

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**AUDIT OF
THE DEPARTMENT OF HEALTH'S
FOOD SAFETY AND HYGIENE
INSPECTION SERVICES DIVISION**



**CHARLES J. WILLOUGHBY
INSPECTOR GENERAL**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General**

Inspector General



December 19, 2012

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Dear Dr. Levin, Dr. Gandhi, Mr. Majett, and Judge Walker:

Enclosed is our final report summarizing the results of the Office of the Inspector General's (OIG) *Audit of the Department of Health's (DOH) Food Safety and Hygiene Inspection Services Division (FSHISD)* (OIG No. 09-2-34LQ).

As a result of our audit, we directed 22 recommendations to DOH for actions we consider necessary to correct identified deficiencies. We received a response to the draft audit report from DOH on July 12, 2012. The full text of DOH's response is included at Exhibit E. We directed 2 recommendations to the Department of Consumer and Regulatory Affairs (DCRA) and 3 recommendations to the Office of Administrative Hearings (OAH) for actions necessary to correct identified deficiencies. We received DCRA and OAH responses to the draft audit report dated August 16, 2012, and August 24, 2012, respectively. The full text of both responses is included at Exhibits F and G, respectively.

OAH did not concur with Recommendations 22, 23, and 24. OAH stated in its response that the agency is only responsible for issuing final orders of fines for violations of the District's Food Code and cannot collect outstanding civil fines and penalties. Based on our review of OAH responses and further analysis, we will redirect Recommendations 22

and 24 to DOH to provide comment to our Office with a response, including the target completion dates for planned actions within 60 days of the date of this final report. Further, we eliminated Recommendation 23 and related discussion, and, as a result, renumbered the remaining recommendations.

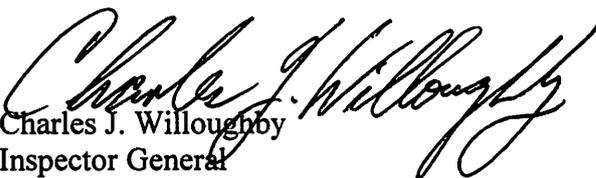
DOH actions taken or planned for Recommendations 1, 3, 4, 11, 15, 16, 18, 19, 20, 21, 25, and 27 are considered to be responsive and meet the intent of the recommendations. However, DOH did not provide target dates for completing the planned actions for Recommendations 4, 11, 15, 16, 18, 19, 20, 21, 25, and 27. Recommendations 25 and 27 have been renumbered as Recommendations 24 and 26 in the final report. Thus, we respectfully request that DOH provide estimated completion dates for these 10 recommendations within 60 days of the date of this final report.

DOH did not adequately respond to Recommendations 2, 5, 6, 8, 9, 10, 12, 13, 14, and 17 and, consequently, these recommendations are unresolved. Accordingly, we request that DOH reconsider its position taken on these 10 recommendations and provide our Office with a revised response within 60 days of the date of this final report.

DCRA agreed to Recommendation 26, and generally agreed with Recommendation 7. However, the Mayor approved legislation that satisfies Recommendation 7. DCRA did not provide a target date for completing planned actions for Recommendation 26. Consequently, Recommendation 26 has been renumbered as Recommendation 25 in the final report. Thus, we request that DCRA provide a target date for planned actions for this recommendation, and provide our Office with the response within 60 days of the date of this final report.

We appreciate the cooperation and courtesies extended to our staff during this audit. If you have any questions, please contact me or Ronald W. King, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,


Charles J. Willoughby
Inspector General

Enclosure

CJW/tag

cc: Distribution List

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FINDINGS AND RECOMMENDATIONS

FSHISD conducts risk-based inspections of food establishments in the District to ensure that the safety of the food supply is in accordance with 25-A DCMR, also known as the District Food Code, § 4400.1. The District Food Code was modeled after the 1999 FDA Food Code and became effective June 6, 2003. The FDA released the first Food Code in 1993 and provided revisions every 2 years until 2002, when the FDA decided to revise the Food Code every 4 years. Thereafter, FDA did not issue another Food Code until 2005. However, FDA issued a supplement to the 2001 FDA Food Code in 2003 and a supplement to the 2005 FDA Food Code in 2007. The most recent version of the FDA Food Code was issued in 2009.

In comparing the 1999 and 2009 FDA Food Codes, we found that there were over 280 modifications. We identified key changes based on the FDA's list of notable changes and those that would impact food safety for District residents and visitors. Those changes covered food allergens, potentially hazardous food, bare hand contact, comminuted meats,⁵ controlling pests, hands and arms cleaning procedures, and Norovirus, all of which are major concerns for the District.

Food Allergens. The FDA first included food allergens as a food safety hazard in the 2005 FDA Food Code. Food allergens are also included in the 2009 FDA Food Code. The FDA added the term "major food allergen" to the list of terms and definitions, and requires the person in charge of a food establishment to demonstrate his or her knowledge of potential symptoms caused by a reaction to a food allergen upon the completion of training for food allergy awareness. This is important because "food employees"⁶ need to know that a reaction to a food allergen can cause serious health problems. For instance, FSHISD received a complaint about a patron who "ordered chicken lo mein, but was given shrimp lo mein; the employee took the shrimp off the noodles and put chicken on the same noodles to serve to the customer who has allergic reactions to seafood." If the customer had an allergic reaction and the food employee did not recognize the symptoms caused by a reaction to a food allergen, this situation could have proven detrimental to the customer.

The District Food Code does not include provisions covering food allergens. Accordingly, DOH should amend the Food Code to require each food establishment to staff an employee who is trained in food allergens. Addressing this deficiency will significantly minimize health risks to the District's food consumers.

⁵ As defined in the 2009 FDA Food Code, "Comminuted" "means reduced in size by methods including chopping, flaking, grinding, or mincing [and] includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of 2 or more types of MEAT that have been reduced in size and combined; such as sausages made from 2 or more MEATS."

⁶ As defined in the FDA 2005 Food Code, a "food employee" is "an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces."

ACRONYMS

BBL	Basic Business License
BCHD	Baltimore City Health Department
BEIS	Bureau of Ecology and Institutional Services
BISD	Boston Inspectional Services Department
CDPH	Chicago Department of Public Health
CY	Calendar Year
DBPR	Department of Business and Professional Regulation
DCFW	Department of Child and Family Wellbeing
DCMR	District of Columbia Municipal Regulations
DCRA	Department of Consumer and Regulatory Affairs
DOACS	Department of Agriculture and Consumer Services
DOEH	Division of Environmental Health
DOH	Department of Health
FDA	U.S. Food and Drug Administration
FEIN	Federal Employer Identification Number
FSHISD	Food Safety and Hygiene Inspection Services Division
FY	Fiscal Year
GAO	Government Accountability Office
HRLA	Health Regulation and Licensing Administration

ACRONYMS

MOU	Memorandum of Understanding
NOI	Notice of Infraction
OAH	Office of Administrative Hearings
OCFO	Office of the Chief Financial Officer
OFD	Office of Food Protection
OIG	Office of the Inspector General
OTR	Office of Tax and Revenue
PDPH	Philadelphia Department of Public Health
PHF	Potentially Hazardous Food
SOAR	System of Accounting and Reporting

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EXECUTIVE DIGEST

OVERVIEW

This report summarizes the results of the Office of the Inspector General's (OIG) audit of the Department of Health's Food Safety and Hygiene Inspection Services Division (FSHISD) (OIG No. 09-2-34LQ). This audit was included in our Fiscal Year (FY) 2010 Audit and Inspection Plan.

Our audit objectives were to: (1) determine whether food establishments in the District of Columbia were receiving proper safety and hygiene inspections; (2) determine the qualifications and adequacy of food inspectors; (3) evaluate the adequacy of procedures used by the Department of Health (DOH) and Office of the Chief Financial Officer for collecting civil fines and penalties; (4) assess whether DOH complied with requirements of applicable laws, regulations, policies, and procedures; and (5) determine if DOH implemented internal controls to prevent and detect fraud, waste, and abuse.

CONCLUSIONS

Our audit found the following conditions requiring management's attention:

- The District Food Code has not been updated since its implementation in 2003. The Code lacks over 280 material updates reflected in the most recent version of the U.S. Food and Drug Administration (FDA) Food Code. We identified several omissions based on the FDA's list of notable changes that would impact food safety for District residents and visitors.
- D.C. Code § 7-731 does not authorize DOH to regulate the inspections of tanning, tattoo, body art, and body piercing establishments. There are also no formal guidelines for inspecting these establishments.
- Routine inspections for establishments were lagging in some instances and not performed in others.
- Inspection reports were not properly organized and maintained in a central storage area.
- DOH was not aware of the correct amount for business license fees, and payment transfers from the Department of Consumer and Regulatory Affairs (DCRA) to DOH for business licenses were not timely completed.
- DOH did not collect revenue from establishment owners for 229 civil fines totaling \$260,100; and the Office of Administrative Hearings (OAH) did not issue final judgments to collect the outstanding balances from partial payments of civil fines, totaling \$4,110.

EXECUTIVE DIGEST

- DOH could not provide the exact number of food and health-related establishments operating in the District because DCRA did not provide DOH with accurate and complete information reflecting all establishments with valid business licenses.
- Our benchmarking studies provide DOH with a comparative breakdown of food safety and hygiene inspection operations of six jurisdictions that have similar food and health protection programs to the District of Columbia. Our benchmarking efforts can be used as a tool to improve the efficiency and effectiveness of DOH's operational process for the FSHISD.

Overall, these conditions indicate that: (1) the District Food Code lacks the most current food safety provisions that are necessary to prevent outbreaks of new foodborne illnesses due to cross contamination and new classifications of potentially hazardous foods; (2) DOH's lack of regulatory powers for certain establishments and formal inspection guidelines for others increases the risk that health-related establishments will operate under unsanitary conditions that endanger public health; (3) the absence of routine inspections increases the risk of unsanitary food operations in the District; (4) inadequate maintenance and storage of inspection reports impede FSHISD's ability to evaluate the frequency, efficiency, and effectiveness of its inspections; (5) DOH has not implemented adequate procedures to identify and collect business license fees from DCRA, and therefore does not consistently collect revenues needed to effectively manage FSHISD operations; (6) DOH has not implemented the necessary procedures to adequately collect civil fines, which contributed to loss of revenues that could be used to enhance District government operations; and (7) DOH lacks a reliable methodology for identifying the exact number of food and health-related establishments operating in the District, which inhibits regular inspections of these establishments in order to protect the health and safety of District consumers. We attribute these conditions to a lack of adequate staffing resources and ineffective management oversight. These conditions increase the risk of foodborne illnesses, loss of revenue for DOH, and ineffective management of District resources.

SUMMARY OF RECOMMENDATIONS

We directed 24 recommendations to DOH that we believe are necessary to correct the deficiencies noted in this report. The recommendations center, in part, on:

- Revising D.C. Code provisions and regulations;
- Improving internal controls for conducting routine inspections;
- Developing written policies and procedures for records management;
- Implementing inter-agency agreements for collecting revenue;
- Collect over \$260,000 in outstanding civil fines; and
- Impose sanctions provided in D.C. Code provisions for civil fine nonpayment.

