

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

**Alan G. Hevesi
COMPTROLLER**



***NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE***

OVERSIGHT OF MOBILE FOOD VENDORS

2002-N-7

DIVISION OF STATE SERVICES

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COMPTROLLER

Report 2002-N-7

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

Dear Dr. Frieden:

The following is our audit report addressing selected aspects of the New York City Department of Health and Mental Hygiene's oversight of mobile food vendors.

This audit was performed 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. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

December 18, 2003

EXECUTIVE SUMMARY

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Oversight of Mobile Food Vendors

SCOPE OF AUDIT

Vendors in New York City who sell food from vehicles, pushcarts, stands or other mobile units must be licensed by the New York City Department of Health and Mental Hygiene (DOHMH). In addition, a separate permit must be obtained for each mobile unit used by the vendor. The vendors are subject to inspection by DOHMH to determine whether they are in compliance with laws and regulations intended to protect public health and safety. Vendors who are not in compliance may be fined, and if the violations are serious enough, the vendor's license/permit may be suspended or revoked. The number of regular year-round permits and the number of seasonal permits (April through October) are limited to 3,100 and 1,000, respectively. At the time of our audit, about 10,000 vendors were licensed (permits may be utilized by more than one licensed vendor). Our audit addressed the following questions about DOHMH's oversight of mobile food vendors for the period July 1, 1999 through August 31, 2002:

- Were inspections performed in a manner that provided adequate coverage?
- Were complaints investigated in a timely manner?
- Were violations identified during inspections addressed in an appropriate manner?

AUDIT OBSERVATIONS AND CONCLUSIONS

We identified serious weaknesses in DOHMH's processes for scheduling inspections of mobile food vendors, investigating complaints about the vendors, and penalizing vendors who repeatedly commit critical violations. To strengthen the protection provided to the public by DOHMH, we recommend that a number of improvements be made in the agency's practices and procedures.

The food handling practices of mobile food vendors are best assessed in unannounced inspections. However, we found that most seasonal operations,

and about half the year-round operations, do not receive such an inspection on an annual basis. At the same time, some operations receive several inspections a year. In light of the high percentage of mobile food vending operations not receiving at least one unannounced inspection a year, we believe changes are needed in the process used by DOHMH to plan these inspections. We recommend that DOHMH formally monitor the inspection status of each mobile food vending operation, and attempt to perform at least one unannounced inspection a year at each of these operations. We note that DOHMH seeks to inspect restaurants at least once a year, and we believe a comparable degree of protection is no less appropriate for customers of mobile food vending operations. (See pp. 5-9)

DOHMH receives more than 300 complaints a year about mobile food vendors. Even though some complaints are more serious than others, and suggest potential hazards to public health, DOHMH does not properly prioritize the complaints on the basis of their threat to public health. We determined that many complaints were not investigated in a timely manner, including complaints that appeared to relate to potentially hazardous conditions. In fact, nearly one-quarter of the complaints phoned in over a 35-month period were not investigated within 30 days and some were not investigated at all. For example, an individual reported that parts of cockroaches were found inside the food sold by a vendor, but the complaint was not investigated for nearly five months. We recommend that complaints be properly prioritized on the basis of risk, and complaint investigations be monitored more closely. (See pp. 11-13)

DOHMH has the legal authority to suspend or revoke the license/permit of mobile food vendors who violate certain laws and regulations. We found indications DOHMH may not have made sufficient use of this authority, as dozens of vendors were repeatedly cited for serious food handling violations, yet were allowed to continue operating. For example, during the two years ended May 31, 2002, 177 of these persistent violators were cited for a total of 1,446 critical violations, an average of 8.2 critical violations per vendor, including one vendor who was cited for 29 critical violations on 16 different inspections. DOHMH officials stated that they prefer to try to correct such problems and not put the vendors out of business. In light of the potential hazards to public health and the persistence of the violations on the part of many of the vendors, we question whether the approach taken by DOHMH is appropriate. We recommend DOHMH develop written criteria for determining when licenses should be suspended or revoked. (See pp. 15-17)

COMMENTS OF OFFICIALS

DOHMH officials generally agree with the report's recommendations and indicated actions planned or taken to implement them. DOHMH officials also

disagreed with certain aspects of the report. A complete copy of DOHMH's response is included as Appendix B. Appendix C contains State Comptroller's Notes, which address matters of disagreement included in DOHMH's response.

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INTRODUCTION

Background

Vendors in New York City who sell food from mobile units, such as vehicles, pushcarts or stands, must be licensed by the New York City Department of Health and Mental Hygiene (DOHMH). In addition, a separate permit must be obtained for each mobile unit used by the vendor. The licenses are generally valid for two years; a full-term permit is also generally valid for two years, while a seasonal permit is valid from April 1 through October 31.

The number of regular full-term permits and the number of seasonal permits are limited to 3,100 and 1,000, respectively. According to DOHMH records, as of June 18, 2002, a total of 2,983 regular full-term permits and 923 seasonal permits were active. Certain special permits may also be issued, and as of that date, the records indicated that 564 restricted area permits (for use in parks or on private property) and 71 mobile food unit commissary/depot permits were also active. The records further indicated that a total of 10,031 food vendor licenses were active.

Applications for licenses and permits are processed by the New York City Department of Consumer Affairs (DCA) in its Citywide Licensing Center. In accordance with a 1996 Memorandum of Understanding between DCA and DOHMH, DCA is responsible for processing all applications and issuing all licenses and permits, while DOHMH oversees the processes. All license and permit transactions are entered by DCA on the City Agencies Management Information System (CAMIS).

To protect the health and safety of the public, mobile food vendors are subject to a number of laws and regulations relating to their handling of food and the design and maintenance of their equipment. For example, certain foods must be cooked or held above certain temperatures, other foods must be cooled or refrigerated below certain temperatures, food must be adequately protected against contamination, and certain standards of sanitation must be maintained. The vendors are also subject to inspection by DOHMH to determine whether they are in compliance with these laws and regulations. Vendors who are not in compliance may be fined, and if the violations are

serious enough, a vendor's license/permit may be suspended or revoked by DOHMH. Certain violations constitute public health hazards that must be corrected immediately, and DOHMH is authorized by law to suspend or revoke the license/permit of any vendor who commits a single violation of this kind.

Inspections are performed by DOHMH's Office of Field Operations/Inspections. The Office has a total of 64 inspectors, who are also responsible for inspecting restaurants and other food service establishments. According to records maintained by DOHMH, during the fiscal year ended June 30, 2002, a total of 9,704 mobile food vendor inspections were performed. Some inspections are performed in response to complaints, and during that same year, a total of 299 complaints about mobile food vendors were reportedly received by DOHMH.

