

H. CARL McCALL  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

February 19, 2002

Thomas R. Frieden, M.D., M.P.H.  
Commissioner  
New York City Department of Health  
125 Worth Street  
New York, NY 10013

Re: Inspections of Food Service  
Establishments  
Report 2000-N-15

Dear Dr. Frieden:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Article III of the General Municipal Law, we audited the inspection process for food service establishments located in New York City as administered by the New York City Department of Health. Our audit covered the period July 1, 1998 through December 31, 2000.

**A. Background**

The New York City Department of Health (City DOH) promotes and protects the health and quality of life of New York City (City) residents and visitors by enforcing compliance with the City's Health Code through the operation of a variety of public health programs and services that involve the monitoring, prevention and control of diseases. Pursuant to the Health Code and other governmental regulations, City DOH's Office of Field Operations/Inspections (OFOI) is responsible for preventing outbreaks of food borne diseases and ensuring the cleanliness of food service establishments (FSEs) in the City by inspecting FSEs on a regular basis. An FSE is a commercial facility where food is prepared and is eaten either on or off premises.

City DOH is subject to Article 81 of the Health Code, which applies to FSEs and non-retail food processing establishments; Article 81 was repealed and then re-enacted in 1996 to make it consistent with Federal guidelines and New York State laws and regulations on the control of public health hazards. OFOI comprises three inspection units: initial, compliance and final. The initial unit performs unannounced inspections of FSEs. If the FSE fails the initial inspection (i.e., certain violations are revealed), the compliance unit performs a compliance, or follow-up inspection to determine if the conditions that existed during the initial inspection have been rectified. The final

unit inspects FSEs that have failed to meet standards for two consecutive inspections (initial and compliance). FSEs failing a final inspection may be subject to closure.

During the period covered by our audit OFOI had a staff of 128 employees, including an average of 75 public health sanitarians who were available to inspect and monitor FSEs to verify their compliance with New York City and New York State laws regarding the preparation and storage of foods. According to a City DOH official, two-thirds of the sanitarians were specifically dedicated to inspections of FSEs. During the City fiscal year ended June 30, 2001, a total of \$5,531,000 was expended on food inspection activities, including \$5,298,000 in personal service costs and \$233,000 in other than personal service costs.

According to City DOH records, a total of 27,256 FSEs were issued permits authorizing them to operate in the City in the year ended June 30, 2000. The September 2000 Mayor's Management Report indicated that, during this year, DOH performed "98.35 percent of initial inspections of all permitted food service establishments to ensure compliance with health and safety codes." The same report indicated that the City DOH goal was one inspection for every FSE each year.

## **B. Audit Scope, Objective and Methodology**

We audited the FSE inspection process covering the period July 1, 1998 through December 31, 2000. The objective of our performance audit was to determine whether OFOI was performing the required inspections of FSEs throughout the City. To accomplish our objective, we interviewed OFOI officials, reviewed applicable laws, rules, policies and procedures, and requested written guidelines for the inspection of FSEs. We obtained and tested the accuracy of a database of all inspections completed during the 30-month period ended December 31, 2000. Based upon our analysis of the database, we believe the inspection information contained in the database is reliable. We used computer-assisted audit techniques to analyze the database of FSE inspections to assess the timeliness of compliance inspections.

As is our practice, we notified City DOH officials at the outset of the audit that we would request a representation letter in which management provides assurances, to the best of their knowledge, concerning the relevance, accuracy and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm that either the agency has complied with all laws, rules and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors.

However, officials of the Mayor's Office of Operations have informed us that, as a matter of policy, Mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from City DOH officials that all relevant information was provided to us during this audit. We consider this refusal to provide a representation letter to be a scope limitation on our audit. Therefore, readers of this report should consider the potential effect of this scope limitation on the findings and conclusions presented in the report.