EXECUTIVE DIGEST

Also, we recommend that DCRA update its management information system to ensure that it consistently reflects accurate and complete information. We further recommend that DCRA provide DOH supporting documentation reflecting the number of establishments receiving and renewing business licenses, and the amount of revenue received from business license fees that should be transferred to DOH.

We recommend that DOH enforce District regulations requiring establishments to pay civil fines and penalties within the allotted time mandated by law. Finally, we recommend that DOH exercise its authority under the D.C. Code to seek liens or seal the establishment owner's property or business if fines are not paid in accordance with District laws.

A summary of the potential benefits resulting from the audit is shown at Exhibit A.

MANAGEMENT RESPONSES AND OIG COMMENTS

On July 12, 2012, DOH provided a written response to the draft audit report. DOH actions taken or planned for Recommendations 1, 3, 4, 11, 15, 16, 18, 19, 20, 21, 25, and 27 are considered to be responsive and meet the intent of the recommendations. However, DOH did not provide the target dates for completing the planned actions for Recommendations 4, 11, 15, 16, 18, 19, 20, 21, 25, and 27. Recommendations 25 and 27 have been renumbered as Recommendations 24 and 26. Thus, we respectfully request that DOH provide estimated completion dates for these 10 recommendations within 60 days of the date of this final report.

DOH did not adequately respond to Recommendations 2, 5, 6, 8, 9, 10, 12, 13, 14, and 17 and, consequently, these recommendations are unresolved. Accordingly, we request that DOH reconsider its position taken on these 10 recommendations and provide our Office with a revised response within 60 days of the date of this final report. The full text of DOH's response is included at Exhibit E.

DCRA provided a written response to the draft audit report, dated August 16, 2012. DCRA agreed to Recommendation 26, and generally agreed with Recommendation 7. However, the Mayor approved legislation that satisfies Recommendation 7. DCRA did not provide a target date for completing the planned actions for Recommendation 26. Consequently, Recommendation 26 has been renumbered as Recommendation 25. Thus, we request that DCRA provide a target date for planned actions for this recommendation, and provide our Office with the response within 60 days of the date of this final report. The full text of DCRA's response is included at Exhibit F.

EXECUTIVE DIGEST

On August 24, 2012 OAH provided a response to the draft audit report. OAH stated in its response that the agency is only responsible for issuing final orders of fines for violations of the District's Food Code and cannot collect outstanding civil fines and penalties. Based on our review of OAH responses and further analysis, we will redirect Recommendations 22 and 24 to DOH to provide comment to our Office with a response, including the target completion dates for planned actions within 60 days of the date of this final report. Further, we eliminated Recommendation 23. The full text of OAH's response is included at Exhibit G.

INTRODUCTION

BACKGROUND

DOH is the District agency charged with identifying health risks; educating the public; and preventing and controlling diseases, injuries, and exposure to environmental hazards. DOH's mission is to promote and protect the health, safety, and quality of life of residents, visitors, and those doing business in the District of Columbia.¹

In 2007, DOH consolidated the Health Care Regulation and Licensing Administration, the Bureau of Community Hygiene, and the Health Professional Licensing Administration into one entity, called the "Health Regulation and Licensing Administration" (HRLA). HRLA provides services, administration, and regulatory oversight through several programs, including the Food Safety and Hygiene Inspection Service Division (FSHISD).

FSHISD inspects the District's food establishments, including delicatessens, bakeries, candy manufacturers, grocery stores, retail markets, ice cream manufacturers, restaurants, wholesale markets, hotels, and caterers. FSHISD inspects a food establishment based on a written, risk-based inspection schedule in accordance with Title 25-A of the District of Columbia Municipal Regulations (DCMR), which is also known as the District Food Code, § 4400.1. In addition to food establishments, FSHISD inspects mobile food vendors, school cafeterias, and health-related establishments.

Through inspections, enforcement, education, and training, FSHISD ensures that residents and visitors to the District consume safe food. FSHISD administers an inspection program to address risk factors known to cause foodborne illnesses. FSHISD enforces regulations that reduce the risk of foodborne illness, ensures food products are honestly and accurately represented, promotes public awareness, and provides guidance concerning the legal requirements and responsibilities governing District food establishments.

Further, FSHISD conducts reviews and inspections of all construction plans for new establishments and those undergoing renovations. FSHISD assesses construction blueprints and inspects establishments to ensure compliance with the regulations in the District Food Code.

¹ We obtained this information from DOH's website at <http://dchealth.dc.gov/>.

INTRODUCTION

Plan Review. FSHISD is responsible for reviewing all construction plans for new establishments, as well as those establishments undergoing renovations. An applicant is required to submit properly prepared plans, specifications, and menu(s) for review and approval. The blueprints and review fee must be submitted before: (a) constructing a food establishment; (b) converting an existing structure to a food establishment; (c) remodeling and/or renovating a food establishment; or (d) changing the type of food establishment or food operation.

Frequency of Inspections. DOH classifies food establishments according to the risk posed by the function and scope of each food operation. The assigned risk level determines the frequency of routine inspections, and FSHISD prioritizes inspections based on its assessment of a food establishment's inspection history and compliance with the District Food Code. The establishment's previous inspection record, history of complaints, changes to menu or operations, and facility modifications might increase its risk level. FSHISD evaluates risk levels annually and changes the risk level as necessary.

Mobile Food Vending Units. DOH is required to evaluate and approve mobile food vending units. FSHISD inspects mobile food vending units every 6 months to determine compliance with 24 DCMR §§ 504.1-504.4. Mobile food vending operations that meet District requirements receive a Health Inspection Certificate after inspection and payment of the required fee. The Health Inspection Certificate identifies the approved food items sold on the vending unit. Certification expires every 6 months from the date of issuance. Mobile food vending operators must display their District-issued certification at all times during operation.

Summer Feeding Sites.² DOH and the Office of the State Superintendent for Education have a memorandum of understanding (MOU) for FSHISD to inspect summer feeding sites.

Routine Food Sampling. In addition to the inspection process, FSHISD is required to conduct routine sampling of food products for microbial contamination and product integrity on a monthly basis in all eight wards of the District. This periodic testing process helps reduce the incidence of foodborne illness by detecting unwanted pathogens in the food supply prior to an outbreak.³ The D.C. Public Health Laboratory and DOH Bureau of Epidemiology assists FSHISD in conducting foodborne illness investigations. FSHISD collects random food samples for bacteria analysis during its inspections of food establishments, mobile vending units, and special events. The routine sampling procedure enables FSHISD to detect several problems that exist within a food establishment, such as unsafe temperature and food handling practices and post-process contamination.

² Summer feeding sites are locations in the District where children and some adults with disabilities can eat free of charge during summer months. These places are not necessarily licensed food establishments (e.g., a church or a recreation center).

³ We obtained this information from the FSHISD Operations and Procedures Manual, August 2009.

INTRODUCTION

Health-related Establishments. As an additional means of protecting public health, FSHISD also inspects health-related establishments such as spas; beauty and barber shops; hair braiding, manicuring, and massage parlors; swimming pools; tanning⁴ facilities; and the manufacture, renovation, and sale of mattresses.

In order to operate legally in the District of Columbia, most businesses must obtain a Basic Business License (BBL) from DCRA, which is valid for 2 years. If a business provides food services to patrons requesting sit down service, with payment made after dining (i.e., waiter/waitress service), and provides these food services to patrons with any combination of other services (such as a carryout), then the business falls under the “public health-retail food establishment” BBL endorsement category.

Before an applicant receives a BBL, DOH conducts a pre-operational inspection of a new establishment. This inspection ensures the establishment meets all license and facility requirements, and is capable of supporting the type of operation planned. Once DOH gives approval for the establishment to open, the business owner pays the appropriate fees and obtains a BBL.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine: (1) whether food establishments in the District of Columbia were receiving proper safety and hygiene inspections; (2) the qualifications and adequacy of food inspectors; (3) the adequacy of procedures used by DOH and OCFO for collecting civil fines and penalties; (4) whether DOH complied with requirements of applicable laws, regulations, policies, and procedures; and (5) whether DOH implemented internal controls to prevent and detect fraud, waste, and abuse.

The scope of the audit covered FSHISD business activities during FYs 2007-2009. To accomplish our objectives, we: (1) interviewed appropriate DOH, DCRA, and FDA personnel; (2) evaluated inspection and training processes; and (3) examined sanitarian training documents and certificates, inspection reports, and complaint investigation forms.

We also reviewed the District Food Code and other applicable laws, regulations, and internal policies governing FSHISD, and assessed compliance with these mandates. We compared the District Food Code with the 2001-2009 FDA Food Codes to determine whether the District

⁴ After the fieldwork for this audit had already been completed, DOH issued a Notice of Proposed Rulemaking on September 2, 2011, in which it proposed new rules for DOH’s regulation of tanning facilities in D.C. The notice indicates DOH’s intent to take final rulemaking action to adopt the proposed rules in not less than 30 days from September 2, 2011. According to Westlaw, as of December 20, 2011, no final rulemaking had been published in the *D.C. Register*.

INTRODUCTION

Food Code is consistent with the guidance put forth in the most recent version of the FDA Food Code, and whether the District should amend current regulations for inspecting food establishments in its jurisdiction. We accompanied sanitarians on inspections of school cafeterias, swimming pools, and food and health-related establishments to observe and determine the adequacy of inspections. We conducted site visits of selected locations to determine whether food establishments existed at addresses listed in DCRA's database.

In addition, we benchmarked other jurisdictions in the United States similar to the District to compare their operational processes with DOH's food and health protection program. We reviewed recordkeeping practices, including adequate maintenance of supporting documentation such as inspection reports. Further, we reviewed the process for cash receipt regarding business license and health service fees, including recordation, deposit, transfer, and reconciliation procedures. We reviewed internal controls over DOH's operating processes to ensure achievement of program objectives, operational effectiveness, and efficiency.

We relied on computer-processed data from the System of Accounting and Reporting (SOAR) to determine the amount of business license fees transferred from DCRA to DOH. DOH and DCRA provided SOAR documents for our review; however, we extracted data from SOAR and compared it to the data provided by both agencies to validate the completeness of the data. We conducted this audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

PRIOR REVIEWS

We did not identify any reports of prior reviews conducted by the OIG or the D.C. Auditor. However, the Government Accountability Office (GAO) issued several reports on Federal Oversight for Food Safety. These reviews did not directly relate to the District's DOH-FSHISD.

GAO released the report entitled, "Federal Oversight of Food Safety: FDA's Food Protection Plan Proposes Positive First Steps, But Capacity to Carry Them Out Is Critical," on January 29, 2008. This review addressed: (1) federal oversight of food safety as a high-risk area that needs a government-wide reexamination; (2) FDA's opportunities to better leverage its resources; (3) FDA's food protection plan; and (4) tools that can help agencies address management challenges.