Audit Scope, Objectives and Methodology

We audited selected aspects of DOHMH's oversight of mobile food vendors for the period July 1, 1999 through April 30, 2003. The primary objectives of our performance audit were to determine whether (1) inspections were performed in a manner that provided adequate coverage, (2) complaints were investigated in a timely manner, and (3) legal action was taken against vendors with multiple and repeated violations.

To accomplish our objectives, we interviewed DOHMH officials and reviewed records maintained by DOHMH. We also used computer assisted audit techniques to analyze (1) inspection information maintained by DOHMH on its automated FOCUS system (FOCAS is the name of the software program) and (2) license and permit information maintained by DCA on the CAMIS. In a related audit report (Report 2003-N-10), we examined DCA's processing of applications for mobile food vendor licenses and permits to determine whether the licenses and permits were issued in accordance with requirements.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency 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. In the representation letter,

agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further 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 DOHMH officials that all relevant information was provided to us during this audit. We consider this absence of 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 this report.

Except as discussed 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 operations of DOHMH that are included in our audit scope. Further, these standards require that we understand DOHMH's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations that are 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 that 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 that we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used 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.

Response of DOHMH Officials to Audit

We provided draft copies of this report to DOHMH officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix B. Appendix C contains State Comptroller's Notes, which address matters of disagreement included in DOHMH's response.

Within 90 days after final release of this report, we request that the Commissioner of the New York City Department of Health and Mental Hygiene 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.

INSPECTION COVERAGE

The food handling practices of mobile food vendors are best assessed in unannounced inspections. However, we found that most seasonal operations, and about half the year-round operations, do not receive such an inspection on an annual basis. At the same time, some operations receive several inspections a year. In light of the high percentage of mobile food vending operations not receiving at least one unannounced inspection a year, we believe changes are needed in the process used by DOHMH to plan these inspections. We recommend that DOHMH formally monitor the inspection status of each mobile food vending operation, and attempt to perform at least one unannounced inspection a year at each of these operations.

The equipment used by mobile food vendors must be inspected each time a permit is issued or renewed, and a vendor's operations may be inspected at any time on an unannounced basis. The inspections that are performed when a permit is issued or renewed are called pre-operational inspections. They are scheduled by appointment and performed at designated locations. All other inspections are called operational inspections.

Three types of operational inspections are performed by DOHMH: geographical inspections, interagency inspections and complaint inspections. According to the information on DOHMH's FOCUS system, about 80 percent of the operational inspections are geographical inspections. For the purposes of these inspections, DOHMH divides New York City into 60 sectors and tries to provide adequate inspection coverage in each sector. Interagency inspections are performed in conjunction with the Police Department and the Department of Sanitation, and complaint inspections are performed as a result of complaints reported to the DOHMH Call Center.

While pre-operational inspections are required by law, operational inspections are not required by law or regulation. DOHMH officials told us the agency seeks to perform at least 8,000 total mobile food vending inspections a year. During the year ended June 30, 2002, 3,540 of the 9,704 mobile food

vending inspections performed by the agency (36 percent) were pre-operational inspections, while 6,164 were operational inspections (64 percent), including 299 complaint inspections.

Pre-operational inspections are performed before a vendor begins operations, and are scheduled by appointment. No food is present in these inspections. The inspections are intended primarily to determine whether the vendor has complied with certain requirements relating to the design and maintenance of his or her equipment. Operational inspections, however, are performed while the vendor is in business and are generally performed on an unannounced basis. These inspections assess the vendor's actual food handling practices in addition to the design and maintenance of equipment and certain administrative practices. Because of these differences in the two types of inspections, any serious violations by mobile food vendors that threaten public health and safety are more likely to be detected by operational inspections.

Most operational inspections are geographical inspections, which are intended to provide adequate coverage throughout New York City. DOHMH officials stated that these inspections are conducted as resources permit. A formal plan is not developed in which specific vendors are targeted for inspection. Rather, DOHMH attempts to perform a batch of unannounced inspections every six to eight weeks in each of the 60 sectors. A sector is scheduled for inspection when enough inspectors are available to cover the sector. On the days selected for these inspections, the inspectors attempt to inspect as many vendors as possible by going to the areas in the sector that are most likely to be frequented by vendors. To determine whether this process provides adequate coverage to the many mobile food vendors that operate throughout New York City, we analyzed the coverage provided during the two-year period June 1, 2000 through May 31, 2002.

According to CAMIS, a total of 2,481 full-term permits were valid for the entire two-year period, and 635 seasonal permits were valid for the one full season (April 1, 2001 through October 31, 2001) in this two-year period. We determined how many operational inspections were performed during the two-year period in relation to the 2,481 full-term permits, and how many operational inspections were performed during the 2001 season in relation to the 635 seasonal permits. Information about the

inspections was maintained on DOHMH's computerized FOCUS system.

We found that the inspection coverage provided to many of the vending operations may not have been adequate, as 29 percent of the year-round operations (719 of 2,481) received no operational inspections during the two-year period. We further determined that an additional 18 percent of the year-round operations (437 of 2,481) received only one operational inspection during the two-year period. Thus, only about half of the year-round operations (1,325 of 2,481, or 53 percent) received two or more operational inspections, indicating they were inspected for food handling practices an average of at least once a year. We also determined that 84 percent of the seasonal operations (531 of 635) received no operational inspections during the one full season that we examined. The results of our analysis follow:

Full Term Permits June 1, 2000 - May 31, 2002		
Number	Percent	Number of Operational Inspections
719	29%	0
437	18%	1
332	13%	2
419	17%	3 or 4
431	17%	5 to 9
143	6%	10 or more
2,481	100%	

Seasonal Permits April 1, 2001 - October 31, 2001		
Number	Percent	Number of Operational Inspections
531	84%	0
58	9%	1
20	3%	2
26	4%	3 or more
635	100%	

If a mobile food vending operation does not receive at least one operational inspection a year, its food handling practices will not

be adequately assessed during that year. In the absence of such an assessment, violations that threaten public health and safety are less likely to be detected and deterred. In light of the high percentage of mobile food vending operations not receiving at least one operational inspection a year, we believe changes are needed in the process used by DOHMH to plan operational inspections.

