-inspections that were delayed, 2,747

(50 percent) resulted in a score of 14 points or more (a B grade or C grade), and 668 (12 percent) had scores of 28 points or more (a C grade).

DOHMH officials primarily attributed its delays in inspection attempts to high staff turnover rates, time allocated for staff training, and the drawing down of its inspection staff to perform other program inspections (e.g., calorie postings and street food vendors) than sanitary inspections. DOHMH officials stated that to address these issues, it authorized overtime for inspectors "to maintain productivity and timely inspections." However, they did not provide any strategies or actions they have to address these reoccurring issues and thereby increase the timeliness of their follow-up inspections.

Without ensuring that follow-up inspections, particularly re-inspections, are conducted promptly at the required time intervals, there is a real and present risk to the public that restaurants cited with critical violations will continue to operate out of compliance with the City and State health regulations.

Recommendations

1. DOHMH management should review its current productivity requirements and resource estimates to assess the optimum number of inspectors required to complete inspections on-time within normal working hours. In performing its assessment, management should account for and strategically plan to address those issues it attributes to the delays in performing inspections, e.g., employee turnover, and time allocated to training.
2. Based on its analysis, management should consider either expanding or reassigning inspection staff wherever possible to cover the backlog of past due required inspections and to improve its on-time performance of inspections.

DOHMH Response: In response to recommendations 1 and 2, "DOHMH disagrees with the auditor's findings and recommendations. The Comptroller's auditors continue to misunderstand the purpose of DOHMH's restaurant inspection program; conflate general, internal targets with legal mandates; and present an analysis of inspection data that omits a critical portion of the relevant dataset. **We stress that the Department conducts timely inspections and the restaurant grading program has motivated restaurants to continuously improve their food safety practices.**" [Emphasis in original]

Auditor Comment: As we state earlier, DOHMH appears to misunderstand the objective of this audit. Our audit focuses on DOHMH's efforts regarding only those FSEs that have health code violations. Inasmuch as DOHMH is using the inspection process as a tool to foster compliance with health code regulations and to ensure that conditions leading to violations are corrected, we believe that DOHMH should ensure that it has sufficient resources to conduct inspections in accordance with its current rules and guidelines. Consequently, we urge DOHMH to implement these recommendations.

Supervisory Inspections Were Not Performed Consistently at Required Levels

Our review of DOHMH's electronic "Monthly Summary Reports" for each of Fiscal Years 2013 and 2014 (through May 2014) showed that the agency did not consistently perform supervisory field inspections at the level established by BFSCS supervisory inspection and review procedures.⁹

Supervisory field inspections involve supervisors either accompanying an inspector during an inspection or visiting and inspecting restaurants soon after an inspection has been conducted in order to compare the supervisor's results to those of the inspectors. Those procedures state that each "APHS I [inspection supervisor] . . . will review the schedule and perform accompanied and unaccompanied inspections . . . on 5% [five percent] of the inspections performed by each PHS [or inspector], each month, on all inspection types and all inspection programs" under their supervision.

As discussed in the detailed scope and methodology section at the end of this report, although we requested a sample of supervisory monthly reports to assess the reliability of the information recorded in the summary spreadsheets, DOHMH did not have all of the requested documentation available. Where DOHMH possessed documentation for units in our sample, we found differences in the actual reports or forms used and/or required from year to year, along with the information recorded. Further, DOHMH was unable to explain the calculation used to determine the total number of inspections performed by each inspector each month, as recorded on its supervisory monthly reports. That information was not recorded in FACTS II. Therefore, we could not be reasonably assured that the information maintained in supervisory monthly field inspection reports and reflected in the spreadsheets was accurate and reliable. However, because DOHMH officials represented that its management relies on the spreadsheets as a means of tracking inspector performance, we analyzed the spreadsheets to obtain a measure of whether inspection supervisors were conducting supervisory field inspections of at least 5 percent for each inspector, each month.

Our initial analysis demonstrated that DOHMH had made efforts to achieve its supervisory inspection requirement; however, those efforts were inconsistent and frequently not performed at the required level for each inspector. After sharing our results with DOHMH, officials stated that there were erroneous entries contained in the spreadsheets they had initially provided to us. Specifically, they said that some of the entries that showed no supervisory inspections occurred because those inspectors were assigned to another unit and any related supervisory inspections were the responsibility of the other unit. (For these, however, they provided no supporting documentation.) Moreover, they stated that there were entries for individuals who had been promoted to supervisors, were not inspectors, and therefore, not subject to supervisory inspections. On June 3, 2015, DOHMH officials provided us with a new set of supervisory inspection spreadsheets, and some payroll screens for 14 individuals indicating the date in which they had been promoted to APHS.

Our analysis of the modified information, however, did not materially impact our initial findings. As reflected in Table III below, for both Fiscal Years 2013 and 2014 (through May 2014), DOHMH's records showed that only 61 percent of the supervisory inspections performed in each "inspector

⁹ The Monthly Summary Reports provided and maintained by the BFSCS Executive Director are electronic spreadsheets and detail DOHMH's supervisory field inspections for Fiscal Years 2013 and 2014 (through May 2014). They reflect the total number of inspections performed by each inspector each month, along with the associated quantity and percentage of accompanied, unaccompanied, and total supervisory inspections in each of the respective fiscal years.

month” met DOHMH’s required 5 percent or more of the inspectors’ total monthly inspections.¹⁰ In a little more than one-fourth (26 percent) of the “inspector months” during the covered period, supervisory inspections for each inspector fell below 5 percent. Moreover, no supervisory inspections were performed in 13 percent of the total inspector months.

Table III

Analysis on Supervisory Field Inspections per
Inspector Months* for Fiscal Years 2013 and 2014
(through May 2014)

Fiscal Year	Total Unique Inspector I.D.s	Total Inspections	Total Supervisory inspections Performed of Total Inspections	% of Total Supervisory Inspections Performed of Total Inspections Performed	Total Number of Inspector Months (a)	Total Number (and Percentage) of Inspector Months that the Percentage of Supervisory Inspections Performed for Each Inspector was >= 5 Percent	Total Number (and Percentage) of Inspector Months that the Percentage of Supervisory Inspections Performed for Each Inspector was > 0 and < 5 Percent	Total Number (and Percentage) of Inspector Months for which NO Supervisory Inspections Were Performed
FY13	148	58,036	3353	5.8%	1,054 (100%)	654 (62%)	250 (24%)	150 (14%)
FY14 (thru May 2014)	134	57,478	3105	5.4%	975 (100%)	582 (60%)	287 (29%)	106 (11%)
Total		115,514	6,458	5.6%	2,029 (100%)	1,236 (61%)	537 (26%)	256 (13%)

*Note: The number of inspectors on staff that conduct inspections of FSEs varies from month to month. Therefore, for the purpose of our analysis, an Inspector Month is equal to one month worked by one inspector. The total number of inspector months for a given year equals the sum of all months worked in a one year period by each inspector [e.g., Total Inspector Months for Fiscal 2013 = (Inspector 1 x number of months worked) + (Inspector 2 x number of months worked) + . . . (Inspector n x number of months worked).]

