

AUDIT REPORT



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

Audit on the Effectiveness of the Complaint Inspection Program for Food Establishments by the Department of Health and Mental Hygiene

MD04-103A

June 30, 2004



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office determined the effectiveness of the Department of Health and Mental Hygiene (DOHMH) Complaint Inspection Program for Food Establishments.

The results of our audit, which are presented in this report, have been discussed with DOHMH officials, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

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

Very truly yours,

A handwritten signature in cursive script that reads 'William C. Thompson, Jr.'.

William C. Thompson, Jr.

WCT/fh

Report: MD04-103A
Filed: June 30, 2004

Table of Contents

| | |
|--|----|
| AUDIT REPORT IN BRIEF | 1 |
| Audit Findings and Conclusions | 2 |
| Audit Recommendations | 2 |
| Agency Response | 3 |
| INTRODUCTION | 4 |
| Background | 4 |
| Objective | 5 |
| Scope and Methodology | 5 |
| Audit Scope Limitation | 8 |
| Discussion of Audit Results | 9 |
| FINDINGS AND RECOMMENDATIONS | 10 |
| Complaints Against Food Establishments Are Not All Followed Up | 10 |
| Complaints About Food Establishments Were Not All Followed Up In a Timely Manner | 15 |
| Many Food-Borne Illness Complaints Were Not Forwarded to the Office of Environmental Investigations | 19 |
| ADDENDUM | |
| Response from the Department of Health and Mental Hygiene | |

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

**Audit on the Effectiveness of the Complaint
Inspection Program for Food Establishments by the
Department of Health and Mental Hygiene**

MD04-103A

AUDIT REPORT IN BRIEF

This audit determined whether the Complaint Inspection Program of the Department of Health and Mental Hygiene (DOHMH) Bureau of Food Safety and Community Sanitation (BFSCS) effectively followed up on complaints against food establishments.

The Office of Customer Service (OCS), within BFSCS, is responsible for the Complaint Inspection Program. That program handles environmental-related complaints, including complaints against food establishments in the city.

During our audit scope period, complainants notified DOHMH about complaints against food establishments by calling the agency's Complaint Hotline (Call Center) 24 hours a day, seven days a week. The operator of the Call Center then recorded information on each complaint and the priority assigned to the complaint directly in the Call Center computer database.

Complaints were categorized by the Call Center as Priority One, Priority Two, and Priority Three. Priority One complaints included those of sewage and confirmed food poisoning. Priority Two complaints included those of alleged food poisoning, no hot or cold water, and improper handling of food. Priority Three complaints included operating without a permit; unsanitary conditions; the presence of roaches, flies, or rodents; or improper ventilation.

Complaints of alleged and confirmed food-borne illnesses were to be immediately forwarded by the Call Center to the Bureau of Environmental Sciences and Engineering's Office of Environmental Investigations (OEI) of DOHMH to be recorded in its automated database. OEI has the primary responsibility for the investigation and surveillance of all alleged and confirmed food-borne illness complaints. After OEI conducts its investigation, the food-borne illness complaints are referred to BFSCS for further follow up.

During Fiscal Year 2003, there were approximately 22,000 food establishments in the city. During that period, BFSCS received 4,743 complaints against approximately 3,808 food establishments. OEI received 642 food-borne illness complaints during Fiscal Year 2003.

DOHMH officials informed us that as of April 2004, the Call Center function regarding complaints against food establishments was taken over by the Citizen Service Center, at 311 (the city's new phone number for government information and services).

Audit Findings and Conclusions

The Complaint Inspection Program of BFSCS is ineffective in following up on complaints against food establishments, as follows:

- Of the 186 complaints in our sample during Fiscal Year 2003, 74 (40 percent) were not followed up by inspectors either by telephone calls or physical visits.
- Of the 112 complaints in our sample during Fiscal Year 2003 that were followed up, the time it took inspections to be conducted ranged from the same day to 344 days (almost a year) later.
- Of the 774 food-borne illness complaints recorded during Fiscal Year 2003, 342 (44 percent) were never forwarded to OEI to be investigated. Those complaints were sent directly to BFSCS.

Regarding our assessment of the inspection reports used in response to complaints, BFSCS did ensure that inspection reports were adequately filled out and that inspectors signed off to attest to the completeness of the data. We did not find that a particular inspector continually found complaints to be unfounded. In addition, most of the complaints were correctly prioritized.

Audit Recommendations

To address these issues, we make eight recommendations, the most significant of which are that BFSCS should:

- Establish formal procedures to govern the Complaint Inspection Program.
- Modify its database to better track the status of complaints and inspections in response to complaints.
- Establish the length of time it should take inspectors to follow up on complaints against food establishments, based on priority and risk to public health. The complaints should then be responded to within the predetermined time, and should be monitored.
- Ensure that all confirmed and alleged food-borne illness complaints that are received have first been forwarded to OEI for investigation.

Agency Response

The matters covered in this report were discussed with officials from DOHMH during and at the conclusion of this audit. A preliminary draft report was sent to officials from DOHMH and was discussed at an exit conference held on June 3, 2004. On June 8, 2004, we submitted a draft report to DOHMH officials with a request for comments. We received a written response from DOHMH on June 24, 2004, stating:

“The Department agrees with seven of the eight recommendations for improving our complaint handling procedures.

“The Bureau’s primary responsibility is to assure that all food service establishments (FSEs) are properly permitted and operating safely. The complaint program supplements this extensive effort.”

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

INTRODUCTION

Background

DOHMH conducts health and safety inspections to enforce the City health and State sanitary codes, protects public safety through an immediate response to emergent threats to public health, and provides programs to monitor, prevent, and control disease.

BFSCS of DOHMH is responsible for conducting inspections for the 17 regulatory programs within the Division of Environmental Health. These programs include the Mobile Food Vending Program, the Day Camp Inspection Program, the Window Falls Prevention Program, the Summer Feeding Surveillance Program, the Food Service Inspection Program, and the Complaint Inspection Program.

OCS, within BFSCS, is responsible for the Complaint Inspection Program. That program handles environmental-related complaints, including complaints against food establishments in the city.¹ This audit will focus on whether the Complaint Inspection Program is effective in following up on complaints against food establishments.

During our audit scope period, complainants could have notified DOHMH about complaints against food establishments by calling its Call Center 24 hours a day, seven days a week. Operators were on duty Monday through Friday, 8:00 a.m. to 4:45 p.m. Complainants could have left a voice-mail message at other times. A complainant could have also called the Citizen Service Center, at 311. The 311 operator would have forwarded the call to the Call Center. The operator of the Call Center should have recorded information on each complaint—such as the name and address of the food establishment, the allegation, the number assigned to the complaint for tracking purposes, and the priority assigned to the complaint—directly in the Call Center computer database.

Complaints were categorized by the Call Center as Priority One, Priority Two, and Priority Three. Priority One complaints would include those of sewage and confirmed food poisoning. Priority Two complaints would include those of alleged food poisoning, no hot or cold water, and improper handling of food—such as a worker handling food with bare hands or smoking, eating, or drinking in a food-preparation area. Priority Three complaints would include operating without a permit; unsanitary conditions such as filthy walls, ceilings, or floors; the presence of roaches, flies, or rodents; or improper ventilation.

BFSCS officials had read-only access to the Call Center computer database and were able to view and download complaints against food establishments into their own computer database.

¹ Food establishments are defined as places where food is prepared and provided for individual portion service directly to consumers, whether provided free of charge or sold, and whether consumption occurs on or off premises. This does not include establishments where food is manufactured or packaged for human consumption at another place. Restaurants, bakeries, pizzerias, coffee shops, and catering halls are all examples of food establishments.

Any inspections conducted in response to those complaints, and any routine inspections, should have been recorded and maintained by BFSCS on Focus, an automated database.

Complaints of alleged and confirmed food-borne illnesses should not have been immediately forwarded by the Call Center to BFSCS. Rather, they should have been forwarded to OEI to be recorded in its automated database. OEI has the primary responsibility for the investigation and surveillance of all alleged and confirmed food-borne illness complaints. If OEI suspects that there has been a food-borne illness and it is considered an outbreak (i.e., two or more people have become ill), OEI investigators are sent out to the food establishment. After OEI follows up on the food-borne illness complaint, it is referred to BFSCS for further follow up. OEI investigators are not sent out to food establishments if food-borne illness complaints do not constitute an outbreak or OEI investigators, after speaking with complainants, feel the complaints are not substantiated. Such complaints are referred to BFSCS for follow up and a sanitary inspection.

During Fiscal Year 2003, there were approximately 22,000 food establishments in the city. During that period, BFSCS received 4,743 complaints against approximately 3,808 food establishments about unsanitary conditions, mishandled food, rodents, alleged food poisoning, sewage, insects, lack of permits, and no water. OEI received 642 food-borne illness complaints during Fiscal Year 2003.