Most operational inspections are geographical inspections, which target specific sectors of New York City rather than specific vendors. Since a vendor is not restricted to a specific sector, if a vendor does not happen to be in an inspected sector on the day of the geographical inspection, the vendor will not be inspected. To increase the likelihood that each mobile food vending operation will receive at least one unannounced inspection a year, DOHMH needs to target uninspected operations for inspection.

DOHMH officials stated that it is difficult to target operations for inspection, because it is not always possible to determine where the operations will be on any given day. We acknowledge this difficulty, but note that the most difficult-to-locate vendors can be contacted by phone or mail and asked to disclose their usual locations. While it may not be possible to track down every mobile food vending operation each and every year, the percentage of operations that receive at least one unannounced inspection a year could be significantly increased if uninspected vendors were targeted for inspection. We further note that, if certain operations were targeted for inspection, follow-up inspections could be performed to determine whether serious problems had been corrected. As is noted in the section of this report entitled *Vendors with Multiple and Repeated Violations*, many vendors with serious violations receive only the one inspection that identifies the violations, and are not inspected again that year.

We therefore recommend that targeted inspections be incorporated into the process used by DOHMH to plan operational inspections. As part of this process, DOHMH should monitor the inspection status of each mobile food vending operation (as indicated by an active permit), and attempt to perform at least one unannounced inspection a year at each of these operations. DOHMH should also perform follow-up inspections at vending operations with seriously deficient food handling practices.

While operational inspections are not required by law or regulation, they address a critical public need. We note that DOHMH inspections of restaurants and other food service establishments are also not required by law or regulation. Nonetheless, DOHMH seeks to inspect each establishment at least once a year. We believe a comparable degree of protection is no less appropriate for customers of mobile food vending operations. We acknowledge that the demands on DOHMH inspectors are great, as they must inspect both the mobile vendors and the food service establishments, and the mobile vendors can be difficult to locate. However, if an attempt is not made to provide annual unannounced inspections to all mobile food vending operations, many of the operations will continue to be uninspected for long periods of time.

We further note that, if DOHMH's process for planning and monitoring operational inspections were formalized and systematized as we recommend, mobile operations would be less likely to receive an excessive number of inspections. As is shown by the preceding table, some of the year-round operations were repeatedly inspected during the two-year period. For example, 143 of the operations were inspected ten or more times during the period, including one operation that was inspected a total of 24 times during the 24-month period. We note that 18 of the 24 inspections found no violations. While some of the operations may have needed to be inspected repeatedly because of complaints, other operations may have been inspected needlessly. If the inspection scheduling process were systematized, there would be greater assurance that DOHMH's inspection resources were optimally deployed.

Recommendations

1. Monitor the inspection status of each mobile food vending operation (as indicated by an active permit), and attempt to perform at least one unannounced inspection a year at each of these operations.
2. If an operational inspection identifies seriously deficient food handling practices at a mobile food vending operation, attempt to perform a follow-up inspection of the operation within the same year or season

RESPONSE TO COMPLAINTS

DOHMH receives more than 300 complaints a year about mobile food vendors. Even though some complaints are more serious than others, and suggest potential hazards to public health, DOHMH does not properly prioritize the complaints on the basis of their threat to public health. We determined that many complaints were not investigated in a timely manner, including complaints that appeared to relate to potentially hazardous conditions. We recommend that complaints be properly prioritized on the basis of risk, and complaint investigations be monitored more closely.

Complaints about mobile food vending operations are directed to DOHMH's Call Center. According to DOHMH officials, the complaints should be classified and prioritized as follows: priority 1 complaints are considered an immediate public health hazard and should be investigated within 24 hours; priority 2 complaints are considered serious and should be investigated within 72 hours; and priority 3 complaints are considered routine and may be investigated as resources allow.

Complaints are logged in, recorded and classified by Call Center staff. If a complaint is investigated, the investigation is performed by an inspector from DOHMH's Office of Field Operations/Inspections, who conducts an operational inspection in response to the complaint. The date of this investigation is also recorded in the complaint log. The procedures relating to complaints are largely informal; they are not contained in operating manuals or otherwise documented for DOHMH staff.

To determine whether complaints are classified and investigated in accordance with DOHMH procedures, we reviewed the complaints logged in by Call Center staff for the period July 1, 1999 through June 8, 2002. In this period of just over 35 months, a total of 936 complaints were logged in, an average of nearly 27 complaints a month or about 321 complaints a year. We noted that all of the complaints were classified; however, they were not classified in accordance with the procedures explained by DOHMH officials. No complaint about mobile food vendors was classified as priority 1, regardless of the potential threat to public health and safety.

As a result of the process that is actually used by DOHMH in classifying and prioritizing complaints, unsanitary conditions that threaten public health and safety may not be corrected in a timely manner. For example, we identified 104 complaints that appeared to indicate potential public health hazards (such as spoiled or contaminated food, or children getting sick), yet were not classified as priority 1. We note that 37 of these complaints were classified as priority 2, while 67 were classified as priority 3 (may be investigated as resources allow). In addition to assigning all these complaints a lesser priority than warranted, we found 31 instances where these potentially serious complaints were not investigated within 30 days, and some of the complaints appeared to be substantiated when they were investigated.

Following are examples of some of the potentially serious complaints that were not investigated in a timely manner:

- It took 152 days to investigate a complaint stating that parts of cockroaches were found inside a bagel with cream cheese.
- It took 105 days to investigate a complaint stating that a vendor who may have lacked a license was selling spoiled chicken on moldy bread.
- It took 61 days to investigate a complaint stating that a vendor was urinating in a jar under his apron and then selling hot dogs.

Overall, we determined that many of the complaints were not investigated in a timely manner. Of the 936 complaints received by DOHMH between July 1, 1999 and June 8, 2002, 638 were classified as priority 3, 298 were classified as priority 2, and none was classified as priority 1. According to DOHMH records:

- 154 of the 638 priority 3 complaints (24 percent) were not investigated within 30 days, including 109 complaints (17 percent) that were not investigated within 60 days,
- 254 of the 298 priority 2 complaints (85 percent) were not investigated within 30 days. In fact, 50 of the 298 complaints (17 percent) were not investigated within 30 days, including 32 complaints (11 percent) that were not investigated within 60 days, and

- 39 of the 46 complaints that had yet to be investigated as of June 8, 2002 were more than one year old. Several of these uninvestigated, year-old complaints appeared to be serious. For example, one complaint stated that rotten hot dogs were being sold by a vendor without a permit, and another complaint stated that the vendor's cart was filthy and infested with rats.