During the course of this audit, City DOH officials were unable to produce a database of all the FSEs that were open during fiscal or calendar year 2000, so that we might determine how many of them had received initial inspections during the year. DOH officials informed us they could produce a database of the FSEs that had been inspected for these periods, and information about the inspections, but could not provide a listing indicating which of these FSEs were actually operational during these periods. Further, we received conflicting information concerning inspection policies and procedures, which required us to re-analyze the data we had been provided and to perform extensive additional audit work. Also, City DOH officials were unable to provide us with documentation to support the Mayor's Management Report statement that 98.35 percent of FSEs received initial inspections in the year ended June 30, 2000. Therefore, we were unable to confirm this assertion. We consider the absence of relevant data, the provision of conflicting information and the lack of documentation supporting the Mayor's Management Report to be limitations on the scope of this audit.

Except for the effects of the limitations described in the preceding paragraphs, we conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those procedures and operations of the City DOH that were included within our audit scope. Further, these standards require that we understand City DOH's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations identified through our preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. Thus, we devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

### **C. Results of Audit**

We found that City DOH has not committed to writing many of the goals or requirements of its food inspection program, and one requirement that was in writing was not followed and was unofficially superseded by another policy. In addition, we found that compliance inspections to check on known violations were not completed within acceptable time frames. As a consequence of these shortcomings, there is increased risk that unsanitary conditions at FSEs remain unresolved for long periods or are undetected, which in turn increases the likelihood that food borne disease could occur.

## **1. Lack of Guidelines for Inspections of Food Service Establishments**

From the outset of this audit, City DOH officials told us that there were no written requirements for the frequency of FSE inspections. Instead, DOH officials referred us to the September 2000 Mayor's Management Report, which indicated an "objective" of one inspection of each FSE per year. In addition, we were told there was no written guidance for OFOI staff to follow in performing their inspection responsibilities. Further, we noted that OFOI supervisors have no written requirements for the number of inspections required of each inspector during a given time period (day, week, etc.). Although OFOI officials schedule inspectors for 23 to 25 inspections each week, they indicated that they expect an average of 14 to be completed during each week.

In response to our inquiry about the lack of written procedures, the City DOH's Assistant Commissioner for Management, Bureau of Regulatory and Environmental Health Services, provided us with written explanations that, in several cases, contradicted the policies and procedures verbally described to us by the OFOI administrators, to whom the inspectors report. One such contradiction related to the time period within which each FSE should be inspected. While we were verbally told that the goal of one inspection per year was based upon the City's fiscal year, similar to the time period indicated in the Mayor's Management Report, the Assistant Commissioner stated that City DOH's goal is one inspection per calendar year. This information required us to re-analyze the inspection database, using calendar year 2000 information, in place of our original analysis of fiscal year 2000 data. Also, while we were verbally informed that compliance inspections should be accomplished from 15 to 45 days following a failed initial inspection, the Assistant Commissioner stated to us in writing that the goal was an "average 45 days between the failed initial inspection and the compliance inspection."

During the course of our audit, we were provided with a written "Revised Protocol for Risk Categorization of Food Establishments," which City DOH issued on December 15, 1997. The Director of the Bureau of Inspections and the Assistant Commissioner for Field Operations signed the protocol, which indicated that all establishments were to be assigned one of five new risk categories. The expanded categories were to replace the previous high, medium and low risk categories, which, according to the protocol, "did not prove useful in resource allocation." According to the protocol, "studies have shown that the types of food served, the preparation steps these foods require, the volume of food, and the population served have a bearing on the opportunity for the occurrence of food borne illness....(T)he Department plans to allocate its resources to target the highest risk establishments with more frequent inspections, and the lowest risk establishments with the least frequent."

However, in response to our inquiries, City DOH officials stated that, since May 15, 2000, they have not adhered to the protocol; instead they have chosen to follow an accelerated inspection program in which an FSE is to be designated a high risk site, and placed on an accelerated inspection schedule, if it fails two inspections within a six-month period. City DOH officials further stated that these inspections are based upon the FSE's inspection history and not on the type of food served. However, our review of the written document that describes the accelerated program did not indicate that this program was to be executed in lieu of the pre-existing protocol. It appears that the accelerated program was to be followed in addition to the protocol.

Without clearly articulated policies and procedures, OFOI sanitarians and other staff may be unsure about their responsibilities, supervisors are unable to monitor performance, and City DOH is at increased risk of failing to ensure the cleanliness of food service establishments and to prevent outbreaks of food borne illness.