DOHMH officials informed us that as of April 2004, the Call Center function regarding complaints against food establishments was taken over by the Citizen Service Center, at 311.

Objective

The objective of the audit was to determine whether the Complaint Inspection Program of BFSCS effectively followed up on complaints against food establishments.

Scope and Methodology

The audit scope period was Fiscal Year 2003 (July 1, 2002, through June 30, 2003).

To obtain an understanding of recording and responding to complaints against food establishments, we interviewed officials from BFSCS, including the Assistant Commissioner, Executive Director, and Executive Deputy Director. We also interviewed the Director of OCS, the Director of the Call Center, and the Director of OEI. We reviewed the procedures through which the Call Center prioritizes different complaints against food establishments, and for the handling of alleged and confirmed food-borne illness complaints. To understand the regulations governing food establishments and the responsibilities of DOHMH, we reviewed Article 81 of the City Health Code and Subpart 14-1 of the State Sanitary Code. We also reviewed the 2001 Food Code of the United States Department of Health and Human Services Food and Drug Administration (FDA). In addition, we reviewed two audit reports issued on February 19, 2002

and December 18, 2003 by the Office of the State Comptroller, “Inspections of Food Service Establishments” and “Oversight of Mobile Food Vendors,” respectively.

We obtained from DOHMH (on disk) data pertaining to the 4,743 complaints recorded against food establishments during Fiscal Year 2003. We sorted the data by name and address of food establishment to obtain the number of food establishments that had received more than one complaint and the number of food establishments that received only one complaint.² The population of food establishments that received more than one complaint during Fiscal Year 2003 was 535 (corresponding with 1,296 complaints). The population of food establishments that received one complaint during Fiscal Year 2003 was 3,273. We then sorted the data by complaint date to determine the number of complaints made each day and whether complaints were recorded daily, including weekends and holidays.

For our sample testing, we randomly selected 58 food establishments (and the corresponding 146 complaints—eight from Priority One, 57 from Priority Two, and 81 from Priority Three) that had received more than one complaint, and 42 food establishments that had received only one complaint.³ (We randomly selected the 42 food establishments to include the following complaints: 14 from Priority One, 19 from Priority Two, and 9 from Priority Three, to ensure that the sample included the more significant complaints.)

The results of our testing, which were not projected, were sufficiently conclusive to provide a reasonable basis to satisfy our audit objective. We, therefore, decided not to expand our samples, which would have allowed us to project our results to the entire population.

We determined whether the complaints made against food establishments in our sample were correctly prioritized by the Call Center. To do so, we compared the priority assigned to the complaints in our sample to the priority that should have been assigned to the complaints according to the manual *DOHMH Bureau of Central Complaints and Information Electronic Complaint Processing System*, last updated on January 1, 1999.

We determined whether our sampled complaints were followed up. To do so, we obtained the history of inspections, maintained on Focus, performed for each food establishment in our sample and established whether the inspections were conducted in response to our sampled complaints or were conducted by the Food Service Inspection Program as part of its routine inspections. We determined whether any complaints were not followed up because

² We eliminated 174 complaints against food establishments from the population of 4,743 for testing purposes since the names of the food establishments were unknown. Thus, the total population of complaints against food establishments was reduced to 4,569.

³ We originally randomly selected 50 food establishments with more than one complaint and 50 food establishments with only one complaint (20 from Priority One, 20 from Priority Two, and 10 from Priority Three.) However, during the course of our review of the documents provided by BFSCS, 8 of the 50 food establishments that we identified as receiving only one complaint had actually received more than one complaint. Therefore, the sample numbers were adjusted to reflect 58 food establishments with more than one complaint and 42 with only one complaint (14 from Priority One, 19 from Priority Two, and 9 from Priority Three.)

inspectors were unable to gain access to the food establishments. If so, we then assessed whether the inspectors returned to the food establishments when they opened.

For complaints in our sample that were followed up, we requested the inspection reports to determine the results of the inspections, the dates of the inspections, and whether inspectors signed off to attest the completeness of the data. We sorted the complaint data by inspector names to determine whether a particular inspector continually found complaints to be unfounded. We compared the dates of the complaints to the dates of the inspections conducted to determine the number of days it took inspectors to follow up.

We determined whether all confirmed and alleged food-borne illness complaints were forwarded to OEI by the Call Center to be recorded and investigated. To do so, we reviewed the 4,743 complaints recorded by BFSCS during Fiscal Year 2003 and identified 774 complaints that were for food-borne illnesses. We then analyzed whether those complaints also appeared in the automated database that OEI maintains of food-borne illness complaints it had received and recorded during Fiscal Year 2003.

To compare BFSCS procedures for following up on complaints against food establishments to procedures used by other localities, we contacted Department of Health officials from 13 other areas in the United States to obtain an understanding of how they handled complaints against food establishments.⁴ We inquired whether there is a complaint hotline or an address for the general public to report a complaint; whether all complaints are followed up by either a physical inspection or telephone call; and whether there are time frames within which inspectors must follow up. Finally, we inquired about the frequency of the routine inspections of food establishments and whether different inspectors follow up on complaints and conduct routine inspections.

We conducted unannounced observations on April 14, 15, and 16, 2004, of 25 food establishments in our sample in which inspectors from BFSCS did not follow up on at least one of the multiple complaints that they each had received during Fiscal Year 2003. (We developed a checklist, using Article 81 of the City Health Code, Subpart 14-1 of the State Sanitary Code, and the 2001 Food Code of FDA, as a guide.) We were unable to actually observe two of the 25 food establishments since they were out of business at the time of our visits.

We established that the 23 food establishments had up-to-date permits to operate, and that the supervisors of food operations of the food establishments on duty during the times of our observations had Food Protection Certificates issued by DOHMH. We also ensured that food workers who prepared food wore caps, hats, or hairnets to minimize contact between hair and food and used proper barriers, such as utensils, sanitary gloves, or waxed paper, to eliminate bare hand contact with food. In addition, we made sure that rodents were not present; equipment such as refrigerators, stoves, utensils, and microwave ovens was in sanitary condition; and garbage was stored properly.

⁴ We contacted officials from Los Angeles County, CA; Florida; Fulton County, GA; Chicago, IL; Baltimore, MD; Newark, NJ; Trenton, NJ; Clark County, NV; Houston, TX; Travis County, TX; Arlington, VA; Nassau County, NY; and Suffolk County, NY.

This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, § 93, of the New York City Charter.

Audit Scope Limitation

As part of our audit, we obtained from DOHMH (on disk) data pertaining to the 4,743 complaints recorded against food establishments during Fiscal Year 2003. Upon our review, we found indications that the data may not be complete. Therefore, we cannot be certain that we have the entire population of complaints made against food establishments during Fiscal Year 2003.

For example, when we sorted the data by “complaint date” (one of the data fields), we found that there were no dates corresponding to weekends or holidays. Officials told us that the “complaint dates” were actually “input dates”, dates that operators recorded complaints into the computer database and not the dates that the complaints were made.

During our audit scope period, Call Center operators were on duty to record complaints against food establishments Monday through Friday from 8:00 a.m. to 4:45 p.m. Complainants could have left voice-mail messages after those hours on weekdays and on weekends and holidays. All voice-mail messages automatically went into an electronic mail in-box. An operator was responsible on the next business day to record in the Call Center computer database any voice-mail message complaints from the electronic mail in-box.

We analyzed the number of complaints received against food establishments during a twelve-week period (July 8, 2002, through September 23, 2002). We anticipated an increase in volume on Mondays and the days following holidays—the next business days. However, none of the weeks during the twelve-week period showed an increase in volume on Mondays or the day after a holiday.

We tried to determine whether all food-establishment complaints received through the voice-mail messaging service were recorded in the Call Center computer database. To do so, we requested to print out all voice-mail messages that appeared in the electronic mail in-box during Fiscal Year 2003. Our purpose was to compare the data from the electronic mail in-box to the data from the computer database to determine if all messages were recorded. However, we were informed that the information would not be available because, due to mail box size limits imposed by computer system personnel, the Call Center cannot store voice-mail messages in the electronic mail in-box indefinitely. Without this information, we cannot ensure that all food-establishment complaints received through the voice-mail messaging service were recorded in the Call Center computer database.

We brought this issue to the attention of DOHMH officials, who stated that they would investigate the matter. (We note that the complaints we received varied in nature from minor to significant.)

We continued our audit testing of the samples to determine whether BFSCS is effective in following up on complaints received. However, due to the noted potential problem with the completeness of the data given to us, we cannot be certain that we reviewed all Fiscal Year 2003 food-establishment complaints.