INTRODUCTION

GAO examined FDA's progress in implementing the Food Protection Plan, and FDA's proposal to focus inspections based on risk, in its report entitled, "Federal Oversight of Food Safety: FDA Has Provided Few Details on the Resources and Strategies Needed to Implement its Food Protection Plan," dated June 12, 2008. GAO provided testimony before the Subcommittee on Oversight and Investigations within the Committee on Energy and Commerce in the House of Representatives. The testimony focused on FDA's progress in implementing the Food Protection Plan, FDA's proposal to focus inspections based on risk, and FDA's implementation of previously issued GAO recommendations intended to improve food safety oversight. To address these issues, GAO reviewed FDA's operations plan, interviewed FDA officials regarding the plan's progress, and analyzed FDA's data on domestic and foreign food firm inspections.

In its 2009 update report entitled, "High-Risk Series: An Update," dated January 22, 2009, GAO listed "Revamping Federal Oversight of Food Safety" on its high-risk list, which had been on the list since 2007. In determining whether a government program or operation is high-risk, GAO considers whether the risk involves public health or safety. The high-risk program helps identify and resolve serious weaknesses in areas that involve substantial resources and provide critical services to the public. GAO reported that fragmented federal oversight of food safety has caused inconsistent oversight, ineffective coordination, and inefficient use of resources. The food safety systems of selected countries separate risk assessment and risk management, conduct risk-based inspections, and take steps to ensure certain food imports meet equivalent safety standards.

Based on these reviews, we determined that GAO's reports did not specifically address resources, strategies, or recommendations needed for food safety plans for the District's DOH-FSHISD. However, we noted that FSHISD adopted a risk-based Food Protection Plan modeled after FDA's Food Protection Plan because the District imports food from other jurisdictions. We also noted that the importance of conducting frequent, risk-based food safety inspections, as stressed in GAO's reports, is also relevant to the District's food safety and health program.

FINDINGS AND RECOMMENDATIONS

FINDING 1. DEPARTMENT OF HEALTH FOOD CODE REGULATIONS
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SYNOPSIS

DOH has not amended the current District Food Code to reflect recent provisions included in the 2009 FDA Food Code. Specifically, DOH inspects food establishments for food safety in accordance with the District Food Code. However, we noted that the District Food Code lacks over 280 material updates.

According to the D.C. Office of the Attorney General, FSHISD planned to adopt the 2009 FDA Food Code in the fall of 2010. However, to date, FSHISD has not adopted the FDA's 2009 Food Code, nor made preparations to finalize adoption of the 2009 FDA Food Code. As a result, DOH is not meeting its mission to protect public health by preventing potential outbreaks of foodborne illnesses from cross contamination and the introduction of new potentially hazardous foods that pose health risks to the residents, employees, and visitors of the District.

DISCUSSION

Pursuant to D.C. Code § 48-104(b) (2009), the Mayor of the District of Columbia, with the approval of the D.C. Council, is authorized to adopt the FDA's Model Food Code, with any necessary amendments to, among other duties: (1) control and regulate the retail sale, commercial and institutional service, and vending of food; (2) establish standards for employee food safety practices and training; (3) regulate food sources, preparation, holding temperatures, and protection; (4) regulate the use of water and the treatment of liquid and solid wastes; and (5) restrict or exclude employees.

We found that the District Food Code has not been updated to include current FDA regulatory policies. As stated in 25-A DCMR § 101.1, the purpose and intent of the District Food Code is to safeguard public health and provide consumers with food that is safe, unadulterated, and honestly presented. However, FSHISD has not revised the District Food Code since its implementation in 2003.

FINDINGS AND RECOMMENDATIONS

FSHISD conducts risk-based inspections of food establishments in the District to ensure that the safety of the food supply is in accordance with 25-A DCMR, also known as the District Food Code, § 4400.1. The District Food Code was modeled after the 1999 FDA Food Code and became effective June 6, 2003. The FDA released the first Food Code in 1993 and provided revisions every 2 years until 2002, when the FDA decided to revise the Food Code every 4 years. Thereafter, FDA did not issue another Food Code until 2005. However, FDA issued a supplement to the 2001 FDA Food Code in 2003 and a supplement to the 2005 FDA Food Code in 2007. The most recent version of the FDA Food Code was issued in 2009.

In comparing the 1999 and 2009 FDA Food Codes, we found that there were over 280 modifications. We identified key changes based on the FDA's list of notable changes and those that would impact food safety for District residents and visitors. Those changes covered food allergens, potentially hazardous food, bare hand contact, comminuted meats,⁵ controlling pests, hands and arms cleaning procedures, and Norovirus, all of which are major concerns for the District.

Food Allergens. The FDA first included food allergens as a food safety hazard in the 2005 FDA Food Code. Food allergens are also included in the 2009 FDA Food Code. The FDA added the term “major food allergen” to the list of terms and definitions, and requires the person in charge of a food establishment to demonstrate his or her knowledge of potential symptoms caused by a reaction to a food allergen upon the completion of training for food allergy awareness. This is important because “food employees”⁶ need to know that a reaction to a food allergen can cause serious health problems. For instance, FSHISD received a complaint about a patron who “ordered chicken lo mein, but was given shrimp lo mein; the employee took the shrimp off the noodles and put chicken on the same noodles to serve to the customer who has allergic reactions to seafood.” If the customer had an allergic reaction and the food employee did not recognize the symptoms caused by a reaction to a food allergen, this situation could have proven detrimental to the customer.

The District Food Code does not include provisions covering food allergens. Accordingly, DOH should amend the Food Code to require each food establishment to staff an employee who is trained in food allergens. Addressing this deficiency will significantly minimize health risks to the District's food consumers.

⁵ As defined in the 2009 FDA Food Code, “Comminuted” “means reduced in size by methods including chopping, flaking, grinding, or mincing [and] includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of 2 or more types of MEAT that have been reduced in size and combined; such as sausages made from 2 or more MEATS.”

⁶ As defined in the FDA 2005 Food Code, a “food employee” is “an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.”

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Potentially Hazardous Food. The FDA classifies cut tomatoes and cut leafy greens as Potentially Hazardous Foods (PHF). This change was first implemented in the 2005 FDA Food Code and included in the 2009 FDA Food Code. Certain raw plant foods support the growth of foodborne pathogens in the absence of temperature control. As a result, pathogens on fresh fruits and vegetables have become a major concern due to the recent rise in foodborne illness outbreaks, such as *Escherichia coli* (*E. coli*). This type of outbreak can lead to complications that may result in death. Our review of FSHISD’s complaint and referral forms indicated several complaints concerning hazardous raw plant foods. Specifically, the complaints noted: (a) use of spoiled fruits and vegetables; (b) brown lettuce on a fish and cheese sandwich; (c) the practice of using the previous day’s salad for lunch the following day; and (d) several patrons became ill shortly after consuming unhealthy raw plant foods.

We believe that DOH should revise existing food regulations for the District to require that all food establishments maintain raw plants foods under the temperature control requirements prescribed in the FDA Food Codes for PHF. This will help prevent outbreaks of foodborne illness.

Bare Hand Contact. The FDA added the prohibition of bare hand contact with ready-to-eat (RTE) food⁷ for employees in food establishments serving highly susceptible populations.⁸ The FDA maintains that this regulation increases the prevention of cross contamination and the spread of foodborne illnesses because when hands are heavily contaminated, effective hand washing practices may not be enough to prevent the transmission of infectious agents from the hands to RTE food. Additionally, the FDA Food Code prohibits any exception to this practice unlike the District Food Code.⁹

⁷ The 2009 FDA Food Code defines “Ready-to-Eat Food” as food, *inter alia*, that is in a form that is edible without additional preparation by the food establishment or consumer.

⁸ The 2009 FDA Food Code defines “Highly susceptible population” as “persons who are more likely than other people in the general population to experience foodborne diseases because they are: (1) immunocompromised; preschool age children, or older adults and (2) obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.”

⁹ According to 25-A DCMR § 800.2, “Except when washing fruits and vegetables...or when otherwise approved, food employees may not contact exposed, ready to eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single- use gloves or dispensing equipment.”

FINDINGS AND RECOMMENDATIONS

The District has several food establishments that serve highly susceptible populations. According to the FSHISD, the very young and the elderly are more likely to contract foodborne illnesses because their immune systems are weaker. We reviewed over 60 complaints submitted to FSHISD about improper use of bare hand contact. Mostly, the complaints involved food employees using excessive bare hand contact with ready-to-eat foods. Some of the complaints indicated that employees: (a) do not wear gloves or wash hands as needed; (b) prepared and touched food items with their bare hands; and (c) never washed hands between the tasks of preparing food and accepting money.

Unlike the guidance set forth in the 2009 FDA Food Code, the District Food Code does not prohibit the use of bare hand contact with ready-to-eat foods for highly susceptible populations. This increases the risk of foodborne diseases through contamination.

Comminuted Meat. The FDA 2009 Food Code § 3-401.11(D)(2) does not advise the sale of undercooked, comminuted¹⁰ meat from a children's menu. Title 25-A DCMR § 900.3 allows an operator to serve raw or partially cooked animal food, as long as the establishment does not serve a "Highly susceptible population," and informs the customer of the risks associated with consuming undercooked items. The District Food Code, however, does not define "Highly susceptible population" to include all pre-school age children. The definition only includes young children who are of pre-school age and obtain food under custodial care, such as a childcare center. This definition does not address pre-school and older children eating in retail food establishments, such as restaurants, where it is common practice to offer menu items specifically intended for children. For example, we found a complaint against a local food establishment where a child ate a piece of a grilled chicken sandwich, and noticed it was partially cooked. The FDA Food Code seeks to increase current protection of children beyond custodial care facilities by establishing needed safeguards in all retail food establishments. Precluding undercooked foods for children increases protection from foodborne illness, which can result in severe health consequences. DOH should require food establishments to include a caveat on children's menus about the risk of consuming undercooked, comminuted meats.

Controlling Pests. The FDA amended the lead-in paragraph under the 2009 Food Code § 6-501.111 to clarify the expectation that food establishments be free of pests. The 2009 FDA Food Code states: "The PREMISES shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to **eliminate** their presence on the PREMISES" (Emphasis added.) Title 25 DCMR § 3210.1, on the other hand, reads: "The presence of insects, rodents, and other pests shall be controlled to **minimize** their

¹⁰ As defined in the 2009 FDA Food Code, "Comminuted" "means reduced in size by methods including chopping, flaking, grinding, or mincing [and] includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of 2 or more types of MEAT that have been reduced in size and combined; such as sausages made from 2 or more MEATS."

FINDINGS AND RECOMMENDATIONS

presence on the premises....” (Emphasis added.) FSHISD received over 500 complaints about pests in the District’s food establishments during FYs 2007-2009. The complaints involved the presence of roaches, rats, mice, birds, cats, dogs, worms, gnats, fruit flies, a caterpillar, and a raccoon. FSHISD found the majority of these complaints valid. Some of the complaints noted: (a) live roaches crawling out of food; (b) severe rat infestation inside and behind food establishments; and (c) establishment owners not discarding food after pests crawled or flew onto the food.