## **2. Untimely Compliance Inspections of Failed Food Service Establishments**

A compliance inspection is a follow-up inspection generated when an FSE fails an initial inspection due to the finding of one or more serious violations. In a compliance inspection, which is conducted by a different public health sanitarian than the initial inspection, the inspector performs a complete re-inspection. This means that he/she will determine whether the violations found during the initial inspection have been corrected and whether there are any new violations.

As already noted, City DOH lacks written guidelines concerning the timing of compliance inspections. While we were verbally informed of an unwritten goal of 15 to 45 days between the failed initial inspection and the compliance inspection, the Assistant Commissioner stated the goal was an average of 45 days between the two inspections. From our analysis of the City DOH database, we found that there were 3,066 FSEs that failed initial inspections in calendar 1999 and that the average length of time between the failed initial inspection and the applicable compliance inspection was 50 days, or 5 days (11 percent) more than the City DOH goal as expressed by the Assistant Commissioner. Additionally, we found that for 769 FSEs, at least 61 days elapsed between the failed initial inspection and the compliance inspection, as follows:

- for 371 FSEs, the compliance inspection was conducted between 61 days and 90 days after the initial failed inspection;
- for 159 FSEs, the compliance inspection was conducted between 91 days and 120 days after the initial failed inspection;
- for 138 FSEs, the compliance inspection was conducted between 121 days and one year after the initial failed inspection;
- for 9 FSEs, the compliance inspection was conducted more than one year after the initial failed inspection; and
- for 92 FSEs, the compliance inspection had yet to be conducted as of December 31, 2000.

We note that these 769 FSEs represent 25 percent of all FSEs that failed initial inspections in calendar year 1999. When compliance inspections are conducted in such an untimely manner, there is a greater risk for unsanitary conditions and a greater likelihood that food borne disease could occur.

### **Recommendations**

1. *Modify the inspection database to enable a determination of the population of food service establishments that were permitted and open during specific periods of time, such as the time period of the Mayor's Management Report.*
2. *Retain documentation supporting the number of food service establishments inspected and reported to the public, such as in the Mayor's Management Report.*
3. *Commit to writing all policies and procedures for the inspection of food service establishments.*
4. *Clarify the applicability of the December 15, 1997 protocol for determining the frequency of inspections of food service establishments.*
5. *Complete compliance inspections within the applicable time frame following failed initial inspections.*

We provided draft copies of this report to City DOH officials for their review and comment. We considered their comments in preparing this report and included them as Appendix A.

In response to our draft report, City DOH officials stated they were committed to implementing four of the report's five recommendations. City DOH officials did not agree with our recommendation to commit to writing all policies and procedures for the inspection of food service establishments. City DOH officials also disagreed with certain other matters, such as our scope limitation concerning the Department's inability to provide a database of all FSEs that were open during fiscal or calendar year 2000. We have addressed the Department's disagreements in a series of State Comptroller's Notes, which are included in this report as Appendix B. Throughout the State Comptroller's Notes, we address the absence of written documentation and conflicting information provided to us during the course of our audit to illustrate the need for City DOH officials to implement our recommendation to commit to writing all policies and procedures for the inspection of food service establishments.

Within 90 days after the final release of this report, we request that the Commissioner of the New York City Department of Health report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Stuart Dolgon, Charles Johnson, Geraldine Walker, Arthur Lebowitz and Marticia Madory.

We wish to thank the management and staff of the New York City Department of Health for the courtesies and cooperation extended to our auditors during this audit.

Yours truly,

Kevin M. McClune  
Audit Director

cc: Mark Shaw, Mayor's Office of Operations



# THE CITY OF NEW YORK DEPARTMENT OF HEALTH

Rudolph W. Giuliani  
Mayor

Neal L. Cohen, M.D.  
Commissioner

December 18, 2001

**Kevin M. McClune**  
Director of Audits  
Office of the State Comptroller  
A. E. Smith State Office Building  
Albany, New York 12236

**Subject: Draft Audit Report on the Inspection Process for  
Food Service Establishments in New York City  
July 1, 1998 - December 31, 2000  
Report No. 2000-N-15**

Dear Mr. McClune:

We have reviewed the subject draft audit report issued October 18, 2001 and appreciate your consideration of our comments on the findings and recommendations.