At the exit conference, DOHMH officials stated that the lack of an increase in volume on Mondays and the days following holidays did not necessarily indicate that voice-mail messages were not recorded in the computer database. Although we concur that this is not outright proof, it does raise issues that should be investigated. Furthermore, DOHMH officials stated that since the Citizen Service Center, at 311, took over the Call Center function regarding complaints against food establishments, all voice-mail information had been deleted.

Discussion of Audit Results

The matters covered in this report were discussed with officials from DOHMH during and at the conclusion of this audit. A preliminary draft report was sent to officials from DOHMH and was discussed at an exit conference held on June 3, 2004. On June 8, 2004, we submitted a draft report to DOHMH officials with a request for comments. We received a written response from DOHMH on June 24, 2004, stating:

“The Department agrees with seven of the eight recommendations for improving our complaint handling procedures.

“The Bureau’s primary responsibility is to assure that all food service establishments (FSEs) are properly permitted and operating safely. The complaint program supplements this extensive effort.”

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

FINDINGS AND RECOMMENDATIONS

The Complaint Inspection Program of BFSCS is ineffective in following up on complaints against food establishments, as follows:

- Of the 186 complaints during Fiscal Year 2003 made against the 100 food establishments in our sample, 74 (40 percent) were not followed up by inspectors either by telephone calls or physical visits to the 52 food establishments.⁵
- Of the 112 complaints made against the 69 food establishments in our sample during Fiscal Year 2003 that were followed up, the time it took inspections to be conducted ranged from the same day to 344 days (almost a year) later.
- Of the 774 food-borne illness complaints recorded during Fiscal Year 2003, 342 (44 percent) were never forwarded to OEI to be investigated before referral to BFSCS.

The issues cited above are discussed in greater detail in the following sections of the report.

Regarding our assessment of the inspection reports used in response to complaints, BFSCS did ensure that inspection reports were adequately filled out and that inspectors signed off to attest to the completeness of the data. We did not find that a particular inspector continually found complaints to be unfounded. In addition, most of the complaints were correctly prioritized.

A review of the electronic complaint databases of DOHMH was outside the scope of this audit. However, we did note an issue regarding the completeness of the complaint database for Fiscal Year 2003 that BFSCS officials gave us (see Audit Scope Limitation in the Scope and Methodology section of this report). Based on our observations, we feel that it is possible that the complaint database is not complete, and that DOHMH may not be recording all complaints received. The absence of complete information would further impair the ability of BFSCS to effectively follow up on complaints against food establishments.

Complaints Against Food Establishments Are Not All Followed Up

Of the 186 complaints made during Fiscal Year 2003 against the 100 food establishments in our sample, 74 (40 percent) were not followed up by inspectors either by telephone calls or physical visits to 52 food establishments.

Table I, following, shows, by priority, the total number and examples of complaints (out of 74) that were not followed up by BFSCS.

⁵ Please note that our sample consisted of 188 complaints. However, there were two complaints in which BFSCS officials could not provide us with any documentation. Thus, for purposes of our analysis, we reduced our population of complaints to 186.

TABLE I

Number and Examples of Complaints, by Priority, that Were Not Followed Up by BFSCS

| (A) | (B) | (C) |
|--|--|---|
| Example of Complaints Not Followed Up by BFSCS at Food Establishments | Priority Assigned by BFSCS to each Example of Complaints (According to the Manual) | Number of Complaints that Were Not Followed Up by BFSCS for each Example* |
| Sewage | Priority One | 1 |
| Alleged Food-borne Illness Contamination of Food Mishandled Food No Water | Priority Two | 26 |
| Unsanitary Conditions Structural Defects Ventilation System Heat Odors Food Worker Activity Rodents Insects Improper Garbage Storage** Establishment in Operation Despite Being Closed Down** | Priority Three | 47 |
| Total | | 74 |

Legend * The total number of complaints not followed up by BFSCS is 74. However, there were a total of 36 complaints in which a multiple number of conditions were complained about. For purposes of this table, for each complaint, we selected the condition with the highest priority.

** For report purposes, we included these examples of complaints with the Priority Three complaints, since they were not listed in the manual, and therefore, were not prioritized by BFSCS.

BFSCS has no formal procedures for when to follow up on complaints against food establishments. However, BFSCS officials stated that Priority One complaints require “immediate” responses, Priority Two complaints require “prompt” responses, and Priority Three complaints require only “routine” responses. While BFSCS officials were certain that the response time for Priority One complaints must be within 24 hours, they were less certain about the response time for Priority Two and Three complaints. The Executive Director stated that he “thinks” Priority Two complaints must be responded to “within 72 hours,” and that Priority Three complaints can be responded to “at the Bureau’s discretion.” He further stated that

complaints could be followed up by inspectors either conducting physical inspections or placing phone calls to the food establishments, and recording the conversations.

As shown below, some of the complaints in our sample, were part of multiple complaints against the same food establishments, none of which were followed up:

- The Call Center during Fiscal Year 2003 (July 26, October 29, November 20, and December 4, 2002) referred to BFSCS for follow up four complaints against a Manhattan food establishment. The complaints (Numbers F207030, L302030, C324021, and L338008) dealt with infestation of mice, improper ventilation, and a fan that led to the backyard blowing odors and fumes to the adjacent apartments. BFSCS followed up on none of the complaints.
- The Call Center during Fiscal Year 2003 (July 5, November 25, and December 5, 2002) referred to BFSCS for follow up three complaints against another Manhattan food establishment. The complaints (Numbers K186003, N329007, and N339009) dealt with rat infestation and food prepared in a filthy basement. BFSCS followed up on none of the complaints.
- The Call Center referred to BFSCS for follow up three complaints during Fiscal Year 2003 (two on June 13, 2003, and a third on June 27, 2003) against another Manhattan food establishment. The complaints (Numbers C164018, F164023, and L178012) dealt with rat infestation and roaches found in food. BFSCS followed up on none of the complaints.

We conducted unannounced observations on April 14, 15, and 16, 2004, on 23 food establishments in our sample at which inspectors from BFSCS did not follow up on at least one of the multiple complaints each had received during Fiscal Year 2003. During our observations, we noted whether any of the conditions alleged in the multiple complaints still existed or whether other conditions existed.

In three food establishments, the conditions alleged in the multiple complaints still existed at the time of our observations, as follows:

- A complainant (Complaint Number R255002 dated September 12, 2002) had alleged that a food establishment in the Bronx had unsanitary conditions and garbage in the kitchen. Our observation on April 16, 2004, revealed chopped vegetables stored in uncovered pots; uncovered meat lying on a table; and food workers who did not prepare and serve food with proper barriers, such as utensils, sanitary gloves, or waxed paper. In addition, the floors of the food-preparation area were not clean and in good repair and the bathrooms for the employees were in poor condition.
- A complainant had alleged (Complaint Number C113012 dated April 23, 2003) that workers in a Bronx food establishment were handling food without gloves. Our observation, on April 16, 2004, also revealed food workers in that food establishment did not prepare and serve food with proper barriers.

- A complainant alleged (Complaint Number I091055 dated April 1, 2003) that food in a Manhattan establishment had made the complainant ill and that there was grease throughout the premises. Our observation on April 14, 2004, revealed that the floors of the food-preparation area were unclean and greasy. In addition, we found a dead rodent on the basement floor, near the carbonated soda machine; we also found flying insects. In addition, the floor of the male employee's bathroom was dirty; and there was no toilet paper in the male patron's bathroom.

For 20 of the 23 food establishments we visited, the conditions alleged in the multiple complaints did not exist. However, we found other conditions, as follows, at 18 of the 20 food establishments:

- Permits and signs advising that copies of the most recent inspection reports could be obtained from DOHMH were not conspicuously displayed for the public to see, as required;
- Equipment such as stoves was unclean;
- Floors, ceilings, and walls of bathrooms both for employees and patrons were not clean and in good repair. Some bathrooms did not have the required self-closing doors.
- Floors, walls, and counters of food-preparation areas were not clean and in good repair.
- Workers who prepared and served food did not use proper barriers, such as utensils, sanitary gloves, and waxed paper, to eliminate bare-hand contact with food.
- Signs such as "Choking First Aid" and "No Smoking" were not posted. One of the food establishments had only a "Choking First Aid" sign in Spanish.

Furthermore, 14 of the 74 complaints not followed up by BFSCS were for food-borne illnesses. Five of the 14 complaints were initially sent to OEI for investigation. In all cases, OEI determined by interviewing complainants on the telephone that the complaints were "individual" (not outbreaks) and "unconfirmed." As a result, the complaints were referred to BFSCS for follow up, but BFSCS never followed up. Nine of the 14 complaints that were not followed up by BFSCS were never sent to OEI for investigation. (This issue will be discussed in greater detail in another section of the report.)