DOHMH Response: “The auditors criticize the Department because it does not conduct supervisory inspections for 5% of each inspector’s inspections each month. The department pointed out repeatedly to the auditors that there is no such monthly target, and it would be inappropriate to set one. Nonetheless, the audit conducts an analysis designed to paint the Department in a negative light. In fact, as shown in Table III of the audit, the percent of supervisory inspections performed actually surpassed the auditors’ 5% target for the period assessed. ”

Auditor Comment: Despite DOHMH’s assertion to the contrary, as noted in the report text above, its established procedures expressly state that “the inspection supervisors are to perform accompanied and unaccompanied inspections . . . on 5% [five percent] of the inspections performed by each PHS [or inspector], each month.” Furthermore, DOHMH contradicts itself later in its response, stating that it will update its internal documents “to remove reference to ‘monthly’ checks.”

With regard to DOHMH’s claim that it surpassed the 5 percent target for the period assessed, the agency is referring to the aggregate number of supervisory

¹⁰ For the purpose of our analyses, an “inspector month” is equal to one month worked by one inspector. The total number of inspector months for one inspector is equal to the total number of months s/he worked in a 12 month annual period.

inspections. However, DOHMH's procedures clearly state that supervisory field inspections are to be conducted for "5% [five percent] of the inspections performed by *each PHS* [or inspector], *each month*." [Emphasis added.] It is against this criterion that we analyzed DOHMH's performance. Our analysis, as reflected in Table III, found that in only 61 percent of the inspector months did supervisory field inspections meet or exceed the agency's 5 percent target.

Similar to the reasons given for delayed inspections (discussed earlier), during the audit DOHMH officials provided various reasons for not meeting the 5-percent supervisory inspection requirement consistently. Specifically, they faulted high staff turnover, staff leave time, and the reassignment of staffing resources to other areas within DOHMH as reasons for not meeting the 5 percent requirement.

Further, DOHMH officials stated that the five-percent requirement is a management target that is aspirational but not mandatory. They went on to explain that supervisory inspections are done at the discretion of the supervisor and are generally based on the perceived skill level of each inspector. For example, new inspectors and inspectors with problems or difficulties are generally targeted for supervisory inspections more frequently than more experienced inspectors. Finally, they noted that supervisory inspections will also be performed if management suspects that a particular inspector of taking bribes or engaging in other inappropriate conduct.

We recognize that operational matters, such as staff turnover, may impede DOHMH's oversight of inspectors in some aspect. However, management should nonetheless comply with established control procedures, especially when there exists a high risk for fraud.

Without consistent application and adherence to these supervisory inspection review procedures, DOHMH not only foregoes a strong control and fraud deterrent, but the agency limits its ability to ensure that its inspectors conduct sanitary inspections in an appropriate and consistent manner. Moreover, in failing to ensure that these procedures are followed and are appropriately documented, DOHMH fails to achieve the management's objectives for which the procedures were instituted, to provide effective supervision of inspectors and supervisory accountability.

Recommendation

3. DOHMH should ensure that each inspection supervisor conducts field inspections of at least five percent of the inspections performed each month by each PHS or inspector under their supervision, in accordance with BFSCS supervisory inspection and review procedures.

DOHMH Response: "The Department disagrees with this audit finding and recommendation. . . .

"DOHMH will update its written internal documents that pre-date the grading program to remove reference to 'monthly' checks and to reflect that it no longer relies exclusively on supervisory field inspections for corruption and quality control. Instead, it will incorporate current supervisory use of data analytics, timely electronic report review, and automated controls embedded in the inspection platform (e.g. time stamps) to enable a robust supervisory environment that enables prioritization and specialized oversight into its procedures for providing supervisory oversight."

Auditor Comment: As we state earlier, the 5 percent target is clearly stated in DOHMH's own supervisory inspection review procedures. We merely

recommend that DOHMH ensure compliance with its own procedures. DOHMH indicates in its response that it will update its procedures and establish other corruption and quality control measures. Until such action takes place, we urge DOHMH to ensure that supervisors comply with the agency's current inspection review procedures. Once those procedures are updated, DOHMH should ensure that its supervisors consistently follow those as well.

Lack of Evidence to Support Management Decisions to Allow Poor Performing FSEs to Remain Open

BFSCS management had no evidence available, either in the form of comments in FACTS II or other records such as e-mails and memoranda, to show the reason for management's decisions to allow restaurants with poor inspection results or with a history of poor inspection results to continue to remain open despite an inspector's recommendation to close the FSE. The same condition was noted in a prior audit conducted by our office, entitled: "*Audit Report on the Department of Health and Mental Hygiene Oversight of the Correction of Health Code Violations at Restaurants*" (#ME09-074A), issued July 20, 2009.

DOHMH's failure to maintain documentation of decisions to allow restaurants with poor inspection results is contrary to the requirements of Comptroller's Directive 1, Principles of Internal Controls, Section 4.3, which provides that "[i]nternal control activities [should] . . . include a wide range of diverse activities such as approvals, authorizations, verifications, record reconciliations, open item agings, transaction analyses, performance reviews, security evaluations, and the creation and maintenance of related records that provide evidence of the execution of these activities."

DOHMH may order a restaurant to temporarily close to correct a public health hazard that cannot be corrected before the end of an inspection or when the restaurant is operating without a valid permit. Prior to closure, an inspector will contact a supervisor. DOHMH has a checklist that specifies certain conditions that trigger a decision to close an FSE. Consequently, based on the specific conditions observed, the inspector may recommend closure; however, the supervisor or his/her superior makes the final determination. If a restaurant is closed, DOHMH closure signs must be immediately posted in the window(s) and/or door(s), all operations must cease, and the restaurant must remain closed for business until DOHMH authorizes it to reopen. DOHMH will monitor the establishment to ensure it remains closed and issues additional violations for not complying with the closing order.

As part of our review of DOHMH's controls, we asked if records were maintained to support management's decision to keep an FSE open in instances when the inspector recommended its closure. DOHMH officials stated that they did not maintain this information. Further, they stated that the existing food service regulations do not require that records be maintained to support management's decision to keep a restaurant open despite continued poor inspection results. Moreover, officials asserted that they do not wish to put restaurants out of business. Instead, DOHMH works with the FSE owners to educate them and bring them into compliance through inspections. Further, FSE owners may be required to undergo training and undergo more frequent inspections.

We commend DOHMH's efforts to work with underperforming FSEs to promote their compliance with governing food safety and handling regulations. However, documenting the reasons for allowing FSEs with poor inspection records to remain open is not inconsistent with these efforts.

Moreover, by not requiring documentation of management’s justification for allowing a restaurant to remain open when closure is recommended by the inspector, DOHMH foregoes a strong control in its efforts to monitor FSEs with poor inspection records. Such a control would bolster DOHMH’s efforts to enforce its internal procedures intended to deter fraud and corruption in the inspection process.