Your audit describes as scope limitations certain areas where you were unable to receive requested information or documentation. The data provided by the Department was comprehensive and amply sufficient to confirm compliance with our policy to inspect every permitted food service establishment (FSE) during the calendar year.

We agree that timely completion of compliance inspections is a priority. It is our contention, however, that the existing median duration of thirty-six days for a compliance inspection is adequately protective. In addition, we have implemented protocols to ensure all compliance inspections are completed within forty-five days of a failed initial inspection.

The Department strongly disagrees with your finding of inadequate documentation of food service inspection protocols. Public Health Sanitarians in the Office of Field Operations/Inspections (OFO/I) are rigorously trained at the Department's Health Academy and all inspection policies and practices are clearly documented and communicated to all staff. Changes to OFO/I policies and procedures are provided to staff verbally and in writing. Supervisors also attend regular and periodic meetings at which performance and policy are carefully reviewed. Our inspection protocols are reviewed by the New York State Department of Health (NYS DOH), which finds the Department's FSE inspection

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\* See State Comptroller's Notes, Appendix B

**Appendix A**

approach and protocols acceptable. NYS DOH notes that our requirements add a degree of protection for the public not experienced in other parts of the state and “coupled with an inspection per year, is most adequate regarding compliance with State and City sanitary codes.” (See attached response.)

The Department has performed an annual full sanitary inspection at over 98% of the over 22,000 FSEs in the City since it made the commitment to do so. OFO/I has, and does, insure food safety in New York City. One example of this is the number of FSEs that fail full sanitary inspections. Over the past five years, the failure rate has decreased from 33% to 18%.

These concerns about your interpretations should not be interpreted as disagreement with your recommendations. We have committed to implementing four of five recommendations included within the draft audit report. Attached to this letter are comments on the draft audit report and the Department’s responses to each recommendation.

We appreciate the courtesy and consideration of your audit staff in the performance of this audit. If you have any questions or need further information, please contact Charles Troob, Assistant Commissioner, Business Systems Improvement at (212) 442- 8413/ 8436.

Sincerely,

  
Benjamin A. Mojica, M.D., M.P.H.  
Deputy Commissioner for Health

**Attachment**

copy: Neal L. Cohen, M. D., Commissioner  
Dan Still, Deputy Commissioner  
Ron Bergmann, Associate Commissioner, BTS  
Kelly R. McKinney, Associate Commissioner, REHS  
Allan Goldberg, Assistant Commissioner, REHS Management  
Elliott Marcus, Assistant Commissioner, OFOI  
Irita Winston, Director, Audits  
Bob Bernstein, Mayor’s Office of Operations

\* See State Comptroller's Notes, Appendix B

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# THE CITY OF NEW YORK DEPARTMENT OF HEALTH

Rudolph W. Giuliani  
Mayor

Neal L. Cohen, M.D.  
Commissioner

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**Bureau of Regulatory and Environmental Health Services  
Office of Field Operations/Inspections  
Response to New York State Report 2000-N-15  
Audit of New York City Department of Health  
Inspections of Food Service Establishments**

The following is the New York City (NYC) Department of Health (the Department) response to the New York State Office of the State Comptroller Report 2000-N-15, an audit of the Department's Bureau of Regulatory and Environmental Health Services (BREHS) Office of Field Operations/Inspections (OFO/I) food service establishment (FSE) inspections.

**Report Heading: Audit Scope, Objective and Methodology**

1. In this section of the report, the auditors state that "City Officials were unable to produce a database of all FSEs that were open during fiscal or calendar year 2000, so that we might determine how many of them received initial inspections during the year."

Permitted food service establishments (FSE) and their current status reside in the CAMIS database, which is managed by the Department of Consumer Affairs. In January of last year, the OFO/I provided auditors with a list of all FSEs permitted and operating at the time the list was delivered. For its own business purposes, protecting public health, the Department is most concerned with FSEs that are operating and serving food to the public. The CAMIS list is a current, rather than a historical listing of operating FSEs.

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**Report Heading: Lack of Guidance for inspections of Food Service Establishments**

2. The first paragraph of this section of the report states, "City DOH officials told us that there were no written requirements for the frequency of FSE inspections. Instead, DOH Officials referred us to the Mayor's Monthly Management Report, which indicated an 'objective' of one inspection of each FSE per year. In addition, we were told there was no written guidance for OFO/I staff to follow in performing their inspection responsibilities."