Throughout the audit, BFSCS officials have informed us that it is because of staff shortages they do not respond to all complaints against food establishments. They said that as of January 12, 2004, in its 17 programs, BFSCS had a total of 129 inspectors responsible for conducting routine inspections, inspections in response to complaints, and inspections prior to the issuance of permits.

At the exit conference, DOHMH officials stated that food establishments are inspected as part of the inspections conducted by the Food Service Inspection Program. These inspections include inspections of new food establishments before a permit is issued, routine sanitary inspections of permitted food establishments, and follow-up inspections, if necessary. Therefore, officials explained that even if complaints are not followed up, food establishments are still monitored by DOHMH. Furthermore, officials stated that they consider any recent inspections conducted by the Food Service Inspection Program when determining whether to respond to complaints.

There are no procedures indicating that BFSCS inspectors should review food establishment inspection histories when determining whether to respond to complaints. Furthermore, we found no relationship between the dates of inspections conducted by the Food Service Inspection Program and the dates of inspections conducted by the Complaint Inspection Program.

We noted that complaints were not followed up for food establishments that did not have recent inspections done by the Food Service Inspection Program. For example, the Manhattan food establishment noted above that received three complaints (July 5, November 25, and December 5, 2002) that were not followed up, had an inspection conducted by the Food Service Inspection Program on June 10, 2003—approximately six months after the last complaint. In another example, not noted above, a complaint (Number A050015) not followed up was received on February 19, 2003 regarding no hot water in a Queens food establishment and had an inspection conducted by the Food Service Inspection Program on July 16, 2003—approximately five months after the complaint.

Furthermore, we noted that food establishments that did have recent inspections by the Food Service Inspection Program still had complaints followed up. For example, a complaint (Number T217001) was received on August 5, 2002, regarding a green worm found in chicken at a food establishment in Queens. The Food Service Inspection Program conducted an inspection on August 19, 2002—approximately two weeks after the complaint—yet the Complaint Inspection Program still followed up on that complaint on September 16, 2002. In another example, a complaint (Number L184040) was received on July 3, 2002, regarding ice cream sold on the sidewalk in front of a Manhattan food establishment. The Food Service Inspection Program conducted an inspection on August 22, 2002—approximately seven weeks after the complaint—yet the Complaint Inspection Program still followed up on the complaint on September 30, 2002.

Although inspections of food establishments are performed as part of the function of the Food Service Inspection Program, this does not preclude the Complaint Inspection Program from performing its function of following up on complaints made against food establishments.

During our audit scope period, complaint information on food establishments—such as complaint dates, complaint numbers, and allegations—were recorded only in the Call Center computer database while complaint inspection information—such as type of follow up performed (visit or telephone call), complaint inspection dates, and results—were recorded by BFSCS in Focus. BFSCS should modify its system to ensure that all information related to complaints is kept

on one complete database. BFSCS should periodically review this database and determine which food establishments have received multiple complaints not yet followed up, and make it a priority to visit those food establishments.

Recommendations

1. DOHMH should ensure that all food-establishment complaints are recorded in its computer databases.

DOHMH Response: “The Department agrees that all food establishment complaints should be recorded in a database. . . . The 311 system will further assist that effort because the system will be designed to match a complaint to a FSE address so that a complaint may be easily routed for an inspection. Additionally, the system will be able to flag duplicate complaints and establish triggers for responding.”

BFSCS should:

2. Establish formal procedures to govern the Complaint Inspection Program.

DOHMH Response: “The Department agrees with this recommendation and it is pending implementation.”

3. Modify its database to better track the status of complaints and inspections in response to complaints.

DOHMH Response: “The Department agrees with this recommendation and has already developed a tracking system to monitor all interactions with a food service establishment (FSE). By July 1, 2004, the BFSCS will launch the first phase of the Food Safety and Community Sanitation Tracking Systems (FACTS), which incorporates all food safety inspection activities. This new system will enable the Bureau to run reports such as the one recommended.”

4. Follow up on the conditions identified by this report at the food establishments visited by the auditors.

DOHMH Response: “The Department agrees with this recommendation. . . . The Bureau has already visited the three FSEs identified by the auditors as establishments with multiple complaints which still exist.”

Complaints About Food Establishments Were Not All Followed Up in a Timely Manner

The time it took inspections to be conducted in response to the 112 complaints made against the 69 food establishments in our sample during Fiscal Year 2003 that were followed up ranged from the same day to 344 days (almost a year) later.

Table II, following, shows the range of days it took BFSCS to follow up on complaints broken down by the priority (according to the manual) of the complaints.

TABLE II

Range of Days to it Took BFSCS to Follow Up on Complaints Broken Down by the Priority of the Complaints

| (A) Priority Assigned by BFSCS to the Complaints Followed Up | (B) Range of Days | (C) Number of Complaints Followed Up by BFSCS | (D) Percentage of Total Complaints (by Priority) Followed Up by BFSCS |
|---|-------------------------|--|--|
| Priority One | Same day through 1 day | 8 | 57% |
| | 2 through 7 days | 6 | 43% |
| Total | | 14 | 100% |
| Priority Two | Same day through 3 days | 5 | 9% |
| | 4 through 30 days | 14 | 25% |
| | 31 through 60 days | 14 | 25% |
| | 61 through 90 days | 4 | 8% |
| | 91 through 120 days | 5 | 9% |
| | More than 120 days | 13 | 24% |
| Total | | 55 | 100% |
| Priority Three | Same day through 3 days | 1 | 2% |
| | 4 through 30 days | 15 | 35% |
| | 31 through 60 days | 11 | 26% |
| | 61 through 90 days | 7 | 16% |
| | 91 through 120 days | 1 | 2% |
| | More than 120 days | 8 | 19% |
| Total | | 43 | 100% |
| Grand Total | | 112 | |

As shown above, Priority One and Priority Two complaints are not always followed up even within the “informal” time frames of BFSCS. For Priority One complaints, 43 percent were not followed up within 24 hours. For Priority Two complaints, 91 percent were not followed up within 72 hours. Furthermore, in total 63 (56 percent) of the 112 complaints, were not followed up within 30 days. The following are examples of the time it took BFSCS to respond to complaints:

- A Priority Two complaint (Number A239001) was received on August 27, 2002, against a food establishment in Queens, regarding a roach found in food, and soap found in water. An inspection was attempted by BFSCS on July 14, 2003—321 days later. However, the inspector was unable to gain access to the food establishment, was unable to complete the inspection, and never made another attempt.
- A Priority Two complaint (Number F196015) was received on July 15, 2002, against a food establishment in Queens, regarding green mold found in a chicken strip. An inspection conducted by BFSCS on May 14, 2003—303 days later—indicated that

the stock of chicken strips was checked and “no evidence of mold could be observed.”

- A Priority Three complaint (Number C280020) was received on October 7, 2002, against a food establishment in Manhattan, regarding roach infestation. An inspection conducted by BFSCS on May 2, 2003—207 days later—found no vermin activity.
- A Priority Three complaint (Number C077034) was received on March 18, 2003, against a food establishment in Manhattan, regarding rat infestation. An inspection conducted by BFSCS on July 28, 2003—132 days later—found no vermin activity.

Of greater consequence is that some of the complaints not followed up in a timely manner were found to be true. The following are examples:

- There were two Priority Two complaints (Numbers N199002, and L203061) received against a food establishment in Manhattan—one, on July 18, 2002, regarding chicken that made a complainant ill; the second on July 22, 2002, regarding a complainant who ate sautéed chicken and a mushroom pastry and became ill. OEI officials had referred these complaints to BFSCS for follow up, since they determined that the complaints were not an outbreak and were “unconfirmed.” On November 19, 2002—approximately 120 days later—BFSCS followed up and found “various foods (potentially hazardous) just sitting on counters and floors; food handled with bare hands; and thawing procedures were not appropriate.”
- A Priority Two complaint (Number 214062) was received on August 2, 2002 against a food establishment in Brooklyn, regarding a double cheeseburger that made a complainant ill. Again, OEI had determined that the complaint was not an outbreak and was “unconfirmed” and had referred it to BFSCS for follow up. On October 16, 2002—75 days later—BFSCS followed up and found double cheeseburgers to be out of temperature.
- A Priority Three complaint (Number F009005) was received on January 9, 2003 against a food establishment in Queens, regarding rat infestation. An inspection conducted on June 12, 2003—154 days later—found the “facility conducive to the existence of pest life; mouse activity was present.”