DOHMH Response: “DOHMH disagrees with this finding as we believe the auditors do not understand the fundamental characterization of the chain of decision making that occurs during an FSE closure subsequent to an inspection. The auditors note that: ‘...based on the specific conditions observed, the inspector may recommend closure; however, the supervisor or his/her superior makes the final determination.’ During the audit, the Department repeatedly explained to the auditors that an inspector does not ‘recommend’ closure. A closure decision involves coordination with the inspector, at least two (2) levels of supervision, and consultation with a manager on duty. The inspector is required to call a manager when the conditions meet a threshold for review and does not make a recommendation regarding closure. Instead the supervisors, and ultimately the manager, evaluate the totality of the circumstances at the restaurant before deciding whether the establishment must be closed to protect the public health. When the manager determines that closure is required, the basis for that decision is already documented in FACTS II.”

Auditor Comment: We understand that a closure decision involves coordination with a number of parties. However, the impetus for such a coordination is the inspector contacting the manager when s/he observes conditions that the inspector believes support the need to close an FSE. If the inspector did not believe that closure was warranted, s/he would not contact the manager. By contacting the manager, therefore, the inspector is in effect indicating that s/he believes that the FSE should be closed and is recommending that the manager review it.

Recommendations

4. DOHMH should ensure that the reasons for not closing an FSE with poor inspection results following an inspector’s recommendation that it be closed are appropriately documented in FACTS II.

DOHMH Response: “DOHMH partially agrees with the auditors’ recommendation as DOHMH sees opportunity to improve the documentation of the process. Following the Comptroller’s recommendation, where the manager reviews the inspection findings and determines that closure is not necessary, the basis for that decision will be documented in FACTS II.”

Auditor Comment: DOHMH indicates that it only “partially agrees” with this recommendation but does not indicate the portion of the recommendation with which it disagrees. Nevertheless, we are pleased that the agency intends to ensure that the bases for not closing FSEs that meet the criteria for potential closure are documented in FACTS II.

DETAILED 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 based on our audit objectives. 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 audit scope initially covered Fiscal Year 2013. However, because of interruptions in the inspection process that occurred in the direct aftermath of Hurricane Sandy in October 2012, we modified the scope of tests involving the timeliness of DOHMH inspections attempts to cover March 2013 through June 2014. To accomplish our objective we performed the following procedures:

To understand the organization of BFSCS and the resources available for carrying out its enforcement responsibilities, we reviewed organization charts, the employee roster, and related personal services and other than personal services budget information for Fiscal Years 2012–2014.

To gain an understanding of DOHMH's enforcement responsibilities, we reviewed relevant information accessed from DOHMH's website and other sources. We also reviewed the following regulations:

- New York State Public Health Law Title 8, Article 13, Food Handling
- New York State Sanitary Code, Subpart 14-1, Food Service Establishments
- New York City Administrative Code Title 17 (a/k/a City Health Code)
- Title 24 Section 3.01(a) of the Rules of the City of New York (RCNY)
- Title 24, Chapter 23 of the RCNY, Food Preparation and Food Establishments

These regulations along with Comptroller's Directive #1, "Principles of Internal Controls," and DOHMH's applicable policies and procedures formed the body of audit criteria.

To assess the BFSCS's internal controls, we interviewed key officials, along with supervisors and health inspectors. We conducted walk-throughs of BFSCS operations and processes and reviewed relevant documentation and reports. We also accompanied two health inspectors in performing inspections of FSEs on October 29, 2013. Further, we reviewed a prior audit conducted by our office, "*Audit Report on the Department of Health and Mental Hygiene Oversight of the Correction of Health Code Violations at Restaurants*" (#ME09-074A), issued July 20, 2009, and noted findings and conditions in that report relevant to this current audit. We performed tests of controls, documented our understanding of those controls, and confirmed this information with DOHMH officials.

To familiarize ourselves with the FACTS II computer system, DOHMH provided read-only access to the application, as requested. We also reviewed the system's various screens and functions, and its records layout and field descriptions. Subsequently, we requested and received a copy of inspection data from FACTS II for Fiscal Years 2012–2014 (through the cut-off date of June 10, 2014). We evaluated the data copy to assess its reliability for audit test purposes. To ensure that

the data copy matched the live system, we judgmentally selected a sample of 50 restaurants from the data copy and compared the data from key fields to the same information recorded in the live system. In addition, we selected a sample of 50 FSEs from the system and compared the related entries to the data copy.

Based on the results of the above procedures, we were reasonably assured that the data copy provided to us by DOHMH matched the data in the live FACTS II live system and was therefore reliable for audit testing purposes.

As part of our test of controls, we randomly selected a sample of 137 FSEs from a population of 24,723 included in DOHMH's list of establishments as of December 17, 2013. We accessed the history of each of the sampled FSEs in FACTS II and reviewed and compared inspection dates, outcomes, etc. to assess the consistency of the application of DOHMH's inspection and enforcement procedures. We also used this preliminary sample to develop a baseline assessment of DOHMH's follow-up inspection attempts and next cycle inspection attempts given established time intervals and related criteria.

To assess DOHMH's follow-up of restaurants cited with violations, we sorted the FACTS II data copy and identified 79,979 total inspection attempts (all types, including initial inspection, re-inspection, compliance, and monitoring inspections, etc.) of 26,240 FSEs that occurred between March 1, 2013, and June 10, 2014 (the data cutoff date). This period was selected so that anomalies in DOHMH inspection process caused in the direct aftermath of Hurricane Sandy in October 2012 would not unfairly skew the results of our analyses. We omitted 35,899 inspection records that were not measurable and therefore could not be analyzed. These records consisted of: (1) 12,975 inspection attempts that had an indicator of "NULL" meaning that no inspection had been performed generally because the inspector had been unable to access the FSE to inspect; and (2) 22,924 records that had a "next inspection date" after June 10, 2014 (the data cutoff date), therefore, beyond the scope of the analysis. After omitting these unmeasurable records, there remained 44,080 measurable inspection attempts from the population of 79,979 records, meaning that they had "next inspection dates" of, on, or prior to June 10, 2014. From this total, we omitted another 1,918 records coded as compliance and monitoring inspections because we focused our analysis on re-inspection and initial inspection attempts for the next inspection cycle, which comprise the major portion of DOHMH's FSE inspection efforts. Of the 19,112 records coded as initial inspection attempts, we omitted 2,793 of them from our analysis because they represented FSEs that received an "A" grade (i.e., received less than 14 violation points and did not meet the criterion for needing re-inspection) on the initial inspection of the previous inspection cycle. Therefore, to evaluate DOHMH's timeliness in carrying out follow-up inspections, our analysis focused on 23,050 re-inspection and 16,319 next cycle initial inspection attempts (39,369 in total) for the period of March 1, 2013, through June 10, 2014.