\* See State Comptroller's Notes, Appendix B

BUREAU OF REGULATORY AND ENVIRONMENTAL HEALTH SERVICES  
OFFICE OF FIELD OPERATIONS AND INSPECTIONS  
253 Broadway, 13th Floor, CN 59A, New York, New York 10007, (212) 676-1600, Fax (212) 676-1666

The New York State Sanitary Code and New York City Health Code do not establish inspection frequencies for FSEs. The stated objective of the *Commissioner of Health*, which is reiterated in the September 2000 Mayor's Management Report, is to perform at least one full sanitary inspection each year. That objective is clearly understood by OFO/I administration, its supervising Public Health Sanitarians and staff, who have implemented the achievement of that objective since 1997.

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3. The report further states that, "OFO/I supervisors have no written requirements for the number of FSE inspections required of each inspector...(day, week, etc.)," and that "Although OFOI officials schedule inspectors for 23 to 25 inspections each week, they indicated that they expect an average of 14 to be completed each week."

The number of FSE inspections a PHS can perform in a week is dependent on a variety of factors, including, but not limited to, the amount of potentially hazardous food on the menu, the size of food preparation areas, the number of violations cited, the need for an office consultation, FSE activity at the time of the inspection, the cooperation of the operator, the amount of time spent educating the operator on safe food handling practices, and distance and time expended traveling between FSEs.

Because each of these variables will affect PHS productivity, the OFO/I does not establish a fixed number of FSE inspections per week. Experience has indicated that a minimum requirement can, under certain circumstances, act as a maximum constraint for FSE inspections. The OFO/I optimizes staff resources by assessing productivity based on the type of inspections performed. An average of fourteen inspections per week is a standard against which individual performance is evaluated and compared to office-wide performance over time. Each week, Associate PHS I's (first line supervisors) assess the productivity of each PHS. This assessment accounts for all factors (i.e., inspection type, FSE size, etc.).

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4. The report further states that, "While we were verbally told that the goal of one inspection per year was based upon the City's fiscal year, similar to the time period indicated in the Mayor's Monthly Management Report, the Assistant Commissioner stated that City DOH's goal is one inspection per calendar year."

The goal of one inspection per year is, and has always been, based and reported on a calendar year calculation. While the Mayor's Management Report presents fiscal year data, this indicator is calculated and reported on a calendar year basis. Department staff repeatedly clarified this goal with the audit team during meetings and in written correspondence.

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\* See State Comptroller's Notes, Appendix B

5. The audit raises the issue that, “while we were verbally informed that compliance inspections should be accomplished from 15 to 45 days following a failed initial inspection, the Assistant Commissioner stated to us in writing that the goal was an average of 45 days between the failed initial inspection and the compliance inspection.”

Several factors, including the circumstances of an inspection and corruption control practices, contribute to the re-inspection interval. Different staff must perform each inspection. Access problems and temporarily closures of FSEs often cause inspection durations to exceed forty-five days. However, the median duration for a compliance inspection, which may be a more appropriate indicator, is currently thirty-six days.

6. Questions also were raised with regard to a “Revised Protocol for Risk Categorization,” which was considered effective on December 15, 1997. The audit report contends that their review of Department documents indicates that the Accelerated Inspection Program, which went into effect in November 1999 and based inspection frequency on an FSE’s inspection history, was meant to augment rather than replace the inspections based on risk type.

Experience has shown that Departmental resources are most effective in protecting the public from food borne illnesses by conducting additional inspections of FSEs with a history of failed inspections, regardless of risk category. OFO/I has updated the December 15, 1997 “Revised Protocol for Risk Categorization” to reflect our approach and protocols. In a letter dated May 4, 2001, from Richard Svenson, Director of the Bureau of Community Sanitation and Food Safety at the New York State (NYS) Department of Health (DOH), Mr. Svenson stated that the NYS DOH found the Department’s FSE inspection approach and protocols acceptable. He noted that NYC requires a supervisor of a FSE to have a Food Protection Course Certificate and to be present during all times of operation. This requirement adds a degree of protection for the public not experienced in other parts of the state and “coupled with an inspection per year, is most adequate regarding compliance with State and City sanitary codes.”