As previously stated, BFSCS has no written procedures governing the length of time it should take inspectors to follow up on complaints. Due to a lack of official BFSCS complaint-inspection time frames, we interviewed Department of Health officials from 13 other areas in the United States to determine whether there were time frames set from the dates that complaints are received to the dates that they must be followed up by inspectors. Most of the officials stated that such emergency complaints as food-borne illnesses are responded to within 24 hours, while less urgent complaints are responded to within 48 or 72 hours. The following summarizes written responses received from some of those officials:

- **Houston, Texas**—During Fiscal Year 2003, 2,652 complaints were received for the approximately 12,000 food establishments, with 35 inspectors available to handle the complaints. Food-establishment complaints are categorized as Priority One, Priority Two, Priority Three, and Priority Four.

Priority One complaints—such as two unrelated food-borne illness complaints made against the same food establishment—are considered an immediate threat to public health. The complaints must be worked on immediately upon receipt, without regard to the time of day—all other responsibilities become secondary. Priority Two complaints allege significant threats to public health and include one food-borne illness complaint. Those complaints must be investigated before the end of the workday following its assignment.

Priority Three complaints allege conditions that may reasonably be expected to cause food-borne illnesses if not corrected in a timely manner. These include something found in food; something growing on food; sewer problems; food undercooked; temperature problems where potentially hazardous foods are stored; rodents, roaches, or other insects or animals inside an establishment. These complaints must be investigated before the end of the second work day following its assignment.

Priority Four complaints allege conditions that normally do not cause food-borne illnesses—such as dirty conditions, odors, an establishment not having a permit, or a food preparer not wearing a hairnet. Those complaints must be investigated before the end of the third work day following its assignment.

- **Florida**—During Fiscal Year 2003, there were 9,040 complaints received against approximately 41,364 food establishments, with approximately 200 inspectors available to handle them. Food-establishment complaints that pose an immediate threat to public health and safety must be investigated within 24 hours. These include evidence of vermin infestation, sewer problems, no water, refrigeration units containing potentially hazardous foods that cannot maintain proper temperatures, and outbreaks of food-borne illnesses. All other food-establishment complaints are investigated “at the earliest opportunity.”
- **Chicago, Illinois**—During calendar year 2003, there were 4,225 complaints received for the approximately 15,000 food establishments, and 51 inspectors available to handle them. Emergency complaints (not specified) are investigated within 24-48 hours; all other complaints are investigated within 10 days.
- **Clark County, Nevada**—During calendar year 2003, there were 11,856 complaints received for the approximately 14,000 food establishments, and 38 inspectors available to handle them. All food-establishment complaints are investigated within 72 hours.

When investigations are delayed, the matter to be investigated may no longer be evident. To provide better assurance that immediate attention will be given to potentially hazardous

conditions, BFSCS needs to develop formal time frames for responding to complaints against food establishments. Adherence to these time frames should be monitored.

Recommendations

BFSCS should:

5. Establish the length of time it should take inspectors to follow up on complaints against food establishments, based on priority and risk to public health. The complaints should then be responded to within the predetermined time, and should be monitored.

DOHMH Response: “The Department agrees with this recommendation and will develop new procedures . . . that will consider appropriate response times based on complaint classifications, inspection histories and 311 business rules.”

6. Consider the results of our survey of Department of Health officials from other localities or conduct its own survey when establishing the length of time it should take to follow up on complaints against food establishments.

DOHMH Response: “The Department disagrees with this recommendation as it suggests comparing apples with oranges. However, the Department has already established a 24 hour (immediate) response target for all ‘emergency’ or Priority One complaints.”

7. Incorporate agreed upon time frames into its formal procedures.

DOHMH Response: “The Department agrees with this recommendation. ”

Many Food-borne Illness Complaints Were Not Forwarded to OEI

Of the 774 food-borne illness complaints recorded during Fiscal Year 2003, 342 (44 percent) were never forwarded to OEI before referral to BFSCS. Those complaints were sent directly to BFSCS.

OEI has the primary responsibility for investigating all complaints of confirmed and alleged food-borne illnesses caused by bacteria, viruses, or parasites. Their investigation differs from the type of inspection conducted by BFSCS.

According to OEI procedures, it is to respond within 24 hours to all clinically confirmed outbreaks of food-borne illnesses. When no clinical confirmation is available for a suspected outbreak of a food-borne illness, OEI is to send investigators to the food establishment within 72 hours. OEI investigators should interview any person who may have been directly involved in the preparation and handling of the food; ask for any leftover food, as well as any specific

ingredients that were used to make the implicated food; and collect swab samples of all food contact surfaces. OEI investigators must gather all the information and evidence as quickly as possible to confirm a suspected outbreak of a food-borne illness. After OEI follows up on the food-borne illness complaint, it refers it to BFSCS for further follow up.

OEI investigators are not sent out to food establishments for an unconfirmed individual (not an outbreak) food-borne illness complaint that they feel is not substantiated after speaking with the complainant. However, the complaint is referred to BFSCS for follow up and a sanitary inspection.

To determine whether all confirmed and alleged food-borne illness complaints were immediately forwarded to OEI to be investigated, we reviewed the 4,743 complaints recorded by BFSCS during Fiscal Year 2003 and identified 774 complaints that were for food-borne illnesses. We then analyzed whether these complaints also appeared in the automated database that OEI maintains of food-borne illness complaints it had received and recorded during Fiscal Year 2003. We identified 342 complaints recorded by BFSCS that did not appear in the automated database that OEI maintains of food-borne illness complaints it had received. We confirmed with OEI that it never received these complaints for investigation.

Food-borne illness complaints not being sent to OEI might be due to confusion among Call Center officials regarding the handling of food-borne illness complaints. OEI procedures require it to investigate all confirmed and alleged food-borne illness complaints. However, Call Center officials stated that only complaints of suspected food-borne illness outbreaks in which two or more people are involved and complaints from a doctor of a confirmed food-borne illness of one person are immediately forwarded to OEI. Complaints of unconfirmed food-borne illnesses of one person are sent by the Call Center to BFSCS and not OEI.

Furthermore, based on the procedures of the Call Center for the handling of suspected outbreaks of food-borne illness complaints, we noted that even they were not always forwarded to OEI. An example was a complaint (Number I354007), received December 20, 2002, against a food establishment in Manhattan, that four out of eight people had become ill due to mishandled food. This complaint was not sent to OEI for investigation; it was directly sent to BFSCS. In another example, a complaint (Number I038007) was received on February 7, 2003, against a food establishment in Manhattan, regarding two people who had become ill. Again, this complaint was not sent to OEI for investigation; it was directly sent to BFSCS.

All confirmed and alleged complaints of food-borne illnesses must be immediately forwarded to OEI for investigation, to ensure that all information obtained from interviews, clinical reports, laboratory results, and food preparation reviews is properly collected and analyzed by personnel trained and available to provide necessary health-related assessments. If the Call Center inadvertently sends a food-borne illness complaint directly to BFSCS, BFSCS officials should immediately forward the complaint to OEI for investigation.

Recommendation

8. BFSCS officials should ensure that all confirmed and alleged food-borne illness complaints that they receive have first been forwarded to OEI for investigation.

DOHMH Response: “The Department agrees with this recommendation. Again, this issue has been addressed recently with implementation of the City’s new 311 hotline and the Bureau will continue to work with all involved agencies, bureaus and offices to ensure this is the case.”

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
OFFICE OF THE COMMISSIONER



125 WORTH STREET, CN-28
NEW YORK, NY 10013
NYC.GOV/HEALTH

THOMAS R. FRIEDEN, M.D., M.P.H.
COMMISSIONER
TEL (212) 788-5261
FAX (212) 964-0472

June 23, 2004

Greg Brooks, Deputy Comptroller
Policy, Audits, Accountancy & Contracts
The City of New York
Office of the Comptroller
1 Centre Street
New York, New York 10007

Re: Audit on the Effectiveness of the Complaint
Inspection Program for Food Establishments
by the Department of Health and Mental
Hygiene
Audit Number: MD04-103A

Dear Mr. Brooks:

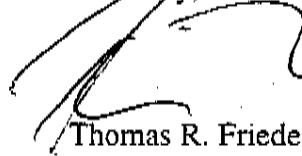
The Department of Health and Mental Hygiene (DOHMH) is responding to the draft Audit on the Effectiveness of the Complaint Inspection Program for Food Establishments by the Department of Health and Mental Hygiene, dated June 8. The Department appreciates the Comptroller's investment in time and energy in reviewing this program.

The Department agrees with seven of the eight recommendations for improving our complaint handling procedures. The Department disagrees with recommendation six, as it is impossible to compare New York City's complaint response program with those in Florida, Chicago or Clarke County, Nevada without conducting an extensive crosswalk of the programs.