When investigations are delayed, the vendor is harder to locate and the matter to be investigated may no longer be able to be investigated (such as spoiled food that has been sold). In fact, since mobile food vendors can change locations, any delay can lessen the likelihood of finding and inspecting the vendor that is the subject of the complaint. To provide better assurance that immediate attention will be given to potentially hazardous conditions, we recommend that complaints be classified and prioritized on the basis of their risk to public health, and the timeliness of all complaint investigations be actively monitored. If it is determined that a complaint has not been investigated within the expected timeframe, immediate corrective action should be taken. We also recommend that the procedures for classifying and prioritizing complaints be formalized and distributed to the appropriate staff.

Recommendations

3. Classify and prioritize complaints about mobile food vendors on the basis of their risk to public health. Develop written procedures for this process and distribute the procedures to the appropriate staff.
4. Develop a system for tracking the timeliness of complaint investigations, and take immediate corrective action when it is determined that a complaint has not been investigated within the expected timeframe.

VENDORS WITH MULTIPLE AND REPEATED VIOLATIONS

DOHMH has the legal authority to suspend or revoke the license/permit of mobile food vendors who violate certain laws and regulations. We found indications DOHMH may not have made sufficient use of this authority, as dozens of vendors were repeatedly cited for serious food handling violations, yet were allowed to continue operating. DOHMH officials stated that they prefer to try to correct such problems and not put vendors out of business. In light of the potential hazards to public health and the persistence of the violations on the part of many of the vendors, we question whether the approach taken by DOHMH is appropriate.

DOHMH performs inspections of mobile food vendors to determine whether the vendors are in compliance with various laws and regulations. A vendor who is not in compliance may be cited for one or more violations. Violators may be fined, and if the violations are serious enough, the license and/or permit of the vendor may be suspended, revoked or designated for non-renewal.

These penalties (suspension, revocation or designation for non-renewal) are imposed by DOHMH in accordance with State and City laws. According to these laws, the penalties may be imposed at the discretion of DOHMH. DOHMH officials stated that they use their judgment when deciding whether or not to impose these penalties. Accordingly, they have not developed written criteria for determining when licenses/permits of mobile food vendors with serious, multiple or frequent violations should be suspended, revoked or designated for non-renewal. They further stated that it is their policy to try to correct problems, not put vendors out of business. Consequently, they suspend and revoke the licenses and permits of only the most egregious offenders. During the two years ended May 31, 2002, a total of 66 vendors had their licenses suspended, revoked or designated for non-renewal.

To determine whether DOHMH made sufficient use of its authority to impose these penalties, we examined the extent to

which vendors with serious, multiple and/or frequent violations were allowed to continue operating. To make this determination, we analyzed the results of the inspections performed during the two years ended May 31, 2002, as recorded on DOHMH's FOCUS system. These inspection results included the date of the inspection and the total number of violations identified by the inspection. The violations were also classified by DOHMH as either critical or general. Many, but not all, of the violations classified as critical are food handling violations that constitute a public health hazard and must be corrected immediately (such as failure to cook or chill food at the required temperatures, or failure to maintain certain standards of sanitation).

We found indications DOHMH may not have made sufficient use of its authority to penalize violators. In particular, dozens of vendors were repeatedly cited for serious violations during the two-year period, yet were allowed by DOHMH to continue operating. For example, 177 vendors were cited for four or more critical violations on four or more separate inspections, including 44 vendors who were cited for ten or more critical violations, and one vendor who was cited for 29 critical violations on 16 different inspections during the two-year period. None of these vendors had their licenses or permits suspended, revoked or designated for non-renewal. The 177 vendors were cited for a total of 1,446 critical violations during the two-year period, an average of 8.2 critical violations per vendor.

We also identified 257 vendors who were cited for at least one critical violation on every operational inspection they received during the two-year period. Each of these vendors received at least two operational inspections during the two-year period, and three received as many as eight. For example, the three vendors received eight operational inspections during the period, and were cited for least one critical violation in every one of these inspections. (An additional 619 vendors received at least one critical violation on their only operational inspection during the two-year period; if these vendors had received additional inspections, they also might have been identified as persistent violators. However, as was previously noted in the section of this report entitled *Inspection Coverage*, follow-up inspections are not routinely performed to determine whether serious problems have been corrected.)

We note that many vendors were able to comply fully with the laws and regulations, as they were not cited for any violations (either critical or general) in the two-year period. Specifically, in 4,991 of the 9,821 operational inspections that were performed during the period, no violations were identified, and 899 of the 3,329 vendors (27 percent) who received operational inspections during the period were not cited for any violations (either critical or general). When the performance of these vendors is compared to the performance of the persistent violators, the performance of the persistent violators is even more alarming.

DOHMH officials told us that the licenses/permits of these persistent violators were not suspended, revoked or designated for non-renewal because it is their policy to try to correct problems, not put the vendor out of business. While we acknowledge that the interests of the vendor must be taken into account and care must be taken in the application of these penalties, the interests of the public also must be taken into account and we question whether these interests are adequately protected when vendors repeatedly cited for critical violations are allowed to continue to operate. We also question the extent to which problems are being corrected, when so many vendors are repeatedly cited for serious violations in inspection after inspection. We note that, if persistent violators were subject to strong penalties more often, there would be more incentive for noncompliant vendors to improve their performance. It should also be noted that, since the number of permits is limited, the expulsion of persistent violators would create openings that might be filled by vendors better able to comply with requirements.

Recommendation

5. Develop written criteria for determining when the licenses/permits of mobile food vendors with serious, multiple or frequent violations should be suspended, revoked or designated for nonrenewal, and apply the criteria consistently.

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September 17, 2003

Kevin M. McClune, Audit Director
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Dear Mr. McClune:

The Department of Health and Mental Hygiene (the Department) has received and reviewed the Oversight of Mobile Food Vendors draft report. I have attached a detailed response to this letter.

Enforcing the regulations that govern mobile food vending presents some extraordinary challenges. The most basic challenge is locating them for operational inspections. Vendors are not required to vend from any one spot. So while some vendors have staked out fixed locations, many more move around following the business. Additionally, there are multiple reasons why a vendor may not decide to work on a given day. Unlike a food service establishment, if a vendor does not work, it is unlikely the cart will be in operation.