Since insects and other pests are capable of transmitting diseases to humans by contaminating food and food-contact surfaces, food establishments must take effective action to eliminate the presence of pests. Currently, the District Food Code minimization policy allows for the tolerance of pests in a food establishment. Given the leniency of the law, food establishment managers may not be exercising all available options to promote a pest-free environment. We found complaints from establishment patrons where employees or managers were complacent about the presence of pests on their premises. For instance, complainants noted that employees laughed about the presence of pests and management seemed indifferent to persistent complaints about pests.

We also found other complaints where management denied knowing about rodent activity in their food establishments, but FSHISD subsequently found evidence of rodent activity and issued summary suspension closure notices for some of these establishments. In some cases, licenses were suspended for rodent activity or rodent infestation that posed health hazards to public safety, but then restored only 2 days after the suspension. We believe that the District Food Code should be amended to require food establishments eliminate the presence of insects, rodents, and other pests on the premises, and DOH should issue stringent fines and penalties to those businesses that refuse to comply with the regulations or have repeat violations.

Hands and Arms Cleaning Procedure. The FDA amended the cleaning procedures, providing more detail on how to clean hands and arms during hand washing. Food employees are now required to rinse their hands with clean, running warm water, instead of just clean water. The FDA also updated the proper sequence for hand washing to help avoid recontamination after washing by requiring the use of a paper towel to turn off the faucet and grasp the bathroom door handle. Most of the complaints we found in this area involved patrons noticing that food employees were not properly washing their hands between performing other tasks and preparing food items. Some of the complaints indicated that certain food establishments were operating without hot water, soap, or towels in their bathrooms. These conditions were not consistent with the new hand washing procedures adopted by the FDA to prevent the spread of foodborne illnesses.

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In addition, the 2009 FDA Food Code requires food employees to wash their hands before putting on gloves to prepare food. This important requirement is not included in the current District Food Code. As a result, food establishments in the District cannot be held accountable for violating this hygienic requirement. For instance, FSHISD received a complaint that food employees were not washing their hands after handling currency and before reusing the same gloves to prepare food.

Further, the 2009 FDA Food Code excludes “ware-washing” sinks as hand washing areas.¹¹ These procedural changes were implemented to enhance the effectiveness of the hand washing procedures in order to minimize incidents of food contamination.

Norovirus. A notable omission from the District Food Code is requiring a food employee to report a diagnosis of the highly contagious norovirus.¹² The Centers for Disease Control and Prevention estimates that norovirus is the leading cause of foodborne illness in the United States. Transmission of norovirus most commonly occurs through contaminated food or water, and by touching contaminated surfaces. During FYs 2007-2009, FSHISD received over 180 complaints of foodborne illnesses. The complaints we reviewed describe illnesses with symptoms of nausea, vomiting, diarrhea, fever, and stomach cramping. For the period under review, FSHISD received reports of 25 confirmed diagnoses of foodborne illnesses resulting from eating contaminated food in the District. Five of the 25 reports were confirmed diagnoses of gastroenteritis caused by norovirus. Additionally, we found complaints from patrons who became ill after eating at District food establishments, but did not consult physicians.

The 2009 FDA Food Code states that food employees who exhibit any symptom of norovirus or other foodborne illness can be excluded from working with food by the person in charge. This regulation is an essential intervention in controlling the transmission of norovirus from infected food employees' hands to ready-to-eat food items. According to the 2009 FDA Food Code, the person in charge has the authority, based on observation, to exclude that employee from working with food to safeguard the wellbeing of others. We strongly believe that without these regulations in the District Food Code, there is a higher risk of norovirus transmission by District food employees. Therefore, DOH should include these regulations in the District Food Code to ensure that the public health is not jeopardized when dining at food establishments in the District.

¹¹ “Ware-washing” is the cleaning and sanitizing of utensils and food contact surfaces of equipment.

¹² Norovirus is a type of virus that causes human gastroenteritis, which is an inflammation of the lining of the stomach and intestines. The symptoms of Norovirus usually include nausea, vomiting, diarrhea, fever, and some stomach cramping.

FINDINGS AND RECOMMENDATIONS

Our review of the District Food Code indicated serious public health concerns that should be addressed as a high priority of DOH. Specifically, DOH failed to revise the District Food Code to incorporate hygienic food preparation and handling requirements reflected in the most recent version of the FDA Food Code. As a result, the District is at greater risk of experiencing outbreaks of foodborne illnesses.

RECOMMENDATIONS

We recommend that the Director, DOH:

1. Adopt the new provisions reflected in the 2009 Food Code to promote the best food safety practices for food establishments in the District.

DOH Response

DOH has revised the 2003 Food Code Regulations and incorporated all new provisions from the FDA's 2001, 2005, and 2009 Model Food Codes to formulate the District's new 2012 Food Code Regulations. The enactment of the legislation is awaiting the D.C. Council review and approval.

OIG Comment

Action taken by DOH is responsive and meets the intent of this recommendation.

2. Implement a mechanism for updating the District Food Code every 4 years, equivalent to the FDA's standard, to safeguard the public health of food consumers in the District.

DOH Response

DOH states that a mechanism is already in place and DOH maintains a signed partnership with FDA, which requires updates to regulations every 2 years. According to DOH, it is the agency's first year participating in the National Standards Initiative, and the agency now plans to implement all practices for this initiative.

FINDINGS AND RECOMMENDATIONS

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation. During our review, we identified that the FDA partnership agreement between FDA and DOH expired in 2005. The agreement should be renewed annually, but DOH has not renewed the agreement since 2005. According to FDA officials, both agencies are operating as if there is no agreement. Further, DOH was unable to provide us with documentation to support a partnership agreement with FDA. Therefore, we request that DOH provide a revised response to the recommendation within 60 days of the date of this final report, and include a copy of the signed, current partnership agreement verifying DOH's participation in the National Standards Initiative requiring updates to regulations every 2 years.

FINDINGS AND RECOMMENDATIONS

FINDING 2. HEALTH AND HYGIENE REGULATIONS
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SYNOPSIS

DOH does not have the power to inspect the operations of tanning, tattoo, body art, and body piercing establishments.¹³ We discovered that there are no finalized laws, regulations, policies, or procedures for inspecting these establishments. Consequently, FSHISD does not conduct pre-operational or routine inspections of these establishments. As a result, any unsanitary conditions present in these establishments may jeopardize the public health and safety of District residents and visitors. Therefore, D.C. law should be amended to grant DOH regulatory powers over inspecting the operations of tanning, tattoo, body art, and body piercing establishments. In addition, DOH should establish formal policies and procedures for conducting routine inspections of these facilities to ensure that consumer health and safety are safeguarded.

DISCUSSION

FSHISD does not conduct either pre-operational or routine inspections of the tanning, tattoo, body art, and body piercing establishments in the District. In addition, FSHISD could not identify the number of these facilities operating in the District because regular inspections were never performed. Failure to conduct regular inspections also did not allow FSHISD to monitor the sanitation and hygienic practices in these establishments. These conditions jeopardize the health and safety of District residents and visitors. Our review found that FSHISD has received complaints of unsanitary practices and conditions in these establishments.

We attribute these conditions to the District's failure to grant DOH regulatory powers over inspecting the operations of tanning, tattoo, body art, and body piercing establishments. We believe that granting such powers, initially through emergency legislation, will enable DOH to promote and protect the health of the consumers patronizing these establishments.

¹³ On January 27, 2012, the DOH Director issued proposed rules for DOH to regulate tanning facilities in the District. As of October 2, 2012, however, DOH has not published final rulemaking in the *D.C. Register* regarding this function. In addition, on April 5, 2011, the D.C. Council introduced B19-0221, the "*Regulation of Body Artists and Body Art Establishments Act of 2012*." This bill was signed by the Mayor on August 17, 2012, and enacted as Act 19-0448, which authorizes DOH to regulate tattoo and body-piercing establishments. On September 6, 2012, Act 19-0448 was transmitted for Congressional review and is projected to become D.C. law on October 22, 2012.

FINDINGS AND RECOMMENDATIONS

We noted that D.C. Code § 7-731 (2008) grants DOH regulatory power over inspecting the operations of barber shops, beauty salons, swimming pools, and massage and health spas, but the provision fails to include inspecting the operations of tanning, tattoo, body art, and body piercing establishments.

Specifically, D.C. Code § 7-731(a) provides:

Notwithstanding the licensing powers and responsibilities given to other District of Columbia agencies and officials in subchapters I-A and I-B of Chapter 28 of Title 47 of the District of Columbia Code, the Department Of Health, as established by Reorganization Plan No. 4 of 1996, effective July 17, 1996 (part A of subchapter XIV of Chapter 15 of Title 1), shall be the exclusive agency to:

.....

- (10) Regulate the operation of barber shops and beauty salons;
- (11) Regulate swimming pools; [and]
- (12) Regulate massage and health spa establishments

DOH is limited in its ability to fulfill its mission “to promote and protect the health, safety and quality of life of residents, visitors, and those doing business in the District” because these exempt establishments are not subject to regular inspections and regulatory oversight. We believe that DOH should develop formal policies, procedures, and health code regulations governing these establishments in order to more effectively fulfill its public health and safety mission.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATIONS

We recommend that the Director, DOH:

3. Request that the Council of the District of Columbia amend the D.C. Code to grant the agency exclusive regulatory powers over inspecting tanning, tattoo, body art, and body piercing establishments.

DOH Response

DOH commented that Councilmember Yvette Alexander proposed Bill 19-221, the “Regulation of Tattoo Artists and Body Piercing Artists Act of 2011,” which will authorize DOH to establish and regulate operational requirements for tattoo, body art, and body piercing establishments. Once the Bill is enacted, the regulatory responsibilities for inspecting tattoo, body art, and body piercing establishments will be conducted by DOH.

OIG Comment

Action taken by DOH is responsive and meets the intent of the recommendation.

4. Finalize proposed regulations for DOH to regulate inspecting tanning establishments in the District.

DOH Response

DOH will publish a Third Notice of Proposed Rulemaking for New Tanning Facility Regulations in Subtitle F of Title 25 of the District of Columbia Municipal Regulations (DCMR) to incorporate substantive changes based on public comments.

OIG Comment

To date, DOH has not published a Third Notice of Proposed Rulemaking for New Tanning Facility Regulations or final rulemaking in the D.C. Register or in Subtitle F of Title 25 of the DCMR regarding this function. Therefore, we request that DOH provide this Office a copy of the Third Notice of Proposed Rulemaking for New Tanning Facility Regulations, which DOH proposes for adoption in Subtitle F of Title 25 of the DCMR within 60 days of the date of this final report.

FINDINGS AND RECOMMENDATIONS

5. Establish formal policies and procedures to inspect tanning, tattoo, body art, and body piercing facilities necessary to prevent the contamination of equipment, supplies, and work surfaces.

DOH Response

DOH states that the agency has already established formal policies and procedures to inspect tanning, tattoo, body art, and body piercing facilities with the publication of two Notices of Proposed Rulemaking for New Tanning Facility Regulations.