The Department strongly objects to the conclusion arrived at in the final paragraph under the “Lack of Guidance for inspections of Food Service Establishments.” OFO/I PHSs are rigorously trained at the Department’s Health Academy and all inspection policies and practices are clearly documented and communicated to all staff. Changes to OFO/I policies and procedures are provided to staff verbally and in writing. Supervisors also attend regular and periodic meetings at which performance and policy are carefully reviewed. The Department has performed an annual full sanitary inspection at over 98% of the over 22,000 FSEs in the City since it made the commitment to do so. The median duration for compliance inspections in thirty-six days. OFO/I has, and does, insure food safety in New York City. One example of this is a the number of FSEs that have failed full sanitary inspections. Over the past five years, the failure rate

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\* See State Comptroller's Notes, Appendix B

insure food safety in New York City. One example of this is the number of FSEs that have failed full sanitary inspections. Over the past five years, the failure rate has decreased from 33% to 18%.

**Report Heading: Untimely Compliance Inspections of failed Food Service Establishments**

At any DOH FSE inspection, the establishment is closed if there is a public health hazard which cannot be immediately remediated. Compliance inspections, which are full sanitary inspections, are performed to determine if an FSE is operating safely, and has corrected previously issued violations.

The OFO/I analyzed the reported 92 FSEs for which no compliance inspection was detected. Of the 92 compliance inspections reported as not performed, our analysis of the data revealed that in only fifteen cases was a compliance inspection outstanding. Five FSEs from the list of 92 passed their initial inspection and did not require a compliance inspection and an additional five FSEs had compliance inspections within 35 days. In 32 instances, the database indicated that the FSE had been given an initial or other type of full sanitary inspection. The auditors incorrectly included 27 Smoke Free Air Act inspections among the 92 failed FSE inspections. In seven instances, the compliance inspection was correctly entered with an "out of business code," which indicates that the inspector discovered the FSE had gone out of business when attempting a compliance inspection. One of the coded entries following an initial indicated that the FSE was "referred" to another agency for follow-up, as it was not within the Department's jurisdiction.

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The goal of the OFO/I is to complete compliance inspections within fifteen to thirty days. Outliers, FSEs for which a compliance inspection may be delayed for legitimate reasons, frequently skew the calculation of a mean. A temporarily closed restaurant is an example of a situation where a compliance inspection might take more than 60 days. For this reason, we have set an average of 45 days as the target for this indicator as it is reported in the Mayor's Management Report.

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Prior to 1999 the average compliance inspection occurred more than 100 days after the initial inspection. That interval had been reduced to 60 days in the last fiscal year and 47 days in the first three months of the current fiscal year. Since July, the average number of days for a compliance inspection has decreased to 42-46 days and the median number of days to an inspection is 36 days. Furthermore, a protocol has been implemented that will assure that failed initial inspections receive compliance inspections in no more than forty-five days.

\* See State Comptroller's Notes, Appendix B

**Recommendations**

- 1. Modify the inspection database to enable a determination of the population of food service establishments that were permitted and open during specific periods of time, such as the time period of the Mayor's Management Report.***

Since the Department has been primarily interested in the FSEs operating at a given point in time, maintaining a history of FSEs that were operating during a given period has not been a priority. However, the Department will consider adding this functionality to future database modifications.

- 2. Retain documentation supporting the number of food service establishments inspected and reported to the public, such as in the Mayor's Management Report.***

The OFO/I accepts this recommendation and will explore capturing all FSEs permitted and operating in a given calendar year, so that the percentage of inspections performed may be calculated using that figure as a denominator of total inspections.

- 3. Commit to writing all policies and procedures for the inspection of food service establishments.***

There is sufficient written documentation of policies and procedures to inform the inspection process and OFO/I operations. This documentation communicates mandated services, exigent needs, responsibilities and obligations to administrators, supervisors and staff .

- 4. Clarify the applicability of the December 15, 1997 protocol for determining the frequency of inspections of food service establishments.***

The OFO/I has reissued the "Revised Protocol for Risk Categorization." as a guideline for initial FSE assessment and not a plan for inspection frequency.