One of the major issues raised by the report is the issue of how the Department finds and carries out operational inspections. The auditors recommend at least one operational inspection a year and suggest that we contact permit holders to find out where and when they will be operating. While there is no mandate to perform annual field inspections, the Department's intent is to perform a field inspection for each permitted cart actually operating. Contacting vendors would be expensive and impractical. Even if this were logistically feasible, it would not guarantee a successful inspection of an operation because the vendor is not obligated to work any particular day or vend from any particular location. It also is important to note that many seasonal permits are issued to ice cream vendors, who frequently relocate to new areas and present a very low risk due to the nature of their pre-packaged product.

The Department has determined that a geographic approach to operational inspections is the most efficient and effective means to find and inspect vendor operations, having tried the approach of locating individual vendors in the past. In the geographic approach, the City is divided into sectors and inspectors are sent to a sector to inspect the mobile food vendors

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operating in that sector approximately every eight weeks. Assigning geographic areas for inspections assures we will inspect the vendors that are operating; by focusing on the most heavily populated areas, we minimize the risk to the most people. Often, this is done in conjunction with the Police Department and Department of Sanitation as a sweep of an area, so that illegal carts may be confiscated and improperly prepared food may be discarded.

During the period defined by the scope of this audit, the Department participated in more than 200 sweeps and closed or confiscated 428 illegal operations. Another area of criticism pertained to how the Department tracks and follows-up on complaints. We are working on improving our tracking methods and are in the process of developing a database to assist us. Our procedures for follow-up, however, are appropriate. The Bureau of Food Safety and Community Sanitation (BFSCS), which is responsible for mobile food vending, downloads all mobile food vending complaints from the agency's Call Center complaint database once a week. All complaints are then assigned to an inspector who will attempt to find all carts in a given sector when visiting it. Information from the complaint is used to locate the vendor. As with routine operational inspections, the same challenges of locating the vendor are borne by this process.

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Finally, the audit recommends a more aggressive approach with vendors with histories of multiple violations. This would be desirable, but the audit understates the difficulty in revoking or suspending licenses. It is a labor intensive process that requires sustained findings of violations by the Environmental Control Board (ECB), followed by hearings at the Office of Administrative Trials and Hearings (OATH). Currently, our General Counsel receives a periodic list of the worst offenders from the ECB and pursues as many cases as resources will permit. During the period defined in the scope of the audit, the Department had more than 90 cases in which OATH revoked or suspended a license or permit.

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The Department is committed to assuring public health and safety and will continue to explore new technologies and procedures that will make its practices more efficient, particularly at a time when our resources are stretched thin. 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) 788-4757.

Sincerely,



Isaac Weisfuse, M.D., M.P.H.
Acting Commissioner

* See State Comptroller's Notes, Appendix C

**New York City Department of Health and Mental Hygiene
Response to Draft Audit Report by the
New York State Office of the State Comptroller
Oversight of Mobile Food Vendors**

(Italicized Sections are quotations from the Draft Audit Report)

1. *The number of regular year-round permits and the number of seasonal permits (April through October) are limited to 3,100 and 1,000, respectively. At the time of our audit, about 10,000 vendors were licensed (permits may be shared by more than one vendor).*

Permits may not be shared. They are issued to one person or entity, who holds the permit, but multiple vendors may work on a permitted cart.

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AUDIT OBSERVATIONS AND CONCLUSIONS

2. *We identified serious weaknesses in the practices used by DOHMH in performing inspections of mobile food vendors, investigating complaints about the vendors, and penalizing vendors who repeatedly commit critical violations. To strengthen the protection provided to the public by DOHMH, we recommend that a number of improvements be made in the agency's practices and procedures.*

As the auditors never accompanied a Bureau of Food Safety and Community Sanitation (BFSCS) public health sanitarian on a field inspection, they are not qualified to comment on "weaknesses in practices...in performing inspections." There are no other statements in the report that refer to "practices" in performing an inspection.

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3. *In light of the high percentage of mobile food vending operations not receiving at least one unannounced inspection a year, we believe changes are needed in the informal process used by DOHMH to plan these inspections. We recommend that DOHMH formally monitor the inspection status of each mobile food vending operation, and attempt to perform at least one unannounced inspection a year at each of these operations.*

While the Department has no mandate to perform field inspections of mobile food vendors and their carts, it attempts to perform a field inspection for each cart operating during the course of year. As a matter of practice, the BFSCS approaches the challenge of inspecting mobile food vending by dividing the City into geographical areas and assigning Public Health Sanitarians (inspectors) to those areas to inspect each mobile food vending cart operating within that area. Each area is revisited approximately every eight weeks. This is a formal plan and is formally monitored. It is an approach that is best suited for vendors that are not always in fixed locations and may not be operating every day.

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Additionally, the Department targets areas of the city that traditionally support a high level of mobile food vending activity, which varies based on the time of year. In so doing, it is able to focus on vending operations that are the most active and serving the most people. It would be fiscally irresponsible to expend the substantial and additional resources that would be needed to locate every vendor during the course of the year, particularly when the public health risk is not substantiated.

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4. DOHMH receives more than 300 complaints a year about mobile food vendors. Even though some complaints are more serious than others, and suggest potential hazards to public health, DOHMH does not properly prioritize the complaints on the basis of their threat to public health. We determined that many complaints were not investigated in a timely manner, including complaints that appeared to relate to potentially hazardous conditions. In fact, nearly one-quarter of the complaints phoned in over a 35-month period were not investigated within 30 days and some were not investigated at all. For example, an individual reported that parts of cockroaches were found inside the food sold by a vendor, but the complaint was not investigated for nearly five months. We recommend that complaints be properly prioritized on the basis of risk, and complaint investigations be monitored more closely. (See pp. 10-12)

BFSCS data for FY 2002 indicate that only 55% of mobile food vending complaint inspections resulted in a finding. The relatively low yield on complaint inspections suggests that resources would be better expended on higher risk areas of inspection need. It is important to note that the time period covered by the audit includes the months following the attack on the World Trade Center. The BFSCS was heavily involved in the rescue and recovery operation and a good many of its staff were diverted from their regular duties for three to nine months in order to meet this extraordinary need. However, we agree that the system for tracking these complaint inspections could be strengthened.