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation, which is development of agency policies and procedures. Based on our findings, DOH did not have any written, formal policies and procedures and was unable to provide documentation of these policies and procedures for our review.

6. Implement the proposed health code regulations to include inspection and enforcement functions including the issuance of civil infractions for tanning, tattoo, body art, and body piercing establishments.

DOH Response

In order to protect the health and safety of individuals, especially minors, using tanning equipment and devices, DOH will publish a Third Notice of Proposed Rulemaking for New Tanning Facility Regulations in Subtitle F of Title 25 of the DCMR to incorporate substantive changes based on public comments received in response to the Second Notice of Proposed Rulemaking for New Tanning Facility Regulations published in the D.C. Register on January 27, 2012. Additionally, the D.C. Office of the Attorney General (OAG) issued an opinion upholding the DOH's exclusive authority to regulate tanning facilities as "radiological and medical devices" pursuant to D.C. Code § 7-731(a)(8).

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation. The full intent of this recommendation was to implement the proposed health code regulations and enforcement of civil infractions for tanning, tattoo, body art, and body piercing establishments. DOH has not published final rulemaking in the D.C. Register or in Subtitle F of Title 25 of the DCMR regarding this function. Therefore, within 60 days of the date of this report, we request that DOH provide this Office a copy of the Third Notice of Proposed Rulemaking for New Tanning Facility Regulations, which DOH proposes for adoption in Subtitle F of Title 25 of the DCMR.

FINDINGS AND RECOMMENDATIONS

We recommend that the Director, DCRA:

7. Request that the Council of the District of Columbia finalize Bill 19-221, the “Regulation of Tattoo Artists and Body-Piercing Artists Act of 2011,” to govern the operations of tattoo, body art, and body piercing establishments.

DCRA Response

DCRA commented that it supports “any regulation which will continue to promote the health, safety, and welfare of the citizens and businesses in the District of Columbia. The relationship between DOH and DCRA has been a formidable exchange. In fact, D.C. Code § 7-731(2)(b) has specifically supported this relationship Therefore, we will make every effort to support DOH in obtaining the legislation needed to encourage the D.C. Council in passing and implementing the new laws.”

OIG Comment

DCRA’s response is noted, but does not meet the intent of the recommendation. However, the Mayor approved Bill 19-221, which is now Act-0448. The Bill received Congressional review and passed into law (19-0193) The Regulation of Body Artists and Body Art Establishment Act of 2012, on October 23, 2012.

FINDINGS AND RECOMMENDATIONS

FINDING 3. ROUTINE FOOD SAFETY AND HEALTH HYGIENE INSPECTIONS
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SYNOPSIS

FSHISD is required to conduct routine inspections of each food establishment in accordance with a risk-based inspection schedule. Each food establishment is required to receive at least one routine inspection within a 13-month cycle. We found that in most cases, FSHISD either has not conducted the proper number of routine inspections of food establishments in accordance with the risk-based inspection schedule, or has not conducted routine inspections at all. FSHISD has lagged in the performance of routine inspections of food establishments and failed to perform routine inspections of health-related establishments. We also found that FSHISD lacked effective oversight in conducting routine inspections of food and health-related establishments. These conditions exist because of poor planning and a lack of human resources. As a result, FSHISD cannot detect unsanitary practices occurring in District food establishments that may cause potentially hazardous health conditions to District residents and visitors.

DISCUSSION

FSHISD is not performing routine inspections of establishments as required by 25-A DCMR § 4400. These inspections should occur according to a risk-based inspection schedule. FSHISD established the schedule based on the FDA recommendation to assign a risk-level to each facility, which in turns determines the frequency of routine inspections per year.

According to DCRA, as of October 29, 2009, there were 10,330 food establishments and 1,818 health-related establishments in the District. However, according to FSHISD records, there were 5,100 food establishments and 699 health-related establishments in the District, as of September 30, 2009. In view of these discrepancies, we relied on DCRA's records because it issues basic business licenses for establishments operating in the District.

FSHISD's routine inspections include lounges, nightclubs, and bars.¹⁴ Also, FSHISD conducts inspections of health-related establishments. Further, FSHISD conducts inspections based on complaints generated by customers or agency referrals.

¹⁴ According to an FSHISD Program Manager, lounges, nightclubs, and bars are night establishments that operate after 5:00 p.m. that serve food; however, not all night establishments have food operations. If the establishment does not have food operations, FSHISD inspects the establishments for hygienic operations, such as a bathroom.

FINDINGS AND RECOMMENDATIONS

Routine Food Safety Inspections. A routine food safety inspection is an unannounced inspection of a food establishment, where the sanitarian conducts a complete examination covering all items in the regulations for compliance. The schedule spans a 13-month period broken into four cycles, allowing every food establishment to receive a routine inspection at least once per cycle. For instance, a high-risk establishment would receive a routine inspection 3 to 4 months after obtaining a license; a low-risk establishment would receive a routine inspection generally 6 months to a year after obtaining a license; a delicatessen or carryout would receive a routine inspection 6 months later; and a gas station would receive a routine inspection a year after obtaining a license.

Our review revealed that FSHISD is lagging in conducting routine inspections of food establishments. FSHISD indicated that the goal is to complete inspections for all food establishments during each cycle; however, FSHISD believes that it is achieving only 50 percent of the goal. We found that FSHISD is not conducting routine inspections according to the risk level assigned to the food establishment. For example, establishments requiring four inspections received one or two routine inspections, while some establishments requiring one inspection did not receive any at all. We attributed these conditions to a lack of sufficient staffing resources and other agency priorities, such as training, obligation to conduct other types of inspections, and emergency situations.

Review of Routine Food Inspections. To conduct our review of routine food safety inspections, we requested a list of valid basic business licenses from DCRA. We obtained a listing of 10,330 food establishments as of October 29, 2009. Using the stratified statistical sampling technique, we selected 366 food establishments to determine whether establishments in the District were receiving routine inspections. Table 1, below, summarizes the results of our analysis.

FINDINGS AND RECOMMENDATIONS

Table 1. Results of Statistical Sample of Routine Food Inspections (FYs 2007-2009)

<i>Number of Establishments</i>	<i>Category</i>
309	Establishments receiving some type of inspection. ¹⁵
38	Establishments not identified by FSHISD as food establishments requiring inspection.
15	Establishments FSHISD identified as closed or out-of-business.
3	Establishments with a business and premise address outside of the District in DCRA's database.
1	Establishment that could only be identified by the address in DCRA's database.
366	Total Number of Establishments in Our Sample

We determined that 309 establishments in our sample received some type of inspection in addition to or in lieu of a routine inspection. Of the 309 establishments, less than half received routine inspections for FYs 2007-2009. Only 110 of the 309 establishments in FY 2007 received routine inspections. In FY 2008, 120 of the 309 establishments received routine inspections. For FY 2009, 123 of the 309 establishments received routine inspections.

When the audit team asked FSHISD to provide risk levels for establishments in our sample, FSHISD replied that 38 food establishments did not exist at the locations in DCRA's database. Therefore, we conducted internet searches and site visits to determine whether food establishments were located at the addresses identified in DCRA's database and whether they were the establishments DCRA listed in its database. We found that nine establishments were identified correctly by DCRA; five addresses were for residential housing; and two addresses could not be located. In addition, we found that 17 establishments were different from what DCRA identified in its database and FSHISD listed that no food establishment existed at these 17 locations; and 5 establishments were later identified by FSHISD as food establishments, but they were different establishments than what DCRA listed in its database. Based upon our review, FSHISD correctly identified these five establishments.

¹⁵ FSHISD may also conduct Preoperational, Follow-Up, Complaint Generated, License Renewal, and License Transfer/Change of Ownership inspections as well as inspections of establishments performing renovations. During inspections, FSHISD may issue a Notice of Closure if an establishment receives too many critical violations. Once the violations are corrected, FSHISD may perform a Restoration or Post Restoration Inspection. Also, if FSHISD determines during an inspection that an establishment does not have a valid business license, FSHISD will issue a Cease and Desist Order.

FINDINGS AND RECOMMENDATIONS

FSHISD identified 15 establishments as closed or out-of-business. We determined that these food establishments were no longer in business. However, 4 of the 15 establishments did not close until FY 2007 and we found that 2 of the 4 establishments received routine inspections before closing. We could not determine whether the other two establishments should have received routine inspections during the period under review because DCRA did not provide licensing information for those establishments.

Our review determined that three establishments did not have a District address listed in DCRA's database. Rather, DCRA listed Maryland, Virginia, and Massachusetts addresses for these establishments. We found that the establishments with Maryland and Massachusetts addresses actually have locations in the District of Columbia, and FSHISD conducted two routine inspections for one of the establishments in FY 2007. FSHISD also conducted one routine inspection for the Virginia establishment in FYs 2007 and 2008.

One establishment could not be identified because DCRA only listed the address in its database but did not include the name of the establishment. We conducted a site visit, could not find the address listed in DCRA's database, and concluded the address does not exist.

Our review of FSHISD's routine food inspection operations indicated that 209, 198, and 191 food establishments did not receive routine inspections in 2007, 2008, and 2009, respectively. We also determined that most of the food establishments that received routine inspections did not receive the proper number of inspections according to the risk level assigned by FSHISD in FYs 2007, 2008, and 2009. The results of our review are summarized below in Table 2. For 25 establishments, we could not determine the required number of routine inspections because FSHISD did not assign risk levels to those that were no longer in business, or FSHISD did not have records indicating that those food establishments existed.

Table 2. Results of Review of Routine Inspections by Risk Level

Fiscal Year	No. of establishments that <u>did not</u> receive routine inspections	No. of establishments that <u>did not</u> receive the proper # of inspections according to the assigned risk levels	TOTALS
2007	209	83	292
2008	198	81	279
2009	191	99	290

FINDINGS AND RECOMMENDATIONS

Routine Inspections of Night Establishments Serving Food. We found that FSHISD is not routinely inspecting most night establishments. Title 25-A DCMR § 4400 requires that each food establishment¹⁶ in the District be inspected in accordance with the risk-based inspection schedule. (See Table 3 on the following page.) These establishments are subject to at least one routine inspection during the inspection cycle.

We requested FSHISD and DCRA to provide each agency's list of all night establishments in the District. Unfortunately, neither agency was able to satisfy our request. Therefore, we had to conduct additional audit work researching www.bardc.com and www.washingtonpost.com to obtain a list of night establishments, where we found 254 night establishments. In light of DCRA and FSHISD's inability to provide us with this information, we believe that both DCRA and FSHISD should maintain an accurate and complete listing of all night establishments in order to conduct and track inspections of such establishments.

Out of the 254 night establishments in the District, we found that 213, 175, and 242 establishments did not receive routine inspections in FYs 2007, 2008, and 2009, respectively. Further, we found that 39, 72, and 12 establishments, respectively, did not receive the required number of routine inspections according to their respective risk levels during those same periods.