We performed various analyses and data sorts to determine whether inspection attempts (re-inspections and next cycle inspections) were conducted in accordance with time intervals and requirements established in applicable regulations, DOHMH procedures, and/or hard-coded in the FACTS II database. For example, we analyzed the timeliness of inspections and inspection attempts of the 39,369 records by inspection type and determined the frequency of those that were delayed and on time and the average time of delays thereof. We also analyzed all "next" inspection types that resulted in a score of 14 points or more, and the timeliness of those inspections. As most of DOHMH's follow-up efforts are targeted at FSEs that score 14 or more points in either an initial inspection or re-inspection, our analyses focused on DOHMH efforts to carry-out re-inspection attempts and next cycle inspection attempts, based on information recorded in the FACTS II database.

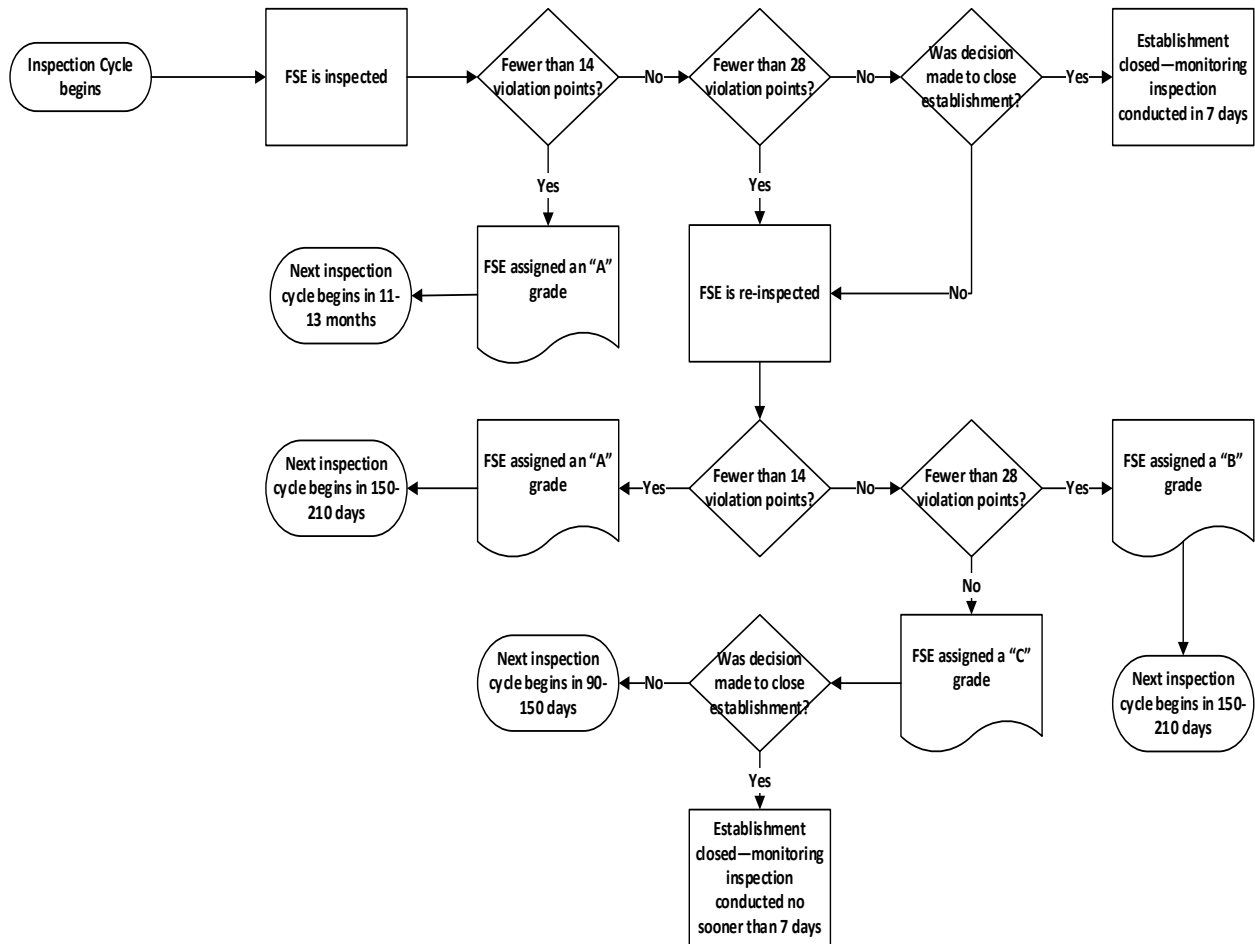
To assess DOHMH's supervisory field inspections, we evaluated electronic spreadsheets detailing DOHMH's supervisory field inspections for Fiscal Years 2013 and 2014 (through May 2014), which were maintained and provided to us by the BFSCS Executive Director. The records reflect the total number of inspections performed by each inspector each month, along with the associated quantity and percentage of accompanied, unaccompanied, and total supervisory inspections in each of the respective fiscal years. We found a small number of anomalies in the spreadsheets, which DOHMH clarified.

Based on the anomalies we found, we attempted to assess the reliability of the information recorded in the spreadsheets. To do so, we selected a sample of 49 combination inspectors/inspector months (25 for Fiscal Year 2013 and 24 for Fiscal Year 2014). Then, we requested the "Supervisor Monthly Report of Field Staff" (supervisor report) for each of these inspector/inspector months to verify the total number of inspections recorded in the spreadsheet matched. DOH did not have 12 (24 percent) of the 49 requested supervisory monthly reports. Of the remaining 37 supervisory reports and supporting documentation that DOHMH had available, we found differences in the actual reports or forms used and/or required from year to year, along with the information recorded, therefore, we were unable to achieve our test objective. Although we requested, DOHMH was unable to explain the calculation used to determine the total number of inspections performed by each inspector each month, as recorded on its supervisory monthly reports. This information was not recorded in FACTS II.

Noting the factors discussed above, we could not be reasonably assured that the information maintained on supervisory monthly field inspections reflected in the spreadsheets was accurate and reliable. However, as DOHMH management relies on the spreadsheets as a means of tracking inspector performance, we analyzed the spreadsheets to, at minimum, determine whether inspection supervisors were conducting supervisory field inspections of at least 5 percent of each inspector, each month, as required. We sorted the data, determined the number of unique inspectors, total number of inspection months for each of Fiscal Years 2013 and 2014, as well as the number of months for which supervisory inspections met the 5 percent target, those that fell below the 5 percent, and those months for which no supervisory inspections were noted.

Further, we followed-up with DOHMH officials to determine whether the agency maintained documentation to show the reason(s) for or basis of management's decisions to allow restaurants with poor inspection results or with a history of poor inspection results to continue to remain open despite an inspector's recommendation to close an FSE.