However, the Department does not agree with an underlying assumption of the auditors' report, that rapid response to all complaints of *alleged* problems in food service establishments (FSEs) is an effective and efficient use of agency resources to protect the public's health. The Bureau's primary responsibility is to assure that all food service establishments are properly permitted and operating safely. With close to 23,000 FSEs in New York City, inspecting each at least once during the course year is a substantial undertaking. Needless to say, FSEs that require follow-up inspections because of unacceptable inspection results receive them in a timely manner. The complaint program supplements this extensive effort. New York City responds to Priority One complaints within 24 hours. Nothing in this audit suggests that public health would be better served by enhanced efforts on lower priority complaints.

Attached to this letter are more detailed comments on the audit report and the response 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 for Business Systems Improvement, at (212) 788-4757.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Frieden', written over a horizontal line.

Thomas R. Frieden, M.D., M.P.H.
Commissioner

TRF/ct

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BUREAU OF FOOD SAFETY AND COMMUNITY SANITATION

STATEMENT IN RESPONSE TO COMPTROLLER'S AUDIT

This response will discuss the overall responsibility of the Bureau of Food Safety and Community Sanitation (BFSCS), and address the Comptroller's Draft Report: "Audit on the Effectiveness of the Complaint Inspection Program for Food Establishments by the Department of Health and Mental Hygiene" issued on June 8, 2004.

The Department of Health and Mental Hygiene (DOHMH) does not agree with an underlying assumption of the auditors' report, that rapid response to all complaints of *alleged* problems in food service establishments (FSEs) is an effective and efficient use of agency resources to protect the public's health. The Bureau's primary responsibility is to assure that all food service establishments are properly permitted and operating safely. With close to 23,000 FSEs in New York City, inspecting each at least once during the course year is a substantial undertaking. Needless to say, FSEs that require follow-up inspections because of unacceptable inspection results receive them in a timely manner. In fiscal year (FY) 2003 (July 1, 2002 through June 30, 2003), 46,267¹ inspections were conducted of food service establishments and mobile food vendors; 39,715 inspections were conducted through April in FY 2004. The complaint program supplements this extensive effort. New York City responds to Priority One complaints within 24 hours. Nothing in this audit suggests that public health would be better served by enhanced efforts on lower priority complaints.

Overview of Activities of BFSCS

The BFSCS is responsible for enforcing the New York City Health and New York State Sanitary Codes, and various Local Laws of the City of New York for a broad spectrum of environmental health concerns. The BFSCS is a large, high profile, technical bureau responsible for conducting city-wide inspections for the majority of regulatory programs within the Department's Division of Environmental Health, including pre-permit, routine and complaint-generated inspections of all food service establishments, mobile food carts, fish stalls, day camps, shelters, correctional facilities, public and non-public schools, soup kitchens and senior centers. The BFSCS also has responsibility for response to non-food enforcement areas, including compliance with window guard regulations, sanitary conditions in single-room occupancy hotels, the Midtown Task Force, New York State Clean Indoor Air Act, New York City Smoke-Free Air Act and environmental emergencies, such as power outages. This translates into approximately 70,000 pre-permit, routine and complaint generated inspections per annum.

Public Health Sanitarians (PHS or inspector) perform the majority of inspections conducted by the BFSCS. They are college graduates, who by New York State Public Health

¹Number of all FSE inspections, which includes complaint inspections, routine inspections (initial, compliance, Final Inspection Program), Accelerated inspections, and mobile food vending inspections.

Law, must have earned a minimum thirty credits in the physical sciences. Once hired by the Bureau, PHSs undergo four additional months of rigorous training in every area of the Bureau's operation before being assigned to one of its offices. They are cross-trained in all relevant programmatic areas to maximize the Bureau's ability to deploy staff to areas of greatest need and maximize productivity.

The BFSCS has regulatory jurisdiction of over 23,000 FSEs, in which 20,652 are commercial type establishments, such as restaurants, takeout food establishments and retail bakeries. The BFSCS has established a 12-month inspection cycle for FSEs. The inspections include a full sanitary review modeled on a Hazard Analysis Critical Control Point (HACCP) system that includes: verification of food sources; appropriate storage; assessments of food workers and management food safety practices; knowledge and implementation of food safety measures, such as cooking and holding temperatures of potentially hazardous food; facility construction; cleaning and sanitizing processes; vermin control; and safe and sanitary plumbing.

No food safety program anywhere in the world can assure that FSEs comply with all the regulations established to protect the public and, as is the case in New York City (NYC), FSEs operate despite the presence of violations. In fact, over 85% of NYC FSEs receive at least one critical violation in an inspection. The NYC DOHMH establishes a threshold for passing a FSE inspection and requires all public health hazards to be corrected at the time of the inspection. Failure to correct a public health hazard at the time of inspection results in immediately closing the establishment. FSEs that fail an inspection receive a full sanitary compliance inspection within six weeks, which if failed results in a warning and a full sanitary final compliance inspection. Failing a final compliance inspection results in immediate closing of the FSE. Two successive failed inspections results in a minimum of twice a year inspections until two consecutive inspections are passed. Failure of any one of those twice a year inspections may result in the Department ultimately seeking to further suspend or revoke the FSEs permit to operate.

In contrast to "routine" cycle inspections, complaint generated inspections primarily verify the validity of the complaint. They do not always represent a full review of the food establishment as prescheduled routine and follow-up inspections may be pending adjudication. Using allocated resources to respond to the BFSCS's 3,800 complaints a year would be inefficient. Responding to a complaint involves additional travel time as they are rarely in a geographic cluster, whereas travel may be minimized when scheduling routine inspections for FSEs within a localized geographic area. The Department is confident that its food safety inspection programs adequately identify and deal with problem FSEs through their enforcement procedures. Diverting resources to inspect FSEs for possible violations reported by the public jeopardizes the BFSCS's ability to complete the more important task of systematically assessing the safety of an FSE. As evidenced by the experience of the auditors reporting on their observations while visiting FSEs during the period of this audit, many of the concerns they raised were not violations and were not found when a trained inspector followed up.

In March 2003, the BFSCS changed the way in which FSE inspections are evaluated. The method of scoring FSE inspections was revised to better reflect the overall sanitary conditions of an establishment. This scoring system is consistent with current public health

trends and based on risk factors for food borne illnesses. The scoring system is designed to give the food service operator a clear understanding of what they must do to prevent disease and ensure compliance with State and City codes, and local laws.

Beyond enforcing regulations to which FSE operations must adhere, Bureau inspectors spend a considerable amount of time educating operators of these establishments on proper food safety practices. If you ever eat at a restaurant, diner, delicatessen, school cafeteria, community center, mobile food vending cart or any other facility or establishment that serves meals to the public, it is likely that the Department's BFSCS is providing regular and periodic inspections of that FSE to assure the safety of what you eat.

The auditor's observations did reflect some of the success of our food safety program; they mentioned that the 23 establishments to which they made unannounced visits all had permits and the supervisor on premise held the Department's Food Protection Certificate. They also stated, "For 20 of the 23 food establishments we visited, the conditions alleged in the multiple complaints did not exist." The auditors' report attests to the fact that of some 23,000 food establishments, only 3,808 received a complaint (16%), and of those 3,273 received a single complaint (14%). Only 535 FSEs received multiple complaints (2% of the total population). This is because the BFSCS's food protection programs and inspections are working.

Response to Specific Findings and Conclusion: Audit Number MD04-103A.

We would like to comment generally on several findings in the audit: that complaints are not followed up if a complaint inspection has not taken place; that significant problems still exist in FSEs with multiple complaints; that not all complaints are entered into our data base; and that routine food borne illness complaints were not all referred to the Office of Environmental Investigations.

Follow-up on complaints. In stating that the BFSCS did not follow-up on certain complaints, the audit creates the impression that FSEs that were the subject of complaints were not inspected, and that therefore the public was exposed to a significant risk. In most cases cited, a cycle inspection took place close enough to the complaint date that an additional complaint inspection was not warranted. The auditors had access to the history of cycle inspections, but chose not to use it because of a lack of a formal protocol, which stated when the complaint inspection was not necessary. We agree that such a protocol would be helpful, but it is misleading to state that there was no follow up to complaints.

Nonetheless, in order to deal with the relatively small number of complaints that may have "fallen through the cracks," the BFSCS will be implementing a new procedure in its methodology for handling complaints. This will include the use of the 311 database and downloading complaint information from it into FACTS so that routine queries may be run as to which FSEs received a complaint and the require additional follow-up activity. All FSEs for which a complaint is received will be sent a letter informing them of the nature of the complaint and the possibility of additional follow-up.