FSHISD management does not have adequate controls in place to ensure that agency policies and procedures are carried out in performing required inspections of night establishments. As a result, FSHISD is unable to detect and prevent harmful food safety practices that could affect the health and well-being of residents and visitors to the District who frequent bars, lounges, and other night establishments.

Risk Level Assignments. In accordance with criteria defined in 25-A DCMR § 4400.2, food establishments are assigned a risk level between 1 and 5, with 1 representing the lowest risk and 5 representing the highest risk regarding the establishment's food operations. Table 3, on the following page, describes the risk level characterization for food establishments in the District.

¹⁶ Title 25-A DCMR § 9901 defines "food establishment" broadly to include an "operation that stores, prepares, serves, vends, or otherwise provides food for human consumption . . ." This definition includes a night club, bar, or other establishment that provides food for human consumption. However, we note that the definition does not include a private club that "serves occasional meals at not more than twenty-four (24) events during a twelve (12) month period[.]"

FINDINGS AND RECOMMENDATIONS

Table 3. Risk-Based Inspection Schedule for Routine Inspections

FSHISD FREQUENCY RISK-BASED INSPECTION SCHEDULE

Risk Level	Characterization	Number of routine inspections ¹⁷
High risk #5	Extensive handling of raw ingredients. Food processing at the retail level, e.g., smoking and curing; reduced oxygen packaging for extended shelf life.	5
High risk #4	Extensive handling of raw ingredients. Preparation processes include the cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous foods. Food processes include advanced preparation for next-day service. Category would also include those facilities whose primary service population is immunocompromised.	4
Moderate risk #3	Extensive handling of raw ingredients. Preparation process includes the cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous food. Advance preparation for next-day service is limited to 2 or 3 items. Retail food operations include deli and seafood departments, establishments doing food processing at retail.	3
Moderate risk #2	Limited menu (1 or 2 main items). Pre-packaged raw ingredients are cooked or prepared to order. Retail food operations exclude deli or seafood departments. Raw ingredients require minimal assembly. Most products are cooked/prepared and served immediately. Hot and cold holding of potentially hazardous foods is restricted to single meal service. Preparation processes requiring cooking, cooling, and reheating are limited to 1 or 2 potentially hazardous foods.	2
Low risk #1	Primarily prepackaged non-potentially hazardous foods. Limited preparation of hot dogs and frankfurters. Mobile ice cream operations.	1

Complaint-generated Inspections. FSHISD receives complaints from food establishment patrons who have an unpleasant dining experience because of an establishment’s unsanitary conditions or if a patron becomes ill from the consumption of food from the establishment. FSHISD also receives complaints from customers of health-related establishments due to unhealthy sanitary conditions within those establishments. Our review consisted of determining if complaints generated by patrons or agency referrals were

¹⁷ See D.C. DEP’T OF HEALTH FOOD SAFETY AND HYGIENE INSPECTION SERVICES DIVISION OPERATIONS AND PROCEDURES MANUAL 7 (Aug. 2009). The OIG obtained the number of routine inspections for each risk level from the FSHISD program manager.

FINDINGS AND RECOMMENDATIONS

investigated by FSHISD in a timely manner and whether complaints of food and health-related establishments resulted in full inspections. We obtained 2,162 complaint-and-referral forms for FYs 2007-2009. To conduct our review, we used a true random number generator¹⁸ to select a 10 percent sample of complaints. Our sample consisted of 217 complaint-and-referral forms to review. We determined that FSHISD did not investigate 56 complaints (26 percent) within 2 days as required by the department's policies and procedures. There were 3 complaints (1.4 percent) with no investigative results listed on the complaint-and-referral forms, and 4 complaints (2 percent) did not have a date recorded on the complaint-and-referral forms so that we could determine whether FSHISD investigated these complaints in a timely manner.

FSHISD responds to a complaint by either conducting an investigation or a full inspection. An investigation occurs when the sanitarian determines solely whether the complaint is valid. For example, if FSHISD receives a complaint that an establishment is dirty, the sanitarian will only check for dirty areas throughout the establishment, and will not conduct a full inspection (i.e., checking for food temperature, water temperature, approved food sources, etc.) unless the sanitarian notices other violations and determines an inspection is warranted. FSHISD investigates non-potentially hazardous complaints of food establishments within 2 days, whereas complaints regarding conditions that pose a hazard to the public's health receive immediate inspections. Any complaint regarding health-related establishments generally receives an investigation within 5 business days of receipt.

In reviewing the complaints in our sample, we found that some did not result in an inspection. FSHISD officials stated that a complaint generates an investigation rather than an inspection, especially in circumstances where the establishment has undergone a recent inspection (i.e., within 3 to 4 months of the complaint). In those circumstances, the sanitarian will conduct an investigation to determine the validity of the complaint, note any other violations, and cite the establishment for those violations.

We found that the investigations that led to full inspections did not have the inspection reports or copies of the inspection reports attached to the complaint-and-referral forms. The notes on some of the complaint-and-referral forms did not reveal why the establishment received Notices of Infractions (NOI) or whether the establishment received a citation for a violation at all. A FSHISD official commented that the department prefers to keep the inspection reports separate and maintain all the reports in one centralized location rather than increase the cost of office supplies, such as larger binders and additional copy paper. Nevertheless, FSHISD was unable to provide any inspection reports for FY 2007 because the reports were maintained at various locations at DOH and D.C. General Hospital, and FSHISD lacked staffing resources to search for the reports.

¹⁸ A random number generator is a computation or physical device designed to generate a random sequence of numbers that does not contain duplicate numbers. The random number generator has applications in statistical sampling to produce an unpredictable result.

FINDINGS AND RECOMMENDATIONS

FSHISD provided 18 inspection reports for FY 2008 and 44 inspection reports for FY 2009. The results are summarized in Table 4, below:

Table 4. Complaint-and-Referral Forms

Fiscal Year	No. of complaints	No. of complaint-and-referral forms selected for review	No. of inspection reports provided	No. of inspection reports not provided
2007	859	86	0	86
2008	647	65	18	47
2009	656	66	44	22
Total	2,162	217	62	155

Our review indicated that due to poor recordkeeping practices, staffing constraints, and lack of management oversight, FSHISD could not provide inspection reports for 155 of 217 (71 percent) complaints reviewed for FYs 2007-2009. Missing records undercut management’s ability to support its decisions and actions taken. In addition, failure to conduct a routine review of complaints inhibits the District’s ability to identify and address serious food safety concerns.

Complaints Against Night Establishments. FSHISD does not always conduct routine inspections of night establishments. However, DOH will inspect a night establishment on a complaint-generated basis. We found that FSHISD received complaints from patrons of the District’s night establishments regarding: 1) unsanitary conditions; 2) rodents; 3) lack of hot water; 4) absence of a certified food manager on duty; 5) service of food stored improperly and at incorrect temperatures; and 6) onset of illness after food consumption, with symptoms including cramps, vomiting, chills, diarrhea, and nausea. One complaint revealed a confirmed diagnosis of E. Coli. It is imperative that FSHISD conduct regular, routine inspections of night establishments in addition to inspections generated from complaints in order to identify and correct poor food safety practices that could be detrimental to the health of customers who patronize these establishments.

FINDINGS AND RECOMMENDATIONS

Health and Hygiene Inspections. We found that FSHISD does not perform routine inspections of barbershops, beauty salons, or massage and health spas. These health-related establishments receive inspections on pre-operational and complaint bases only. The inspection process is different for these establishments because it is based on the different laws governing each discipline. We also found that FSHISD is not inspecting tanning, tattoo, body art, and body-piercing facilities because the District does not have laws pertaining to those types of facilities. The absence of a legal requirement to perform routine inspections of these establishments prevents FSHISD from detecting poor hygienic safety practices that could jeopardize the health and safety of citizens in the District who patronize these establishments.

Routine Food Sampling. Review of routine food sampling was not an objective of this audit. However, during the course of our fieldwork, we found that in the past, FSHISD obtained samples of food products for testing in order to reduce incidents of foodborne illness. Prior to February 2010, the D.C. Public Health Lab conducted weekly tests of FSHISD food samples for foodborne illness investigations. Currently, FSHISD only provides food samples to the lab when the department investigates a complaint of a confirmed (i.e., diagnosed by a physician) foodborne illness. Due to budgetary constraints, FSHISD lacks resources to pay for the lab technicians' services and the supplies necessary to conduct the testing. Some examples of food items that can be tested through routine food sampling include ready-to-eat foods, chicken, sushi, fish, shellfish, mayonnaise-based salads, sausage, hot dogs, fruits, and vegetables.¹⁹ When testing these types of foods, the lab is looking for pathogen bacteria, such as E. Coli 0157:H7, Salmonella, Shigella, and Listeria. FSHISD's decision to discontinue weekly routine food sampling removes an important safeguard designed to prevent the occurrence of foodborne illnesses.

FSHISD's failure to perform routine inspections of food and health-related establishments will not prevent poor safety operations, which could be hazardous to regular patrons. Additionally, FSHISD lacks internal control over monitoring of routine inspections of night establishments, which could lead to improper food handling or poor food safety practices. This condition could be detrimental to the health and safety of District residents and visitors who frequent these establishments.

¹⁹ Title 25-A DCMR § 9900 defines "ready-to-eat food" as a "food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form including, but not limited to, potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food; raw, washed, cut fruits and vegetables; whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed."

FINDINGS AND RECOMMENDATIONS

RECOMMENDATIONS

We recommend that the Director, DOH:

8. Perform routine inspections of food establishments based on the risk-based inspection schedule.

DOH Response

DOH states that the Food Safety Division currently inspects based on risk-level determination and the system has been in place for 5 years.

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation. Although the risk-based inspection schedule has been in place for 5 years, we found that FSHISD has not conducted routine inspections according to the risk level assigned by DOH to food establishments. Therefore, we request that DOH provide a revised response that includes actions planned and a target completion date for this recommendation within 60 days of this final report.

9. Develop policies and procedures to ensure that sanitarians perform routine inspections of night and health-related establishments.

DOH Response

DOH states that supervisors and one sanitarian currently perform night inspections and the program manager organizes sweeps during summer nights and weekends in order to facilitate the inspection of night establishments. Also, sanitarians are assigned to sweeps of health-related facilities in July and August.

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation. DOH's response did not address establishing policies to formalize its inspection of night and health-related establishments. Therefore, we request that DOH provide us with a completion date for such policies within 60 days of the date of this final report.

FINDINGS AND RECOMMENDATIONS

10. Institute policies that create a day and night shift work schedule for sanitarians in order to accommodate inspections of night establishments.

DOH Response

DOH states that an increase in staff will enhance its capability to implement inspections of night/after-hour establishments.

OIG Comment

DOH's response is noted, but does not meet the intent of the recommendation. The full intent of the recommendation was to implement formal policies to create a work shift schedule for sanitarians to conduct inspections of night establishments, and DOH's response did not address whether it instituted or plans to institute such policies. Therefore, we request that DOH provide a revised response with a target completion date for such policies within 60 days of the date of this final report.