Flowchart of Inspection Process



APPENDIX II

Required Time Intervals until the Next Cycle Initial Inspections

Grade	Score*	Follow-up Actions and Time Intervals	Time Interval (Range) till Next Cycle Initial Inspection
A	13 or fewer points	None Required – The next inspection will be the Initial Inspection for Next Inspection Cycle	11 to 13 months
B	14 to 27 points	Re-inspection to occur between 8 and 30 days subsequent to initial inspection or re-inspection citing 14 or more violation points	150 days to 210 days (5 months to 7 months)
C	28 or more points	Re-inspection to occur between 8 and 30 days subsequent to initial inspection or re-inspection Compliance inspection may be conducted after any inspection that results in a score of 28 or more violation points	90 to 150 days (3 to 5 months)
CLOSED No Grade Issued	28 or more points for Public Health Hazard not corrected or repeated violations	Monitoring Inspection conducted following a restaurant being ordered closed to ensure it remains closed unless and until authorized by DOHMH to open.	60 to 120 days (2 to 4 months)

Note: When an FSE receives a B or C grade on re-inspection, the final grade will be determined by the OATH Health Tribunal



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE

Mary T. Bassett, MD, MPH

Commissioner

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June 23, 2015

Marjorie Landa
Deputy Comptroller for Audit
Office of the New York City Comptroller
1 Centre Street, Room 1100
New York, NY 10007-2341

Re: Audit Report on the NYC Department of Health and Mental Hygiene's
Follow-up on Health Code Violations at Restaurants Audit Number MJ14-058A

Dear Deputy Comptroller Landa:

The NYC Department of Health and Mental Hygiene (DOHMH) reviewed the draft report on DOHMH's follow-up on health code violations at restaurants that was issued on June 9th 2015. The objective of the audit was to determine whether DOHMH had adequate controls to ensure that food service establishments resolve health code violations in a timely manner.


DOHMH strongly disagrees with the auditors' findings, which demonstrate a fundamental misunderstanding of how the restaurant inspection program works. The flawed findings lead to the erroneous conclusion that the timing of inspection cycles has placed the public's health at risk, but in fact every indicator shows that restaurants continue to become cleaner and safer.

- The percentage of restaurants displaying an A grade is 95 percent as of June 2015, up from 80 percent in January 2011.
- Fifty-eight percent of restaurants now receive an A on their initial inspection – more than double the rate in January 2011.
- Since grading began, 25 percent more restaurant supervisors have completed food protection courses.
- From 2010 to 2013, Salmonella disease declined 14 percent while surrounding jurisdictions did not see a similar decline. Preliminary 2014 data indicates a 24 percent decline in New York City since 2010.

The attached response details DOHMH's position in regards to the auditors' findings and recommendations.

If you have any question, please contact Sara Packman, Assistant Commissioner for Audit Services at (347) 396-6679.

Sincerely,

A handwritten signature in blue ink, appearing to read "Oxiris Barbot".

Oxiris Barbot, MD

cc:

Mary T. Bassett, M.D., MPH, Commissioner, DOHMH
Daniel Kass, MSPH, Deputy Commissioner, Environmental Health, DOHMH
Elliott Marcus, Associate Commissioner, Food Safety and Community Sanitation,
DOHMH
Sara Packman, Assistant Commissioner, Audit Services, DOHMH
George Davis, Director, Mayor's Office of Operations

Attachments:

**RESPONSE TO THE NEW YORK CITY COMPTROLLER'S AUDIT ON
THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S
FOLLOW-UP ON HEALTH CODE VIOLATIONS AT RESTAURANTS**

AUDIT NUMBER MJ14-058A

The Department of Health and Mental Hygiene (DOHMH or Department) reviewed the draft report on the DOHMH's follow-up on health code violations at restaurants and thanks the auditors for the opportunity to respond. The stated objective of the audit was to determine whether DOHMH has adequate controls to ensure that food service establishments (FSEs) resolve health code violations in a timely manner. The audit scope covered DOHMH inspections from March 2013 through June 2014.

The audit concludes that DOHMH needs to strengthen its controls to ensure that FSEs resolve health code violations in a timely manner. The auditors report three findings: (i) DOHMH does not consistently attempt follow-up inspections for FSE's with violations in a timely manner; (ii) supervisory inspections were not performed consistently at required levels; (iii) there was no evidence to support management decisions to allow poor performing FSEs to remain open.

DOHMH disagrees with these findings because, despite nearly two years of meetings with the Bureau of Food Safety and Community Sanitation (BFSCS), the auditors persist in misinterpreting the nature and purpose of an inspection. An inspection is intended to discover deficiencies, correct those deficiencies that pose immediate risk to the public, and instruct operators how to avoid such violations in the future. The purpose of subsequent inspections is to begin that process anew, encouraging improvements in conditions over time. The methodology employed by the auditors was primarily focused on the timing of subsequent inspections.

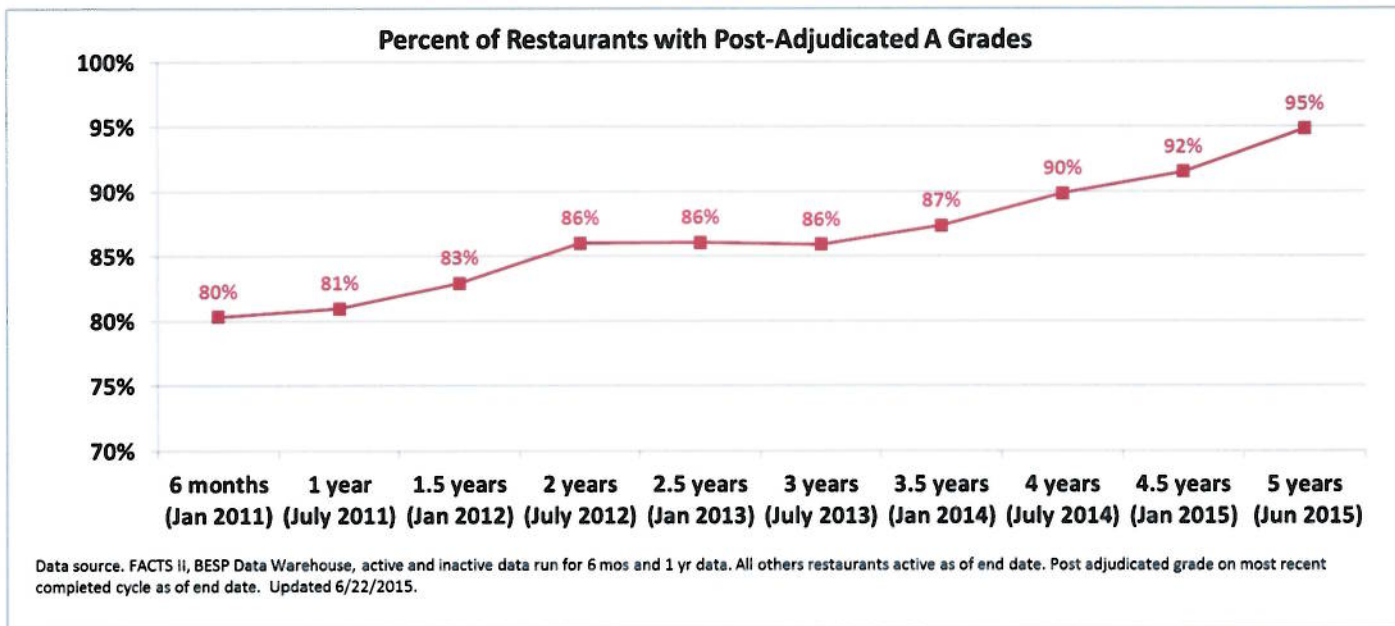
Public Health Risk Associated with Dining Out has Declined