Continuing problems in FSEs with multiple complaints. We do not disagree that many of the establishments with multiple complaints are problem establishments. We note that many of these establishments have been frequently inspected and cited, and that to conduct additional complaint inspections would serve little purpose. (See attached Table I.) As previously mentioned, most inspections result in citing at least one violation. Additionally, a FSE in New York City, as in any other part of the country, may receive a violation and not require a follow-up inspection until it meets a threshold for failing the inspection. In New York City, that threshold is 28 points in violations (5-10 points for critical violations and 2-5 points for general violations) for a combination of critical and general violations. Finally, although we understand that the audit methodology might appropriately call for field visits to FSEs, it is important to note that without proper training, one cannot properly comment on the safety of any food establishment or its compliance with the health code. The auditors' observations should not be taken as health risks.

Incompleteness of automated database. We believe that there is no basis for the audit comments on this issue. The audit is incorrect in stating (page 1) "complainants notified DOHMH about complaints against food establishments by calling the agency's Complaint Hotline (Call Center) 24 hours a day, seven days a week." During the audit period the Call Center was open five days per week for 12 hours a day, and Saturday for 8 hours. At other times, the caller heard a recording that stated normal business hours, and also stated that a voicemail message could be left. The Call Center had procedures for listening to these messages, and calling back if appropriate. This was not a routine method for receiving complaints, and no instructions for how to make a recorded complaint were given. However, a small number of voicemail messages did include enough information to be the basis for a complaint.

The auditors noticed that there were few or no complaints registered on weekends and holidays, and raised the possibility that complaints were left on the voicemail system and not recorded. This is pure speculation. There was no reason to think that the number of messages including complaints was large enough to be statistically noticeable. This issue was mentioned too late in the audit process to be tested against real data, because the Call Center does not retain its messages after listening to them and taking appropriate action (phoning people back, entering data as appropriate). The auditors did observe the Call Center procedure for listening to messages and found nothing to criticize.

We believe that the auditors are being overcautious in saying that they have a scope limitation because they can't "confirm" that all complaints were entered. As they refer to it as a "scope limitation" rather than a finding, we cannot formally object—it is a judgment call by the auditors. We do object to their recommendation that we take action to ensure that all complaints are recorded. To be sure, this is no longer a relevant recommendation to DOHMH, as the 311 system is receiving complaints 24 hours a day, 7 day a week. Even so, we object to the unfounded implication that there was a problem that needed to be addressed.

Food-borne illness complaints. Call Center procedures were based on guidelines given to them by BFSCS, which reflected the protocol at the time the guidelines were issued. As a result, routine food-borne illness complaints (not confirmed by a physician and not referring to

multiple cases of illness) were sent to BFSCS and not to the Office of Environmental Investigation. This issue has been addressed with 311, and we expect it to be fully resolved.

Discussion of Findings

While the BFSCS is not attempting to justify extensive lags in responding to complaints, many of the decisions made as to when follow-up may occur have to do with the allocation of resources, and the best way to serve public health. For most of the period considered in the audit, the BFSCS had far less than its full census of inspectors. Based on inspection resources, mandates, and facilitation of broad public health surveillance of FSEs, decisions were made to ensure that FSEs received a routine inspection within a 12 month period, and that FSEs with a past history of non-compliance receive two inspections within a 12 month period. Again, the BFSCS is confident that its inspectional program adequately deals with FSEs that pose a serious health risk to the public through its multiple inspections and code enforcement programs.

With the launch of Citizen Service Management System (311) the BFSCS, in conjunction with staff from 311 and the DOHMH Call Center, are currently working to establish new protocols and procedures to address citizen complaints. The 311 system is designed to provide the public with information requests, service request, and referrals. The Bureau will reclassify FSE complaints as Urgent, Prompt, and Normal. BFSCS will retrieve Urgent complaints twice a day from the 311 system, Prompt complaints will be retrieved once weekly, and establishments that receive complaints categorized as Normal complaints will receive a warning letter from the Department. The warning letter will describe the alleged condition, demand that the operator correct such condition if it exist, and warn that an inspector may be dispatched to conduct a formal inspection of his or her facility. The BFSCS also will review complaint response time policies, including the time interval between the receipt of a complaint and an appropriate response.

Recommendations

1. Recommendation #1 states that the Department should “ensure that all food establishment complaints are recorded in its computer databases.”

The Department agrees that all food establishment complaints should be recorded in a database and believes that the agency already meets this standard. The 311 system will further assist that effort because the system will be designed to match a complaint to a FSE address so that a complaint may be easily routed for an inspection. Additionally, the system will be able to flag duplicate complaints and establish triggers for responding.

2. Recommendation #2 states that the BFSCS should: “Establish formal procedures to govern the Complaint Inspection Program.”

The Department agrees with this recommendation and it is pending implementation. The Department agrees to establish formal in-house procedures in conjunction with New York City Management System (311) business rules, OEI, and its own Office of Customer Service to establish protocols.

3. Recommendation #3 states that BFSCS should “modify its database to better track the status of complaints and inspections in response to complaints.”

The Department agrees with this recommendation and has already developed a tracking system to monitor all interactions with a food service establishment (FSE). By July 1, 2004, the BFSCS will launch the first phase of the Food Safety and Community Sanitation Tracking Systems (FACTS), which incorporates all food safety inspection activities. FACTS will ultimately replace FOCUS and has been designed to integrate all of the BFSCS's multiple computerized systems for tracking various program activities. FACTS will enable BFSCS staff to record and review all interactions with a particular venue (i.e., date inspected, type of inspection, results of inspections, any follow-up). This new system will enable the Bureau to run reports such as the one recommended. It promises to be a great asset in the Bureau's ability to assure food safety.

4. Recommendation #4 states that BFSCS should “follow up on the conditions identified by this report at the food establishments visited by the auditors.”

The Department agrees with this recommendation, noting that follow-up may not mean a “complaint inspection.” The Bureau has already visited the three FSEs identified by the auditors as establishments with multiple complaints which still exist. (See Table I.) The inspectors did not corroborate the auditors' findings. The BFSCS will evaluate other cited complaints and follow up on those deemed necessary and appropriate for follow-up in view of the FSE's inspection history and the seriousness of the complaint.

5. Recommendation #5 states that the BFSCS should: “Establish the length of time it should take inspectors to follow up on complaints against food establishments, based on

priority and risk to public health. The complaints should then be responded to within the predetermined time, and should be monitored.”

The Department agrees with this recommendation and will develop new procedures, as stated in the response to Recommendation #2, that will consider appropriate response times based on complaint classifications, inspection histories and 311 business rules.

6. Recommendation # 6 states that the BFSCS should: “Consider the results of our survey of Department of Health officials from other localities or conduct its own survey when establishing the length of time it should take to follow up on complaints against food establishments.”

The Department disagrees with this recommendation as it suggests comparing apples with oranges. The auditors did not take into account the differing nature of the food safety programs it surveyed, the regulations that they enforce, how they carry out their enforcement responsibilities or whether or not those stated time frames for follow-up are met. New York City has one of the largest and most comprehensive food safety and enforcement programs in the country. However, the Department has already established a 24 hour (immediate) response target for all “emergency” or Priority One complaints.

7. Recommendation # 7 reads: “Incorporate agreed upon time frames into its formal procedures.”

The Department agrees with this recommendation. **See response to Recommendation #5.**

8. Recommendation #8 reads: “BFSCS officials should ensure that all confirmed and alleged food-borne illness complaints that they receive have first been forwarded to OEI for investigation.”

The Department agrees with this recommendation. Again, this issue has been addressed recently with implementation of the City’s new 311 hotline and the Bureau will continue to work with all involved agencies, bureaus and offices to ensure this is the case.

Appendix

Discussion of specific cases cited in the audit

Page 6. "We [the auditors] determined whether any complaints were not followed up because inspectors were unable to gain access to the food establishments. If so, we then assessed whether the inspectors returned to the food establishments when they opened." The auditors should have discovered that a Priority Two Complaint, number A050015, no hot water/heat, was actually made by the restaurant owner herself. BFSCS attempted to inspect the site 13 times to no avail; its inspectors never received access. The restaurant has now been out of business since 11/26/03, so it is a moot point. This complaint should never have been listed as one that the BFSCS did not respond to because it tried to inspect it multiple times.

Page 7. "We conducted unannounced observations on April 14, 15, and 16, 2004, of the 25 food establishments in our sample in which inspectors from BFSCS did not follow up on at least one multiple complaint..." This section describes observations by the auditors but not necessarily evidence of unsafe procedures, much less health code violations. For example, uncovered meat lying on a table is not a violation. The same holds true for a number of the allegations made by the auditors on page 12 of the Final Draft Report.

Page 11/12. The attached *Table 1: Multiple Complaints Against the Same Food Establishment not Followed-up* reflects that full sanitary inspections were conducted within acceptable time frames, and that warranted violations were issued for violations relating specifically to alleged complaints, or the inspection revealed the complaint was unfounded.