11. Perform weekly routine food sampling to prevent incidents of foodborne illness.

DOH Response

DOH states that a Memorandum of Understanding (MOU) between DOH and the D.C. Public Health Lab is needed to address funding issues, and DOH needs to hire a full-time microbiologist to perform routine food sampling. Currently, foodborne illness and outbreak sampling occurs as needed.

OIG Comment

DOH's response is noted and partially meets the intent of this recommendation. The full intent of the recommendation was to perform weekly routine food sampling to reduce the risk of incidents of foodborne illness. Accordingly, we request that DOH revise its response to this recommendation within 60 days of the date of this final report to include estimated target dates for implementing weekly routine food sampling.

FINDINGS AND RECOMMENDATIONS

12. Conduct inspections for establishments only in the District.

DOH Response

DOH states that special events occurring 5 to 10 times per year often predicate the inspection of facilities located outside the District. The inspections are generally associated with an event being held in D.C., thus necessitating the inspection. Some of the inspections may be associated with National Security Safety Events outlined by the Homeland Security Administration.

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation. We agree that special events occur in the District and for establishments located outside of the District that participates in special events, a District inspection would be necessary. However, during our review, we found that FSHISD conducted routine inspections for an establishment in Virginia in FYs 2007 and 2008, and the inspection report did not indicate that the inspections were conducted in relation to a special event in the District. The address on the inspection report (written by the sanitarian) was not located in the District. Therefore, we request that DOH provide us with a revised response within 60 days of this final report, which specifically addresses the basis for inspecting the Virginia establishment at issue in this finding.

FINDINGS AND RECOMMENDATIONS

FINDING 4. MAINTENANCE AND RETENTION OF INSPECTION REPORTS

SYNOPSIS

We found that FSHISD did not properly maintain its records to effectively control inspection activities. Records were variously maintained in a file room, stored in boxes, and placed on tops of filing cabinets without any organization to facilitate efficient retrieval for review and other control purposes. The file room was in complete disarray. These poor recordkeeping practices made it difficult for FSHISD to submit files requested for our review. We attribute these conditions to the lack of effective management oversight and a file maintenance policy. These conditions impede FSHISD's ability to provide ready access to records in response to oversight agency requests for information.

DISCUSSION

In performing our audit, we found that FSHISD did not adequately maintain inspection reports, which is a clear indication of poor recordkeeping practices. For review, we selected a statistical sample of food establishments that obtained valid basic business licenses in order to determine whether the establishments received routine safety and hygiene inspections during FYs 2007-2009. We requested FSHISD to provide inspection reports for our sample of 366 entities. FSHISD indicated that inspection reports were maintained at various locations throughout the building and D.C. General Hospital. In addition, management stated that the division lacked staffing resources to search for the inspection reports located at DOH.²⁰

When we attempted to locate inspection reports, we found that DOH officials had moved the reports to another location. The inspection reports were located in several areas of the office, stored in file boxes, on tables, and inside two lateral filing cabinets organized by sanitarian name. Officials stated that prior to September 2007, inspection reports were filed by facility address, but after September 2007, inspection reports were filed by sanitarian name and month. We found that inspection reports were missing, files were in disarray, and an overall lack of management oversight existed for sound recordkeeping practices. We encountered difficulty obtaining proper documentation to conduct our review, which significantly delayed our audit activities. In fact, we were required to virtually comb through thousands of files in an effort to obtain the necessary records.

²⁰ FSHISD is located at 899 North Capital Street, NW, Washington, D.C. 20002

FINDINGS AND RECOMMENDATIONS

In addition, we reviewed documentation to determine whether FSHISD investigated complaints in a timely manner and whether complaints about food and health-related establishments resulted in full inspections. In response to our request for 217 inspection reports addressing complaint investigations from our sample, FSHISD was unable to locate all the necessary files needed for our review. As a result, our audit team attempted to assist FSHISD in locating the inspection reports for complaints investigated during FYs 2007-2009. However, due to DOH file room disorganization, the audit team's attempts were unsuccessful.

FSHISD provided 62 of the 217 inspection reports requested for complaint investigations during FYs 2007-2009, which represented only 29 percent of the files requested. FSHISD indicated that file boxes containing FYs 2007 and 2008 inspection reports were stored at D.C. General Hospital, and the department had not visited that site for at least 2 fiscal years. FSHISD officials also stated that the reports might be located in a basement room on the hospital campus. This uncertainty indicates that FSHISD officials lack internal controls to monitor the location of important inspection records.

The following photographs illustrate the degree of disorganization in the file room where DOH maintained inspection records. During our visit, we found that inspection reports were improperly filed without regard to sequential order. Further, some inspection reports were haphazardly located in unlabeled boxes with other DOH information and placed on top of file cabinets. The files were maintained in an unlocked storage area accessible to anyone.

FINDINGS AND RECOMMENDATIONS

Image 1

Image 1 shows conditions in DOH's file room located on the second floor of 899 North Capitol Street, NW, Washington, D.C. These boxes were placed in a corner of the room and contained sanitarians' route slips and timecards, which were stored in a disorganized manner.



Image 2

Image 2 shows files stored in the file cabinets in DOH's file room, which house inspection reports, sanitarian route slips, and timecards. The files were stored with other documents, such as controlled substance abuse files, which were unrelated to FSHISD.



Image 3

Image 3 shows files of inspection reports for food establishments. The files were not organized in chronological sequence or alphabetical order. They were stored haphazardly.



FINDINGS AND RECOMMENDATIONS

Image 4

Image 4 shows file folders of inspection reports. According to DOH officials, inspection reports were filed in order by the food establishment address. However, the photo shows that files were also maintained by the establishment's name. Thus, the files were not easily accessible and inconsistent with FSHISD file storage guidelines.



Image 5

Image 5 shows a stack of inspection reports that were placed on a file cabinet without descriptive information and without regard to chronological order.

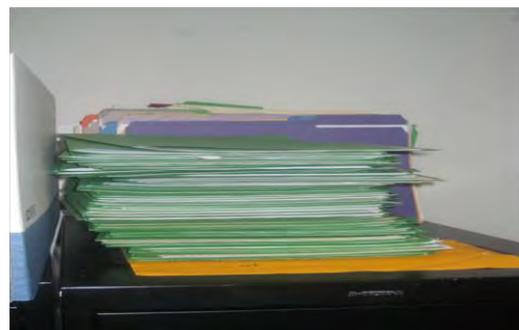
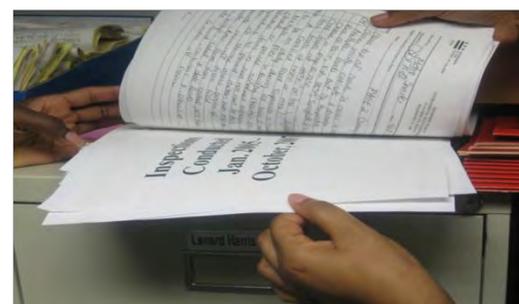


Image 6

Image 6 shows additional inspection reports inserted between stacks of file folders on top of a filing cabinet. The reports were not properly filed in any sequential order.



FINDINGS AND RECOMMENDATIONS

Image 7

Image 7 shows copies of Summary Suspension notices and inspection reports found in boxes inside DOH's file room. The boxes were not labeled to identify the contents of stored documents.

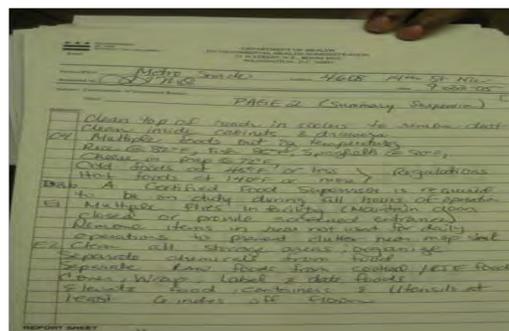


Image 8

Image 8 shows stacks of boxes containing inspection reports and other miscellaneous documents not organized in any specific order.



Image 9

Image 9 shows how FSHISD filed inspection reports after the files were relocated to another floor at 899 North Capitol Street. These inspection reports were for 2008 only, and filed in a lateral filing cabinet organized by sanitarian last name but lacked further organization, such as ascending date order.



FINDINGS AND RECOMMENDATIONS

Image 10

Image 10 shows copies of inspection reports for FYs 2007 and 2009 that were not organized by calendar year or alphabetical order. These reports were located on a table and in a chair outside of an employee's office at DOH.



FINDINGS AND RECOMMENDATIONS

During the course of our audit, FSHISD implemented the Digital Health System on May 24, 2010, and launched the related website to the public on July 16, 2010. The Digital Health System captures and stores inspection data as well as schedules inspections. Although the System can hold an unlimited amount of data, FSHISD will only capture and store inspection reports from the past 3 calendar years. The Digital Health System will improve most aspects of FSHISD operations by electronically scheduling inspections, maintaining inspection history, and monitoring the number of complaints. The system also allows residents to view current health inspection reports. To locate the health inspection history of a food establishment, residents can search for the establishment by zip code, licensee name, or restaurant name. DOH has not implemented policies and procedures regarding usage of the newly implemented Digital Health System.

Failure to properly maintain and organize records of inspection activities impedes FSHISD's ability to effectively track and monitor inspections for compliance with established policies, procedures, and regulations. Implementation of the Digital Health System will facilitate electronic access to inspection reports via the DOH website. We believe that implementation of the Digital Health System and related usage policies have the potential to address recordkeeping problems noted in this report.

RECOMMENDATION

We recommend that the Director, DOH:

13. Develop formal recordkeeping policies and procedures to ensure efficient and effective management of records related to inspection activities.

DOH Response

DOH states that food safety inspection data are uploaded to the Digital Health System developed by Garrison Enterprises. The system has completely eliminated the need for paper filing of hard copy documents. The documents are now completely stored on a server, which makes retrieval of an inspection instantaneous.

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation. DOH's response did not address establishing related usage policies of the Digital Health System to ensure efficient and effective management and retrieval of inspection records. Therefore, we request that DOH provide a target completion date for such policies within 60 days of this final report.

FINDINGS AND RECOMMENDATIONS

14. Arrange and file the hardcopy records for backup purposes prior to implementing electronic access via the Digital Health System.

DOH Response

DOH states that the Digital Health System has completely eliminated the need for paper filing of hard copy documents. The documents are now completely stored on a server, which makes retrieval of an inspection instantaneous. Any remaining paper files are properly stored to meet DOH's needs.

OIG Comment

DOH's response did not meet the intent of this recommendation. DOH's response did not address establishing a process for filing hardcopy records for backup purposes prior to entering inspection data into the Digital Health System. Therefore, we request that DOH provide a revised response with a target completion date for this recommendation within 60 days of the date of this final report.

FINDINGS AND RECOMMENDATIONS

FINDING 5. BUSINESS LICENSE FEES

SYNOPSIS

Adequate controls were not implemented to ensure that revenues from business license fees were correctly identified and transferred from DCRA to DOH. This condition exists because: (1) DCRA does not provide appropriate supporting documentation indicating what portion of the business license fee should be transferred to DOH; and (2) there is no Memorandum of Understanding (MOU) or regulation that stipulates the requirements for the transfer of business license fees from DCRA to DOH. As a result, funds owed to FSHISD were not properly remitted, resulting in lost revenue that could be used to help effectively manage FSHISD operations.