After 5 years, restaurant grading continues to empower the public to make daily decisions about where to dine: 91% of New Yorkers approve of restaurant grading, 88 percent use grades in making their dining decisions and 76 percent feel more confident eating in an A-grade restaurant.¹

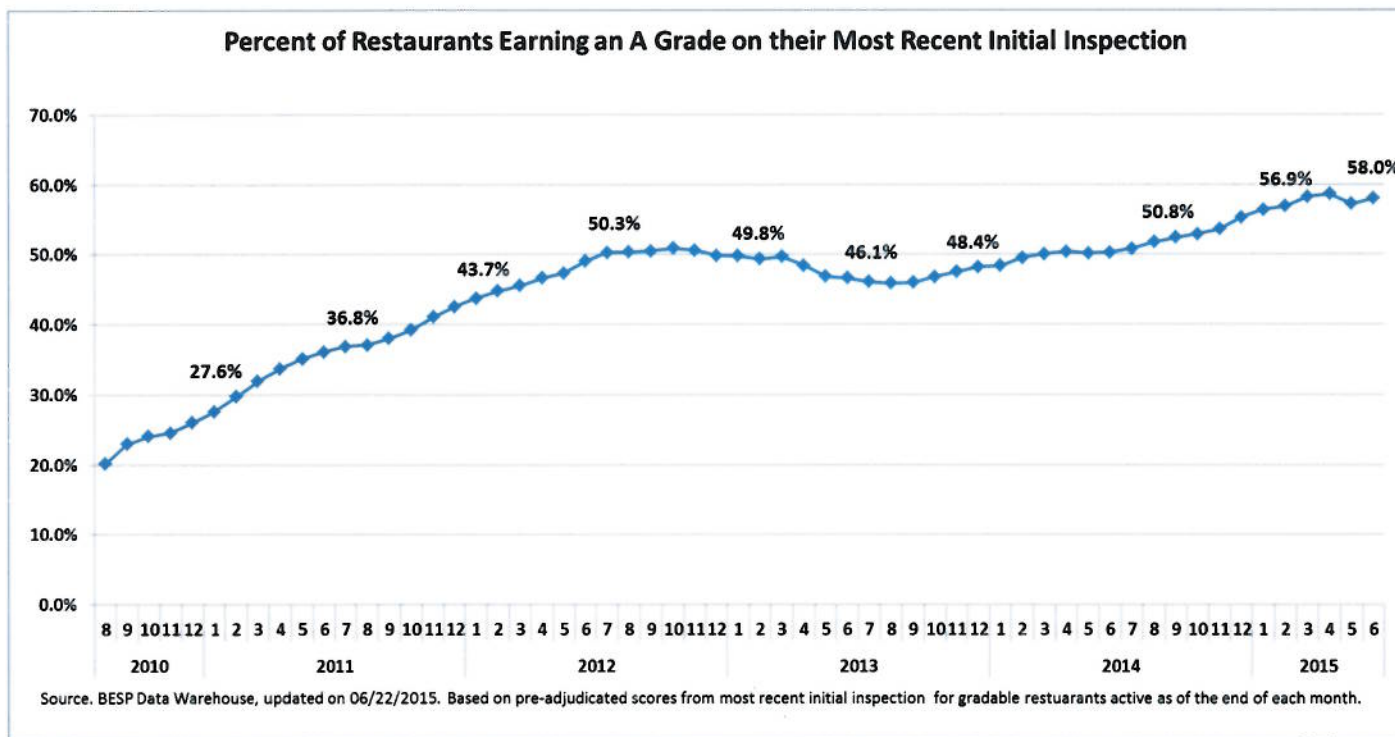
The Department encourages restaurants to operate without violations by motivating them to achieve an A grade, providing food safety education and deterring poor performance through fines. Indeed, the results from inspections show that restaurants have responded to this multipronged enforcement approach by attaining, overall, excellent compliance with food safety regulations. The implementation of restaurant grading in July 2010 has increased accountability, transparency, and vastly diminished public health risk associated with dining out. The following results demonstrate the impact of the changes to the inspectional program.

¹ Baruch College Survey Research, Jan-Feb, 2012

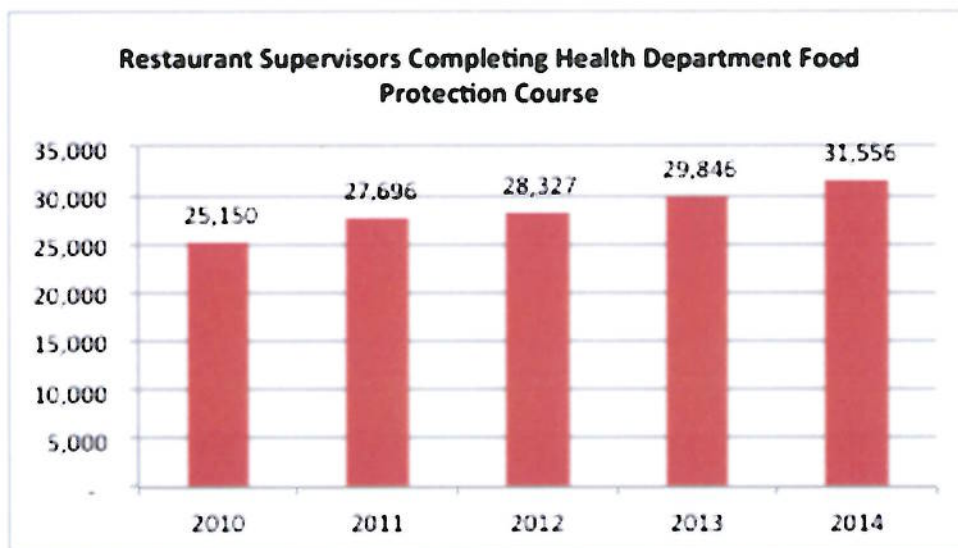
- 95% of New York City restaurants post an A grade (through June 2015)



- 58% of all restaurants earn A grades on their initial inspection (through June 2015)



- Violations per inspection declined 10% in FY14 compared to FY12; on top of an overall 15% decrease in inspections during the same time period.
- Since grading was announced, 25% more restaurant supervisors complete food protection courses. More than 31,500 restaurant supervisors were trained in 2014.