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5. We found indications DOHMH may not have made sufficient use of this authority, as dozens of vendors were repeatedly cited for serious food handling violations, yet were allowed to continue operating. For example, during the two years ended May 31, 2002, 177 of these persistent violators were cited for a total of 1,446 critical violations, an average of 8.2 critical violations per vendor, including one vendor who was cited for 29 critical violations on 16 different inspections, DOHMH officials stated that they prefer to try to correct such problems and not put the vendors out of business. In light of the potential hazards to public health and the persistence of the violations on the part of many of the vendors, we question whether the approach taken by DOHMH is appropriate. We recommend DOHMH develop written criteria for determining when licenses should be suspended or revoked. (See pp. 13-15)

The revocation, suspension or denying renewal of licenses or permits is a complex and labor intensive legal matter. Each case must be adjudicated at the Environmental Control Board (ECB), from which the Department receives periodic printouts of licensees or permit holders with the greatest number of violations over a two year period. The Department prioritizes vendors with the greatest numbers of violations and cases are then brought to the Office of Administrative Hearings and Trials (OATH). More than 90 licenses or permits were revoked or suspended during the timeframe covered by the audit.

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INTRODUCTION

Background

Audit Scope, Objectives and Methodology

6. We audited selected aspects of DOHMH's oversight of mobile food vendors for the period

* See State Comptroller's Notes, Appendix C

July 1, 1999 through April 30, 2003. The primary objectives of our performance audit were to determine whether (1) inspections were performed in a manner that provided adequate coverage, (2) complaints were investigated in a timely manner, and (3) violations identified during inspections were addressed in an appropriate manner.

The auditors never accompanied a PHS on a field inspection and otherwise did not look into the third objective listed.

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7. Except as discussed 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 operations of DOHMH that are included in our audit scope. Further, these standards require that we understand DOHMH's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations that are 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 that our audit provides a reasonable basis for our findings, conclusions and recommendations.

The auditors did not consider public health risks and the Bureau's or Department's other activities in light of an overall budget and a need to judiciously allocate resources.

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INSPECTION COVERAGE

8. The food handling practices of mobile food vendors are best assessed in unannounced inspections. However, we found that most seasonal operations, and about half the year-round operations, do not receive such an inspection on an annual basis. At the same time, some operations receive several inspections a year. In light of the high percentage of mobile food vending operations not receiving at least one unannounced inspection a year, we believe changes are needed in the informal process used by DOHMH to plan these inspections. We recommend that DOHMH formally monitor the inspection status of each mobile food vending operation, and attempt to perform at least one unannounced inspection a year at each of these operations.

Although a permit may be issued, there is no requirement that a permittee operate a cart during the period covered by the permit. BFSCS experience has found that many permit holders do not operate carts. Permittees would have to be surveyed to assess their level of activity over the time frames evaluated to place the statements in the preceding paragraph into context.

9. Most operational inspections are geographical inspections, which are intended to provide adequate coverage throughout New York City. DOHMH officials stated that these inspections are conducted as resources permit. A formal plan is not developed in which specific vendors are targeted for inspection. Rather, DOHMH attempts to perform a batch of unannounced inspections every six to eight weeks in each of the 60 sectors. A sector is scheduled for inspection when enough inspectors are available to cover the sector. On the days selected for these inspections, the inspectors attempt to inspect as many vendors as possible by going to the areas in the sector that are most likely to be frequented by vendors. To determine whether this process provides adequate coverage to the many mobile food vendors that operate throughout New York City, we

* See State Comptroller's Notes, Appendix C

analyzed the coverage provided during the two-year period June 1, 2000 through May 31, 2002.

As previously mentioned, the BFSCS targets its resources so that the most active vendors are inspected at least once, but frequently on multiple occasions. The geographic scheduling of inspections is a formal, risk based plan that considers the mobile nature of mobile food vending. To protect the public against risks associated with purchases from mobile food vendors, it is appropriate to focus on those vendors actually in operation in places with large numbers of customers. The BFSCS also dedicated a significant portion of its resources to activities related to the aftermath of the terrorist attack on the World Trade Center destruction from September 11, 2001 through June 2002.

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10. We found that the inspection coverage provided to many of the vending operations may not have been adequate, as 29 percent of the year-round operations (719 of 2,481) received no operational inspections during the two-year period. We further determined that an additional 18 percent of the year-round operations (437 of 2,481) received only one operational inspection during the two-year period. Thus, only about half of the year-round operations (1,325 of 2,481 or 53 percent) received two or more operational inspections, indicating they were inspected for food handling practices an average of at least once a year. We also determined that 84 percent of the seasonal operations (531 of 635) received no operational inspections during the one full season that we examined. The results of our analysis follow:

Again, the BFSCS targets its resources so that inspections focus on vendors who are operating regularly in areas with a high concentration of vending operations that are serving a great many people (parks, shopping districts, etc.). The auditors failed to report on the instances of inspectors shutting down or seizing illegal vending operations, curtailing the risks of the highest risk vendors. During the audit period, the BFSCS, in conjunction with the Police and Sanitation Departments closed and/or confiscated 428 illegal vending operations.

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Many seasonal permits are issued to ice cream vendors, who move from location to location frequently. They are engaged in a low risk activity of dispensing pre-packaged products and the BFSCS has determined its resources are better spent tracking down illegal vendors operating in and around many of New York City's parks and tourist attractions.

11. DOHMH officials stated that it is difficult to target operations for inspection, because it is not always possible to determine where the operations will be on any given day. We acknowledge this difficulty, but note that the most difficult-to-locate vendors can be contacted by phone or mail and asked to disclose their usual locations. While it may not be possible to track down every mobile food vending operation each and every year, the percentage of operations that receive at least one unannounced inspection a year could be significantly increased if uninspected vendors were targeted for inspection. We further note that, if certain operations were targeted for inspection, follow-up inspections could be performed to determine whether serious problems had been corrected. As is noted in the section of this report entitled Vendors with Multiple and Repeated Violations, many vendors with serious violations receive only the one inspection that identifies the violations, and are not inspected again that year.

Contacting vendors to ascertain where they are operating would not require the vendor to give us accurate information. There is no mandate for them to inform the Department where they are operating and given the BFSCS' experience with the industry, we have determined that it would

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* See State Comptroller's Notes, Appendix C

not be a valuable allocation of resources. Permitted vendors may hire licensed vendors to work their cart and may not know their exact location. Additionally, many vendors change their location to follow the business. A vendor may determine that it is advantageous to move a cart to the vicinity of a soccer game at a local park one afternoon and later move to the subway station during rush hour. The BFSC is unaware of any jurisdictions that call vendors but would be interested to find data that suggests this is a more successful approach.

12. We therefore recommend that targeted inspections be incorporated into the process used by DOHMH to plan operational inspections. As part of this process, DOHMH should monitor the inspection status of each mobile food vending operation (as indicated by an active permit), and attempt to perform at least one unannounced inspection a year at each of these operations. DOHMH should also perform follow-up inspections at vending operations with seriously deficient food handling practices.