- 5. Complete compliance inspections within the applicable time frame following failed initial inspections.***

A protocol has been implemented that will assure that failed initial inspections receive compliance inspections in no more than forty-five days.

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# STATE COMPTROLLER'S NOTES

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1. Our scope limitation addresses three issues: absence of relevant data, provision of conflicting information and lack of documentation. Regarding the absence of relevant data, City DOH officials were unable to produce a database of all food service establishments (FSEs) that were open during fiscal or calendar year 2000. In response to recommendation 1, officials state, "maintaining a history of FSEs that were operating during a given period has not been a priority. However, the Department will consider adding this functionality to future database modifications." Hence, it is clear that the data we requested was not available. Regarding the provision of conflicting information, we wrote to Assistant Commissioner Goldberg on January 31, 2001, confirming our discussions with Department staff about a lack of written requirements for the inspection of food service establishments and our desire to confirm our understanding of the Department's inspection goals and targets. Assistant Commissioner Goldberg's February 22, 2001 response provided information that conflicted with verbal information concerning the Department's inspection goals and targets that Department staff previously provided to us. Copies of these letters are included with these Notes. Regarding the lack of documentation, we requested Department officials to provide us with supporting documentation for the assertion in the Mayor's Management Report that 98.35 percent of initial inspections were accomplished during fiscal year 2000. Officials were unable to do so. Further, in response to recommendation 2, officials state that they will explore capturing relevant information "so that the percentage of inspections performed may be calculated using that figure as a denominator of total inspections."
2. As stated in Note 1 above, during the course of our audit we were provided with conflicting information with regard to inspection policies and procedures. We made clear in our January 31, 2001 letter to Assistant Commissioner Goldberg that we discussed with Department staff on several occasions the lack of written requirements for the inspection of food service establishments. Assistant Commissioner Goldberg's February 22, 2001 response provided information that differed from the verbal representations made to us by Department staff. As a result, we had to re-analyze data that had been provided to us and perform extensive additional audit work.
3. As stated in Note 1 above, City DOH officials could not provide documentation to support the assertion in the Mayor's Management Report that 98.35 percent of initial inspections were accomplished during fiscal year 2000.
4. Since City DOH officials consider an average of fourteen inspections per week to be a standard against which individual performance can be evaluated, then we suggest officials should formalize this standard in writing.
5. As stated in Note 1 above, we received conflicting information during the course of our audit regarding the Department's inspection goals and targets. Initially, we were informed that the statistics in the Mayor's Management Report were presented on a fiscal year basis.

6. We maintain that the absence of clearly articulated policies and procedures can create the risks we identify. The conflicting information we received during the course of our audit regarding the Department's inspection goals and targets illustrate one of these risks.

7. It should be noted that we provided the details of our findings regarding untimely compliance inspections to City DOH officials on June 14, 2001. It was not until six months later, in their December 16, 2001 response to our draft report, that City DOH officials provided feedback indicating that only 15 of the 92 compliance inspections had not been performed. Even if we accept the Department's assertion at face value, the fact remains that for 692 FSEs (769 minus 77), at least 61 days elapsed between the failed initial inspection and the compliance inspection, including 15 FSEs for which no compliance inspection had been performed as of December 31, 2000.

8. In Assistant Commissioner Goldberg's February 22, 2001 letter to us, he stated, "The NYC DOH's goal is to average 45 days between the failed initial inspection and the compliance inspection." In the Department's response to our draft report, officials now state, "The goal of the OFO/I is to complete compliance inspections within fifteen to thirty days." This is another example of conflicting information and further illustrates the need for written policies and procedures for the food service establishment inspection process.