- Restaurants performing poorly on initial inspection are achieving A grades on reinspection at a higher rate than ever before.
- Reported cases of Salmonella disease declined 14% from 2010 to 2013 while surrounding jurisdictions² did not see such a decline. Preliminary 2014 data indicates a 24% decline in New York City since 2010.

These results refute the audit’s erroneous conclusion that the public’s health is placed at risk by the timing of inspection cycles.

It is irresponsible and incorrect to pose the issue as an increased risk to public health when inspection data demonstrates that the program has worked well, resulting in restaurants that are cleaner than they have ever been.

Fundamental Flaws in the Comptroller Audit

The stated objective in this audit was “to ensure that food service establishments resolve health code violations in a timely manner.” The goal of the restaurant inspection program’s inspection cycles and their frequency is not to ensure that Health Code violations are timely resolved but rather to discover deficiencies, correct those that pose immediate risk to the public, and instruct operators how to avoid such violations in the future. The resolution of violations occurs during an inspection. A restaurant’s ability to operate without violations is evaluated over time, and the proper method for determining

² New Jersey, Connecticut, New York State (excluding NYC)

whether that occurs is to track progress over time in restaurants' collective abilities to improve conditions. During the inspection, the Department evaluates the restaurant's degree of compliance with food safety regulations and notifies the public about the inspection outcome by posting a grade – A, B or C – in the restaurant window. If the inspection shows that the restaurant cannot operate safely, the Department orders it to close as a temporary, emergency measure to protect the public health. The audit's findings and recommendations concern only timeframes for subsequent inspections and not whether the Department's restaurant inspection program promotes compliance with food safety requirements.

The auditors did not attempt to investigate the resolution of health code violations. Such resolution occurs in a variety of ways. The first and most important is that at the time of the inspection, the Department's inspectors point out all violations and require that the most serious, i.e., those that are public health hazards, be corrected before the inspection has been completed. For example, food out of temperature must be discarded or returned to temperature. Bare hand contact with ready-to-eat food must be remedied by discarding the food, and the immediate use of gloves. Food in a refrigerator that is not capable of maintaining cooling must be moved to another cooler or discarded, depending on the time out of temperature. Public health hazards that cannot be adequately corrected before the completion of an inspection result in the closure of a restaurant.

The auditors support their first conclusion by stating that for establishments that received a score of 14 or more violations points during the initial inspection, BFSCS' initiation of new cycle inspections (that is, those that begin a new inspection cycle) exceeded established time requirements nearly 50 percent of the time during the period from March 2013 through June 2014. DOHMH acknowledges that it took longer during the audit period to return to a restaurant for its next cycle. Prior to letter grading, only those restaurants that scored above 28 points on initial inspection and re-inspection would be slotted for an additional inspection cycle within the year. Since implementation of letter grading, all restaurants that score more than 13 points on an initial inspection receive a re-inspection and are scheduled for new cycle inspections, depending on the higher score of the initial and re-inspection, between two to seven months later. Even the best performing restaurants continue to be inspected at least once each year.

DOHMH disagrees with the auditors' second conclusion that during Fiscal Years 2013 and 2014, BFSCS supervisors failed to consistently perform supervisory field inspections at the level established by inspection procedures. The Department repeatedly pointed out to auditors with evidence of data that BFSCS exceeded its targets for supervisory field inspections during the audit period.

DOHMH disagrees with the auditors' third conclusion that DOHMH does not document justification when a restaurant is allowed to remain open after an inspector recommends closure. During the audit, BFSCS repeatedly explained to the auditors that inspectors do not recommend closure. The inspectors refer conditions that may result in closure to a supervisor for a closure determination by two levels of supervisors. DOHMH will develop a coding system to record more clearly the reasoning behind the decision to not close a restaurant and allow it to remain open.

Response to Audit Findings and Recommendations

The following is DOHMH's detailed response to the auditors' findings and recommendations.

Finding 1: DOHMH does not consistently attempt follow-up inspections for FSEs with violations in a timely manner.

The auditors state that DOHMH does not consistently re-inspect FSEs cited with violations within established timeframes. Instead, auditors state that their review found that DOHMH's attempts to perform such inspections exceeded the agency's informal 30 day target more than 25 percent of the time. For FSEs that received 14 or more violation points in their initial inspections, DOHMH was not timely in beginning the next inspection cycle for 50 percent of the time.

The auditor noted that according to New York City Health Code, if an FSE scores 14 or more violation points on its initial inspection it must undergo a re-inspection no sooner than 7 days after the initial inspection, however, the regulations do not specify the time frame within which the re-inspection must be performed.

Auditors' Recommendations

1. DOHMH management should review its current productivity requirements and resource estimates to assess the optimum number of inspectors required to complete inspections on-time within normal working hours. In performing its assessment, management should account for and strategically plan to address those issues it attributes to the delays in performing inspections, e.g., employee turnover, and time allocated to training.

2. Based on its analysis, management should consider either expanding or reassigning inspection staff wherever possible to cover the backlog of past due required inspections and to improve its on-time performance of inspections.

DOHMH Response

DOHMH disagrees with the auditors' findings and recommendations. The Comptroller's auditors continue to misunderstand the purpose of DOHMH's restaurant inspection program; conflate general, internal targets with legal mandates; and present an analysis of inspection data that omits a critical portion of the relevant dataset. **We stress that the Department conducts timely inspections and the restaurant grading program has motivated restaurants to continuously improve their food safety practices.**

Reinspections

Reinspections are those that occur for restaurants that do not earn an A grade on an initial inspection. The purpose of these unannounced inspections is to provide a restaurant with another opportunity to demonstrate compliance and earn a better grade. The Comptroller's auditors claim that 27% of re-inspections are conducted late because they occur more than 30 days after the initial inspection. As the audit recognizes, there is no legal or policy requirement that a reinspection be conducted within 30 days of the initial inspection. Nevertheless, DOHMH sets initial schedules for these inspections within 8-15 days following the initial inspection via computer algorithms in its FACTS II data system fully aware that the inspections may be in fact scheduled and conducted later in order to manage workload, maximize routing efficiency, and consider other factors. This was pointed out repeatedly. Yet, the

auditors persist in evaluating the timeliness of re-inspections against a non-existent deadline. The Department's rules very deliberately do not set a deadline for reinspections. Some variation of reinspection schedule is necessary; otherwise the restaurant could predict when it will occur. But the Department's data – shared with the auditors – shows that 90% of reinspections are conducted within 45 days of the initial inspection and 97% are conducted within 60 days. Moreover, although the audit suggests that there is a risk to the public because of the Department's reinspection protocols, the results of these inspections lead to the exact opposite conclusion; restaurants demonstrate significant improvement in food safety practices following the initial inspection at the time of the reinspection.