While operational inspections are not required by law or regulation, they address a critical public need. We note that DOHMH inspections of restaurants and other food service establishments are also not required by law or regulation. Nonetheless, DOHMH seeks to inspect each establishment at least once a year. We believe a comparable degree of protection is no less appropriate for customers of mobile food vending operations. We acknowledge that the demands on DOHMH inspectors are great, as they must inspect both the mobile vendors and the food service establishments, and the mobile vendors can be difficult to locate. However, if an attempt is not made to provide annual unannounced inspections to all mobile food vending operations, many of the operations will continue to be uninspected for long periods of time.

We further note that, if DOHMH's process for planning and monitoring operational inspections were formalized and systematized as we recommend, mobile operations would be less likely to receive an excessive number of inspections. As is shown by the preceding table, some of the year-round operations were repeatedly inspected during the two-year period. For example, 143 of the operations were inspected ten or more times during the period, including one operation that was inspected a total of 24 times during the 24-month period. We note that 18 of the 24 inspections found no violations. While some of the operations may have needed to be inspected repeatedly because of complaints, other operations may have been inspected needlessly. If the inspection scheduling process were systematized, there would be greater assurance that DOHMH's inspection resources were optimally deployed.

Our approach is targeted, formal and designed to both inspect legal vending operations in areas where there is a high concentration of vending and shut down illegal vending operations, often found in those same areas. Carts with multiple inspections represent the carts that are operating regularly, serving the most people and requiring the most scrutiny. Any inspection of these carts should not be considered needless, even if the inspection does not result in a violation.

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Additionally, violations found during a mobile food vending inspection must be corrected at the time of the inspection. Follow-up inspections are scheduled and inspectors return to the location at which the failing inspection occurred, often making multiple inspection attempts. If the cart does not receive a follow-up inspection, it likely that it is no longer operating at a previously known location.

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* See State Comptroller's Notes, Appendix C

The DOHMH believe the auditors' conclusion is incorrect. Inspecting all vendors, rather than focusing on high volume operations that present the greatest risk to the public, would not be an optimal allocation of resources.

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13. Recommendations

- 1. *Monitor the inspection status of each mobile food vending operation (as indicated by an active permit), and attempt to perform at least one unannounced inspection a year at each of these operations.*

While we agree with the concept, our experience tells us that tracking down specific vendors who require an operational inspection is not practical or an efficient use of resources.

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- 2. *If an operational inspection identifies seriously deficient food handling practices at a mobile food vending operation, attempt to perform a follow-up inspection of the operation within the same year or season.*

Inspectors assigned to a geographic area are given the previous inspection reports for any vendor who had a failing inspection in that area during previous visits to it. As mentioned, each area is visited approximately once in an eight week period. However, locating specific vendors poses a significant challenge.

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RESPONSE TO COMPLAINTS

14. Complaints are logged in, recorded and classified by Call Center staff. If a complaint is investigated, the investigation is performed by an inspector from DOHMH's Office of Field Operations/Inspections, who conducts an operational inspection in response to the complaint. The date of this investigation is also recorded in the complaint log. The procedures relating to complaints are informal; they are not contained in operating manuals or otherwise documented for DOHMH staff.

Complaints procedures are written and the auditors were provided with a copy of the BFSCS'S "Preoperational, Operational, Complaint And Inter-Agency Mobile Food Vending Unit Inspections Protocol." Additionally, the Division of Environmental Health has documented response times to complaints.

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15. To determine whether complaints are classified and investigated in accordance with DOHMH procedures, we reviewed the complaints logged in by Call Center staff for the period July 1, 1999 through June 8, 2002. In this period of just over 35 months, a total of 936 complaints were logged in, an average of nearly 27 complaints a month or about 321 complaints a year. We noted that all of the complaints were classified; however, they were not classified in accordance with the procedures explained by DOHMH officials. No complaint about mobile food vendors was classified as priority 1, regardless of the potential threat to public health and safety.

Any complaint of someone becoming ill, priority "1" complaints, would be forwarded to the Office of Environmental Investigations for food borne illness investigation.

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16. Recommendations

* See State Comptroller's Notes, Appendix C

3. *Classify and prioritize complaints about mobile food vendors on the basis of their risk to public health. Develop written procedures for this process and distribute the procedures to the appropriate staff.*

The DOHMH has implemented the activities described in these recommendations, although the auditors may disagree with the timeframes established for follow-up.

4. *Develop a system for tracking the timeliness of complaint investigations, and take immediate corrective action when it is determined that a complaint has not been investigated within the expected timeframe.*

Complaints are downloaded from the Department's Call Center database once a week and assigned for inspections. However, locating specific vendors for a complaint inspection poses the same challenge as finding inspectors for operational inspections. The department is currently working to develop a new database that will improve our ability to track complaint inspections.

VENDORS WITH MULTIPLE AND REPEATED VIOLATIONS

17. We found indications DOHMH may not have made sufficient use of its authority to penalize violators. In particular, dozens of vendors were repeatedly cited for serious violations during the two-year period, yet were allowed by DOHMH to continue operating. For example, 177 vendors were cited for four or more critical violations on four or more separate inspections, including 44 vendors who were cited for ten or more critical violations, and one vendor who was cited for 29 critical violations on 16 different inspections during the two-year period. None of these vendors had their licenses or permits suspended, revoked or designated for non-renewal. The 177 vendors were cited for a total of 1,446 critical violations during the two-year period, an average of 8.2 critical violations per vendor.

Please see the response to statement number 5.

18. DOHMH officials told us that the licenses/permits of these persistent violators were not suspended, revoked or designated for non-renewal because it is their policy to try to correct problems, not put the vendor out of business. While we acknowledge that the interests of the vendor must be taken into account and care must be taken in the application of these penalties, the interests of the public also must be taken into account and we question whether these interests are adequately protected when vendors repeatedly cited for critical violations are allowed to continue to operate. We also question the extent to which problems are being corrected, when so many vendors are repeatedly cited for serious violations in inspection after inspection. We note that, if persistent violators were subject to strong penalties more often, there would be more incentive for noncompliant vendors to improve their performance. It should also be noted that, since the number of permits is limited, the expulsion of persistent violators would create openings that might be filled by vendors better able to comply with requirements.