It should be noted that auditors did not supply the BFSCS with a list of the multiple complaints to which they refer. Instead only a single complaint was noted for each of the establishments. The auditors identified additional conditions **not** made in the complaints received by the Bureau. The attached *Table 1: Multiple Complaints Still Existed at Time of Auditors Observation* shows that full sanitary inspections were conducted for each establishment within a timely manner. On further follow up, the additional conditions observed by the auditors were unfounded, except that a health inspector observed mice droppings at the establishment where a dead rodent was observed. A violation was issued at the time of the inspection.

Page 14. "...we [the auditors] found no relationship between the dates of inspections conducted by the Food Service Inspection Program and the dates of inspections conducted by the Complaint Inspection Program."

Complaints are received and rated by the call center (now by 311) and sent to BFSCS for review and establishing a plan of action, if deemed necessary. The BFSCS advised the auditors throughout this audit that food establishments that received complaints are often inspected under our other programs. BFSCS strives to utilize its personnel effectively, and if a food establishment in a given geographic area will be inspected shortly as part of one of BFSCS' other programs, there is no need to schedule an additional inspection for the complaint. Ironically, some complaints were noted on the day of a scheduled inspection. For example CCN: T364010 (Complaint received 12/30/02, GCZ 12/30/02, FBA 12/30/02).

"We noted that complaints were not followed up for food establishments that did not have recent inspection done by the Food Service Inspection Program. For example, the Manhattan food establishment noted above that received three complaints (July 5, November 25, and December 5, 2002) that were not followed up had an inspection conducted by the Food Service Inspection Program on June 10, 2003, approximately six months after the last complaint." The auditors failed to add to their report that the establishment also had received a full sanitary inspection on April 18, 2002. Not only was it inspected on June 10, 2003, but on July 1, 2003, September 17, 2003 (Final Inspection Program) and December 18, 2003 (Accelerated Inspection Program) as well. No vermin activity was cited on *any* of the full sanitary inspections.

"In another example, not noted above, a complaint Number (A050015)...was received on February 19, 2003 regarding no hot water in a Queens establishment and had an inspection conducted by the Food Service Program on July 16, 2003-approximately five months after the complaint." As mentioned above, complaint number A050015, for no hot water/heat, was actually made by the restaurant owner herself, and BFSCS attempted to inspect the site 13 times to no avail.

On Page 14, the audit reads: "Furthermore, we noted that food establishments that did have a recent inspection by the Food Service Inspection Program still had complaints followed up. For example, a complaint T217001 was received on August 5, 2002, regarding a Green worm found in chicken at a food establishment in Queens. The Food Service Inspection Program conducted an inspection on August 19, approximately two weeks after the complaint--yet the complaint inspection program still followed up on that complaint on September 16, 2002. Complaint L184040 was received July 3, 2002. The Food Inspection Program conducted an inspection August 22, 2002, approximately seven weeks after the inspection, yet the complaint program still followed-up on the inspection on September 30, 2002."

Since the BFSCS uses multiple databases for tracking activities and scheduling inspections, and since data entry at that time took about three to four weeks, it is conceivable that there was some overlap that resulted in multiple and perhaps unnecessary inspections.

On page 16 the auditors state: "The following are examples of the time it took BFSCS to respond to complaints. A239001 (Priority 2) "was received August 27, 2002 against a food establishment in Queens, regarding a roach found in food, and soap found in water. An inspection was attempted by BFSCS on July 14, 2003-321 days later. However the inspector was unable to gain access to the food establishment, was unable to complete the inspection, and never made another attempt." No other attempt was made to follow-up on the complaint because a new owner had been identified for that establishment when the research for assigning it was conducted; it would be inappropriate to hold a new operator responsible for a complaint lodged against the previous owner. An inspection of the new establishment was conducted on January 22, 2003.

On page 16 the auditors also state: "... (Number F196015) was received on July 15, 2002, against a food establishment in Queens, regarding green mold found in a chicken strip. An inspection conducted by BFSCS on May 14, 2003 - 303 days later - indicated that the stock of

chicken strips were checked and no evidence of mold could be observed.” A full sanitary inspection was conducted on January 16, 2002 and April 4, 2003, and no critical violations/food safety violations were observed.

On page 17 the auditors state: “...(Number 280020) was received on October 7, 2002 against a food establishment in Manhattan, regarding roach infestation. An inspection conducted by BFSCS on May 2, 2003 – 207 days later – found no vermin activity..” In response to a similar complaint for the same FSE, M256013, received on September 13, 2002 alleging mice infestation, an inspection was performed on September 30, 2002. A full inspection was also conducted October 21, 2002 - no vermin activity was found. Two additional complaints were also followed up on May 2, 2003; a full sanitary inspection was performed, and no vermin activity was observed.

Page 17: “...(Number C077034) was received on March 18, 2003, against a food establishment in Manhattan regarding rat infestation. An inspection conducted by BFSCS on July 28, 2003- 132 days later-found no vermin activity.” The establishment was inspected on July 28, 2003, and a follow-up visit was conducted on September 5, 2003, and no rodent activity was observed on either full sanitary inspection.

Page 17: “There were two priority complaints N199002 and L203061 received against a food establishment in Manhattan-One on July 18, 2002, regarding chicken that made a complainant ill, the second on July 22 regarding a complaint who ate sautéed chicken and mushroom and became ill. OEI officials had referred these complaints to BFSCS for follow-up, since they determined that complaints were “unconfirmed”. On November 19, 2002 approximately 120 days later-BFSCS followed –up and found various potentially hazardous food just sitting on counters and floors, food handle with bare hands, and thawing procedures were not appropriate.” It should be noted that the same complainant made the complaints. A full sanitary inspection was conducted on August 21, 2002. Additionally, the BFSCS performed inspections on November 19, 2002 and again on December 12, 2002 specifically in response to the complaints and noted that that previous cited violations had been corrected.

“A priority two complaint [N]214062 was received on August 2, 2002, against a food establishment in Brooklyn, regarding a double cheeseburger that made a complainant ill. Again, OEI had determined that the complaint was not an outbreak and was “unconfirmed” and had referred it to BFSCS for follow-up. On October 16, 2002 - 75 days later - BFSCS followed-up and found double cheeseburgers to be out of temperature.” The complaint was responded to and full sanitary inspection was conducted on October 10, 2002.

Page 17 of the audit draft, it also states: “There were two Priority Two complaints (Numbers N199002, and L203061) received against a food establishment in Manhattan...” In fact work papers that the auditors possess show that this was not two cases, but one individual complaining about the same matter—chicken.

TABLE I

| Multiple Complaints Against the Same Food Establishment not Followed up | | BFSCS Findings | |
|---|---------------------------------------|---|---|
| CCN | Intake Dates | Inspection Date | Inspection Results |
| F207030, L302020, 324021, L338008 | 7/26/02, 10/29/02, 11/20/02 12/4/2002 | Cyclical 10/10/02 | No mice found. Ventilation fan cited for being dirty and greasy. |
| K186003, N329007, AND N339009 | 7/5/02, 11/25/02, 12/5/2001 | Pre-permit conducted on 4/18/02, FSAF 6/10/03, FSBF 7/1/03, FSCU 9/17/03 and FZAU 12/18/03 | No rats cited on any full sanitary inspection after 4/18/02 |
| C164018, F164023, N339009 | 2 on 6/13/03, 6/27/03 | Final Inspection and Accelerated Inspection programs 4/30/03, 5/22/03, 8/12/03, 12/9/03 | 4/30/03-Rat droppings cited; 5/22/03 five roach crawling on food. No rodent activity cited on 8/12/03 or 12/9/03 inspections. |
| Multiple Complaints Still Exist at Time of Auditors Observations | | | |
| RZ55002 | 9/12/2002 | Final Inspection and Accelerated Inspection programs 10/10/02, 11/13/02, 1/9/03 4/23/03, 12/08/03. In response to auditors' observation a complaint inspection was conducted on 6/9/04. | BFSCS Findings Mice noted on 10/10/02 & 11/13/02 inspections. No mice on any of the follow up inspections. 6/9/04 Complaint from auditors unsubstantiated. |
| C113012 | 4/23/2003 | Cyclical inspection 5/20/03 in response to complaint F206016. In response to auditors' observation a complaint inspection was conducted on 6/9/04. | Complaint unfounded; 6/9/04 Complaint from auditors unsubstantiated. |
| 109055 (1091005) | 4/1/2003 | Inspection on 5/22/03. In response to auditors' observation a complaint inspection was conducted on 6/9/04. | Full Sanitary conducted again on 4/10/04. 6/9/04 Complaint from auditors unsubstantiated. |