H. CARL McCALL  
STATE COMPTROLLER



123 WILLIAM STREET  
NEW YORK, NEW YORK  
10038-3804

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

January 31, 2001

Mr. Allan H. Goldberg  
Assistant Commissioner  
New York City Department of Health  
125 Worth Street - room 616  
New York, NY 10013

Dear Mr. Goldberg:

At our January 11, 2001 meeting, and at several earlier meetings with your staff, we discussed the lack of written Department of Health requirements for the inspection of food service establishments. At the aforementioned meetings, we were verbally informed that the Department's goals and targets for various parts of the operation of the Office of Field Operations/Inspections are as follows:

- The Department uses five risk categories for food service establishments (A, B, C, D and E); the State Department of Health uses three categories (high, medium and low). The Department reports statistics to the State by equating categories A and B with the State's high risk category, C and D with the State's medium risk category and E with the State's low risk category.
- The Department's goal is to complete one initial inspection of each food service establishment each year.
- It is the Department's goal to complete all required compliance (follow-up) inspections within 15 to 45 days of the failure of the initial inspection by the food service establishment.
- While the State Department of Health and the State Office for the Aging (SOFA) have a written agreement to perform two inspections per year at high risk SOFA sites, the Department has a goal of one food service inspection each year of the City's high risk senior sites.
- The Department does not perform food service inspections at senior sites using standardized inspectors.

To ensure that we have an accurate understanding of the Department's goals and targets for the inspection of food service establishments, we request that you confirm the accuracy of the above noted goals and targets to us in writing.

If you have any questions regarding our request, please contact me at 212-417-5187, or Charles Johnson at 212-676-2929. Thank you for your prompt attention to this matter.

Yours truly,

A handwritten signature in cursive script that reads "Stuart Dolgon".

Stuart Dolgon  
Principal State Auditor

cc: S. Bashkow  
C. Johnson



# THE CITY OF NEW YORK DEPARTMENT OF HEALTH

Rudolph W. Giuliani  
Mayor

Neal L. Cohen, M.D.  
Commissioner

February 22, 2001

Mr. Stuart Dolgon  
Principal State Auditor  
New York State Comptroller's Office  
123 William Street  
New York, New York 10038-3804

Dear Mr. Dolgon:

The following responds to the issues raised in your letter to me dated January 31, 2001:

- The New York City (NYC) Department of Health (DOH) uses five risk categories for food service establishments (A, B, C, D and E). The New York State Department of Health (NYSDOH) uses three categories (high, medium and low). Since July 1, 2000, the NYC DOH has been reporting statistics to the NYSDOH by equating NYC DOH categories "A" and "B" with the NYS DOH "high risk" category, "C" and "D" with the "medium risk" category, and "E" with the "low risk" category.
- The NYC DOH's goal is to complete one full sanitary inspection of each permitted food service establishment each calendar year.
  - Since the NYC DOH performs a full inspection at each compliance inspection, if a compliance inspection was performed in a new calendar year following an initial inspection in the previous calendar year, it is counted as a full inspection for the new calendar year.
- The NYC DOH's goal is to average 45 days between the failed initial inspection and the compliance inspection.
- While the NYSDOH and the NYS Office for the Aging (SOFA) have a written agreement to perform two inspections per year at high risk SOFA sites, the NYC DOH has no such agreement with the NYSDOH or the SOFA. NYC DOH's goal is to perform at least one food service inspection each year at each of the City's senior sites.

- The NYC DOH reviews those SOFA senior centers that also prepare, package and transport potentially hazardous foods and targets a second inspection of those operations.
- The NYC DOH does not perform food service inspections at senior sites using standardized inspectors. The relatively high turnover rate of staff makes balancing the investment of the additional training time and the need to have inspectors in the field untenable. Despite this, the NYC DOH program is of high quality, utilizing fully trained inspection staff. The NYC DOH requires an inspector to complete a rigorous training program that includes classroom instruction, field accompaniments and a final evaluation of the inspector's ability to perform an inspection before the inspector is certified to work independently in the field. The training is comprehensive and thorough. As an additional quality control measure, BREHS OFO/I supervisors who have standardized training closely review the documentation from inspections at SOFA sites.

Please feel free to contact Elliott Marcus, Assistant Commissioner for the Office of Field Operations/Inspections, at (212) 676-1654 or me if you have additional questions or would like a further explanation to the issues discussed in this letter.

Sincerely,



Allan H. Goldberg  
Assistant Commissioner for Management  
Bureau of Regulatory and Environmental  
Health Services  
New York City Department of Health

cc: B. Mojica, MD  
R. Bergmann  
E. Marcus  
C. Troob  
R. Edman  
S. Bashkow