The DOHMH presented the Board of Health with a suggested amendment to New York City Health Code Section 81.05 that will require every licensed mobile food vendor to take and pass a course specifically designed for mobile vending on food protection before receiving a new license. The amendment passed and will go into effect on January 1, 2004. This new requirement will serve the objective of food safety better than fining and license or permit

* Note 3

revocation on the scale suggested by the auditors. It is an approach that takes into consideration the practices of mobile food vendors, the mobility of carts, the vastness of the city and the inherent difficulties in finding every mobile food vending cart while it is operating and the likelihood that more revoked or suspended permits and license would lead to more illegal vending.

Recommendation

5. *Develop written criteria for determining when the licenses/permits of mobile food vendors with serious, multiple or frequent violations should be suspended, revoked or designated for nonrenewal, and apply the criteria consistently.*

The Department will review its criteria for pursuing license or permit revocations or suspensions and create a procedure document.

State Comptroller's Notes

1. We acknowledge in our report that operational inspections are not required by law or regulation. We also recognize that, in fulfilling its responsibilities to protect the public's health and safety, it is DOHMH's intent to perform an annual field inspection of each mobile food vending cart that is permitted and operating. However, as we document in our report, DOHMH did not conduct an operational inspection of 29 percent of the year-round mobile food vending operations during the two-year period June 1, 2000 through May 31, 2002. An additional 18 percent of year-round mobile food vending operations received only one operational inspection during the two-year period. Similarly, 84 percent of mobile food vendors with seasonal permits were not inspected during the period April 1, 2001 through October 31, 2001. Hence, we recommend that DOHMH should monitor the inspection status of each mobile food vendor and attempt to perform at least one operational inspection per year at each of these operations. While we suggest in our report that DOHMH could contact vendors by phone or mail to determine their locations, we do not recommend a specific means DOHMH should use to increase its inspection coverage of mobile food vendors. We recognize that DOHMH officials must allocate their resources in a manner that maximizes accomplishment of the department's public health mission. However, given our findings in this area, including the significant number of vendors who received 5 or more inspections in the two-year period, it appears that DOHMH should reassess the process by which inspections are scheduled to increase the percentage of vendors inspected.
2. As documented in our report, we identified deficiencies in the process by which DOHMH classifies complaints and with the timeliness of investigation of complaints. Complaints indicative of a public health hazard were not classified as such and not immediately investigated, and other complaints were not investigated within established timeframes.
3. Our audit did not assess the actual process for revoking or suspending licenses. We analyzed vendors with multiple and repeated violations and concluded that DOHMH may not have made sufficient use of its legal authority to suspend or revoke the licenses and permits of mobile food vendors who violate certain laws and regulations. For example, we identified 177 vendors who were cited for four or more critical violations on four or more separate inspections, including 44 vendors who were cited for ten or more critical violations, and one vendor who was cited for 29 critical violations on 16 different inspections during the two years ended May 31, 2002. None of these vendors had their licenses or permits suspended, revoked or designated for non-renewal. Since DOHMH officials acknowledge that our recommendation for a more aggressive approach toward vendors with histories of multiple violations is desirable, they must determine the best way to achieve the desired result.
4. We modified our report accordingly.

5. We clarified our report to state that we identified serious weaknesses in DOHMH's process for scheduling inspections of mobile food vendors.
6. We modified our report to recognize that the process used by DOHMH to plan inspections is not informal. However, as stated in the Inspection Coverage section of our report, a formal plan is not developed in which specific vendors are targeted for inspection.
7. We clarified our report to state that our third objective was to determine whether DOHMH officials took appropriate legal action against vendors with multiple and repeated violations.
8. As stated in our report, we assessed those DOHMH operations that are included in our audit scope. In this case, our audit scope addressed DOHMH's oversight of mobile food vendors. It is the responsibility of DOHMH management to assess organizational risks and allocate resources accordingly.
9. As stated in State Comptroller's Note 1, while we suggest in our report that DOHMH could contact vendors by phone or mail to determine their locations, we do not recommend a specific means DOHMH should use to increase its inspection coverage of mobile food vendors. We recognize that DOHMH officials must allocate their resources in a manner that maximizes accomplishment of the department's public health mission. However, given the significant number of vendors who were not inspected and the significant number of vendors who received 5 or more inspections in the two-year period, it appears that DOHMH should reassess the process by which inspections are scheduled to increase the percentage of vendors inspected.
10. As stated in our report, 29 percent of the year-round mobile food vending operations did not receive an operational inspection during the two-year period ended May 31, 2002. During the same period, some of the year-round operations were repeatedly inspected. For example, 143 of the operations were inspected 10 or more times. Although DOHMH officials state that any inspection of mobile food vending carts should not be considered needless, the significant number of carts that received no inspections coupled with the significant number of carts that received multiple inspections suggest that DOHMH officials should reassess the process by which inspections are scheduled.
11. DOHMH's assertion that follow-up inspections are scheduled at the location where the failed inspection occurred is misleading. DOHMH's process is as follows: during the next round of geographically scheduled inspections, inspectors will look for carts with failed inspections. However, this process does not constitute a formal follow-up inspection procedure, because individual carts are not targeted for follow-up inspection. Consequently, the process does not assure that all carts that fail an inspection will be re-inspected.

12. We acknowledge that DOHMH's Preoperational, Operational, Complaint and Inter-Agency Mobile Food Vending Unit Inspections Protocol contains certain written complaint procedures. Hence, we have modified our report accordingly. However, the procedures are not detailed, and provide only the general steps to be followed in responding to a complaint (e.g., review, route, answer and conduct an inspection of the complaint). Additionally, as confirmed by a DOHMH official in writing during the course of our audit, "There is no written policy that requires a complaint to be followed up on with an inspection. There is however, an unwritten policy to respond to priority 1 complaints within 24 hours, priority 2 complaints within 72 hours and priority 3 complaints as resources allow."
13. According to DOHMH officials, it is their intent to perform an annual field inspection for each permitted cart actually operating. Based on our analysis of DOHMH's inspection coverage during the two years ended May 31, 2002, we found that 47 percent of all year-round mobile food vendors either were not inspected (29 percent) or received only one inspection (18 percent). These results lead to a conclusion that the current process used by DOHMH in scheduling inspections of mobile food vendors is not accomplishing the department's stated intent. Consequently, a reassessment of the current process seems warranted.
14. As stated in our report, none of the 936 complaints about the operations of mobile food vendors received during the period July 1, 1999 through June 8, 2002 was classified as priority 1, regardless of the potential threat to public health and safety. Among the 104 complaints we identified that appeared to indicate potential public health hazards were complaints of persons becoming ill (i.e., children getting sick).