Under the grading program, performance on a reinspection can dictate the grade in the restaurant's window for months to come. Motivated to achieve an A grade, restaurants' reinspection performance continues to improve. Restaurants scoring 14-27 points at initial inspection now earn an A-grade on re-inspection 58% of the time compared to 38% 3 years ago. Similarly, restaurants scoring 28 or more points at initial inspection now earn an A-grade on re-inspection 43% of the time versus 28% 3 years ago.

The audit references two handpicked examples of restaurants demonstrating repeat poor inspection performance. It is true that some restaurants consistently perform poorly relative to other restaurants. However, they operate within parameters considered safe for the public. They are, however, required to post a B or C grade, alerting the public to their performance, and are subject to financial penalties for doing so. These incentives for good performance may not work for all establishments. These examples are outliers and the overall trend of reinspection performance is toward improvement.

Next Initial Inspections

The timing of a restaurant's next initial inspection depends on the outcome of inspections in its last inspection cycle; the worse the inspection result, the sooner the Department will return for a new inspection. This tailored inspection schedule enables the Department to more closely monitor those restaurants demonstrating poorer performance and allow restaurants with better inspection outcomes to operate with less oversight by the Department. It targets scarce public resources based on performance, and risk.

The assertion of Comptroller's auditors that next initial inspections are untimely half the time is misleading. The auditors ignored evidence provided by the Department that initial inspection timeframe outliers are often seasonal or part-time restaurants not operating when the next inspection is due. These establishments include restaurants and concession stands located in stadiums and theaters or along the boardwalk at one of the City's beaches. These establishments cannot be inspected in the usual time frames because of the nature of their operation. In these cases it would be impossible to meet a 5 or 7 month timeline. Unfortunately, the auditors ignored this fact.

Next, the audit omitted data showing that essentially all – 99.8% restaurants that achieve an initial A grade receive a next initial inspection within 13 months. And, the Comptroller lumps inspections that are 1 day late with those that are 90 days late to report that 50% of next initial inspections are late. In fact, 59% of "late" next initial inspections occurred within 7 days of the target date, 73% within 15 days, and 86% within 30 days. The audit analyzed inspections that occurred between March 2013 and June 2014. An analysis of fiscal year 2015 to-date (July 1, 2014 to May 22, 2015) demonstrates that the Department has significantly improved the timeliness of next initial inspections. Among all three cycle timeframes (11-13 months, 5-7 months, and 4-6 months for poorer performing restaurants), the Department conducted inspections by target dates 80% of the time.

Finding 2: Supervisory inspections are not performed consistently at required levels.

The auditors state that DOHMH's electronic "Monthly Summary Reports" for each of Fiscal Years 2013 and 2014 (through May 2014) showed that the agency did not consistently perform supervisory field inspections at the level established by BFSCS supervisory inspection and review procedures.

Supervisory field inspections involve supervisors either accompanying an inspector during an inspection or visiting and inspecting restaurants soon after an inspection has been conducted in order to compare the supervisor's results to those of the inspectors. Those procedures state that each "APHS I [inspection supervisor] ... will review the schedule and perform accompanied and unaccompanied inspections ... on 5% [five percent] of the inspections performed by each public health sanitarian (PHS) [or inspector], each month, on all inspection types and all inspection programs" under their supervision.

Auditors' Recommendation

3. DOHMH should ensure that each inspection supervisor conducts field inspections of at least five percent of the inspections performed each month by each PHS or inspector under their supervision, in accordance with BFSCS supervisory inspection and review procedures.

DOHMH Response:

The Department disagrees with this audit finding and recommendation. The Department's supervisors use data analysis, inspection report review and in-field oversight inspections when needed to guard against corruption and to conduct quality control. The auditors criticize the Department because it does not conduct supervisory inspections for 5% of each inspector's inspections each month. The Department pointed out repeatedly to the auditors that there is no such monthly target, and it would be inappropriate to set one. Nonetheless, the audit conducts an analysis designed to paint the Department in a negative light. In fact, as shown in Table III of the audit, the percent of supervisory inspections performed actually surpassed the auditors' 5% target for the period assessed. Rather than conduct supervisory inspections evenly across the staff, these oversight inspections were targeted to the area of need. Additionally, with greater access to electronic data and reporting, 20% of all inspection reports are reviewed by supervisory staff. This goal was met during the audited period and that clear and obvious fact was excluded from the audit report.

DOHMH will update its written internal documents that pre-date the grading program to remove reference to "monthly" checks and to reflect that it no longer relies exclusively on supervisory field inspections for corruption and quality control. Instead, it will incorporate current supervisory use of data analytics, timely electronic report review, and automated controls embedded in the inspection platform (e.g. time stamps) to enable a robust supervisory environment that enables prioritization and specialized oversight into its procedures for providing supervisory oversight.

Finding 3: Lack of evidence to support Management decisions to allow poor performing FSEs to remain open

The auditors state that BFSCS management had no evidence available, either in the form of comments in FACTS II or other records such as e-mails and memoranda, to show the reason for management's decisions to allow restaurants with poor inspection results or with a history of poor inspection results to continue to remain open despite an inspector's recommendation to close the FSE. The same condition was noted in a prior audit conducted by New York City Comptroller's auditors, entitled: "Audit Report

on the Department of Health and Mental Hygiene Oversight of the Correction of Health Code Violations at Restaurants" (#ME09-074A), issued July 20, 2009.

The audit claims that DOHMH's failure to maintain documentation of decisions to allow restaurants with poor inspection results is contrary to the requirements of Comptroller's Directive #1, Principle of Internal Controls. Directive 1, Section 4.3 states that "Internal control activities [should] ... include a wide range of diverse activities such as approvals, authorizations, verifications, record reconciliations, open item agings, transaction analyses, performance reviews, security evaluations, and the creation and maintenance of related records that provide evidence of the execution of these activities."

Auditors' Recommendation

4. DOHMH should ensure that the reasons for not closing an FSE with poor inspection results following an inspector's recommendation that it be closed are appropriately documented in FACTS II.

DOHMH Response:

DOHMH disagrees with this finding as we believe the auditors do not understand the fundamental characterization of the chain of decision making that occurs during an FSE closure subsequent to an inspection. The auditors note that: "...based on the specific conditions observed, the inspector may recommend closure; however, the supervisor or his/her superior makes the final determination." During the audit, the Department repeatedly explained to the auditors that an inspector does not "recommend" closure. A closure decision involves coordination with the inspector, at least two (2) levels of supervision, and consultation with a manager on duty. The inspector is required to call a manager when the conditions meet a threshold for review and does not make a recommendation regarding closure. Instead the supervisors, and ultimately the manager, evaluate the totality of the circumstances at the restaurant before deciding whether the establishment must be closed to protect the public health. When the manager determines that closure is required, the basis for that decision is already documented in FACTS II.

DOHMH partially agrees with the auditors' recommendation as DOHMH sees opportunity to improve the documentation of the process. Following the Comptroller's recommendation, where the manager reviews the inspection findings and determines that closure is not necessary, the basis for that decision will be documented in FACTS II.