DISCUSSION

To operate a food establishment legally in the District, the owner must obtain a BBL from DCRA. To obtain a BBL, the owner must first apply for and obtain a Certificate of Occupancy to demonstrate that the business does not conflict with zoning requirements. The applicant must then obtain a Federal Employer Identification Number (FEIN), which identifies the owner as a business taxpayer, and a D.C. Business Tax Identification Number (FR-500) to determine the employer's ability to pay unemployment taxes. The owner is required to file form FR-500 with the Office of Tax and Revenue (OTR) in order to obtain a Certificate of Tax Registration. In addition, a Clean Hands Certificate is required with all applications for any type of license. A Clean Hands Certificate is an affidavit stating that the applicant does not owe more than \$100 to the District because of fees, parking tickets, fines, penalties, interest, or taxes. DCRA cannot issue or reissue any license or permit if the applicant owes more than \$100 to the District government.

DOH's role in the issuance of business licenses includes FSHISD conducting a plan review and a pre-operational inspection prior to opening a new food establishment. This inspection ensures that all license and facility requirements are met and that the establishment is capable of supporting the type of operation planned. If the establishment is approved, the sanitarian will write on the inspection report, "No Objection to Issuance of License" and sign the license application in the appropriate section. The applicant is required to submit the application, approved inspection report, and appropriate fees to DCRA in order to obtain a printed BBL for a public health-retail food establishment, which is valid for 2 years. The cost of BBLs range from \$200 to \$2,730.

FINDINGS AND RECOMMENDATIONS

Fees collected from licensing food establishments in the District are divided between DOH and DCRA. According to DOH, the agency is entitled to receive 75 to 78 percent of the total income received from the issuance of business licenses, including the application, endorsement, and service enhancement fees. However, DCRA officials indicated that DOH is entitled to receive 100 percent of the business license fee, excluding the application, endorsement, and service enhancement fees. This inconsistency remains unresolved. In addition, DCRA does not provide DOH with the amount of revenue collected from business licenses issued to food and health-related establishments in the District. This condition prevents DOH from accurately determining the amount of revenue due it from DCRA for business license fees on a quarterly basis.

Although both agencies agreed that DCRA should transfer business license fees to DOH quarterly, DCRA has not consistently transferred fees received. We noted instances beginning on April 8, 2008, in which DOH sent several emails to various DCRA officials requesting remittance of business license fees for FY 2008. Approximately 1 month later on May 6, 2008, in response to the DOH emails, DCRA transferred business license fees for FYs 2007 and 2008 (collected between August 1, 2007-April 30, 2008). We believe that DCRA's failure to consistently transfer the correct amount of funds on a quarterly basis prevents DOH from effectively managing, budgeting, and planning for FSHISD business operations.

Revenue Collection Procedures. DOH receives revenue from food establishments that obtain BBLs in order to conduct business in the District. Our review consisted of determining whether DCRA properly received, reported, and transferred business license fees to DOH. DOH has not implemented policies or procedures that outline actual steps for collecting its portion of business license fees from DCRA. In order to obtain business license fees from DCRA, DOH must request that DCRA generate the transfer. As a result, DOH is unable to identify the actual amount of revenue that should be remitted from DCRA to properly support FSHISD operations.

Also, we discovered that there is no MOU between DOH and DCRA that outlines the specifics regarding revenue transfer from BBL fees. According to DOH, revenue transfer is governed by a verbal agreement between the two agencies. Although DCRA eventually transfers the license fee revenue to DOH, the payments are not effected consistently. Therefore, DOH should perform due diligence by correctly identifying and accounting for revenue actually received for business licenses.

FINDINGS AND RECOMMENDATIONS

We reviewed DCRA records regarding business license fee transfers to DOH for food establishments obtaining new licenses or renewing business licenses during FYs 2007-2009. DCRA transferred \$454,333, \$902,880, and \$647,619 for FYs 2007, 2008, and 2009, respectively. We found errors in DCRA's calculations, which resulted in incorrect transfers. We also found that the transfers included license fees DOH should not have received. As a result, financial records revealed that the revenue collected was either overstated or understated. Table 5, below, summarizes these results.

Table 5. Transfers of Business License Fees

Fiscal Year	Amount Transferred by DCRA	Amount DCRA Should Have Transferred	Total Amount of Overpayment or Underpayment(-)
FY 2007	\$218,115	\$218,115	\$0
	\$236,218	\$236,218	\$0
FY 2008	\$679,056	\$626,489	\$52,567
	\$223,824	\$220,968	\$2,856
FY 2009	\$123,357	\$119,486	\$3,871
	\$194,680	\$131,182	\$63,498
	\$61,370	\$126,317	-\$64,947
	\$268,212	\$176,128	\$92,084

Fiscal Year 2007. DCRA made two transfers to DOH totaling \$454,333 on March 27, 2007, and August 31, 2007, for \$218,115 and \$236,218, respectively. We found that DCRA collected business license fees in August and September 2007, but revenue totaling \$202,846 was not transferred to DOH until FY 2008. Due to a lack of documentation, we could not determine whether DCRA transferred the proper amount of business license fees to DOH for the entire fiscal year.

Fiscal Year 2008. DCRA made two transfers of \$679,056 and \$223,824 on May 1, 2008, and August 1, 2008, respectively, totaling \$902,880. The transfers included license fees for vending machines, pesticides operators, and pesticides applicators, which were not regulated by DOH. Excluding the above improper fee transfers we recalculated that the correct transfer amount to DOH should have been \$847,457. DCRA overpaid DOH by \$55,423.

FINDINGS AND RECOMMENDATIONS

For business license fees collected from August 2007 to April 2008, we found that DCRA did not transfer payments until the third and fourth quarters in FY 2008. Both the third and fourth quarter transfers included business license fees collected for April 2008. Further, our analysis determined that DCRA did not accurately calculate the amount of fees transferred for occupations that DOH does not regulate. Additionally, due to a lack of documentation, we could not determine whether DCRA transferred business license fees collected from July 2008 to September 2008.

Fiscal Year 2009. There were four transfers in the amounts of \$123,357, \$194,680, \$61,370, and \$268,212 for business license fees, totaling \$647,619. All four transfers should have excluded license fees for vending machines, pesticides operators, and pesticides applicators. The second and fourth transfers also included application, endorsement, patent medicine, and late fees. The third transfer covered business license fees, which totaled \$132,693. However, DCRA only transferred \$61,370 of that amount to DOH. DCRA's documentation reflected that \$71,323 was previously transferred. However, we were unable to determine when that transfer occurred, so we requested DCRA's assistance. DCRA responded that \$71,323 was not previously transferred to DOH, but DCRA could not explain why its documentation reflected the transfer. Our recalculations determined that, the amount transferred to DOH in FY 2009 should have been \$533,113. DCRA overpaid DOH by \$114,506.

The first and second transfers were for business license fees collected during the period of October 2008 to December 2008. The third transfer was for business license fees collected from January 2009 to March 2009, while the fourth transfer consisted of business license fees collected from April 2009 to July 2009. Due to the lack of documentation, we could not determine whether DCRA transferred business license fees to DOH that were collected from August to September 2009.

Overall, DCRA is responsible for collecting and transferring business license fees to DOH. However, we noted that DCRA was ineffective in its efforts to consistently transfer business fees regulated by DOH and DOH officials neglected to ensure that they received all fees owed to the agency. This condition amplifies a significant internal control weakness over monitoring business license fee transfers from DCRA, which could impede FSHISD operations. We believe that internal controls over the transfer process could be strengthened by an MOU between DOH and DCRA, supplemented with the establishment of formal policies and procedures.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATIONS

We recommend that the Director, DOH:

15. Coordinate with DCRA officials to prepare a Memorandum of Understanding requiring DCRA to transfer the correct amount of funds from business license fees to DOH on a quarterly basis, along with appropriate supporting documentation reflecting the names of the food and health-related establishments that paid for and obtained licenses.

DOH Response

DOH agrees with this recommendation. DOH's CFO will work with DCRA's CFO to finalize an MOU that details the license fees categories and specify how much of each license fee should be transferred to DOH. This information will support the amount of funds that should be transferred to DOH. This reconciliation and transfer of funds must be done quarterly. However, DOH seeks a permanent solution to have the licensing function for all establishments that are licensed by DCRA on behalf of DOH (as proposed by the DOH Facilities Sanitary Standard Act of 2011) transferred to DOH.

OIG Comment

Our review shows that DOH's comments and actions taken are responsive and meet the intent of this recommendation. However, DOH did not provide estimated target dates for completing planned actions for this recommendation. Thus, we respectfully request that DOH provide target dates for planned corrective action within 60 days of the date of this final report.

16. Establish a mechanism for routine supervisory review of all transfers from DCRA in order to promptly identify and address errors.

DOH Response

DOH's agrees with this recommendation. DOH will implement new procedures to include that within 15 days after the end of each quarter, DCRA's CFO will provide DOH's CFO with a list of names, addresses, and all types of food establishments that either issued or renewed their license. The information provided by DCRA will be reviewed and validated by either the DOH FSHISD program manager or HRLA Administrative Services Manager and compared to DOH's database (Garrison System). Inconsistencies will be identified, researched, and corrected as needed.

FINDINGS AND RECOMMENDATIONS

OIG Comment

Our review shows that DOH's comments and actions taken are responsive and meet the intent of this recommendation. However, we request that DOH provide a target completion date for this recommendation within 60 days of the date of this final report.

17. Establish policies and procedures to ensure proper collection of business license fees from DCRA.

DOH Response

According to DOH's CFO, 90% of the income generated from the various license fees categories comes from renewals (10% from initial license issuance). Because the information relative to the types and numbers of establishments that renewed their licenses comes solely from DCRA, it is extremely difficult for DOH to validate these data. Therefore, DOH is seeking transfer of DCRA's licensing functions via the Department of Health Facilities Sanitary Standard Act of 2011.

OIG Comment

DOH's response is noted, but does not meet the intent of this recommendation. The full intent of the recommendation was to establish policies to formalize adequate collection of business license fees from DCRA. DOH did not address whether it has instituted or plans to institute policies. Therefore, we request that DOH provide a revised response with a target completion date for such policies within 60 days of the date of this final report.

FINDINGS AND RECOMMENDATIONS

FINDING 6. CIVIL FINE REVENUE UNCOLLECTED
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SYNOPSIS

Revenue totaling \$260,100 has not been collected from 229 outstanding civil fines issued by DOH during FYs 2007-2009. DOH is responsible for collecting revenue from civil fines that result from OAH final orders. We determined that funds were not collected from the establishments because DOH did not attempt to collect several outstanding civil fines and the balance on partial payments of civil fines, nor seek to request enforcement authority from OAH. In addition, OAH has neither issued final orders nor responded to DOH regarding several notices of infraction carrying civil fines. Once a matter is adjudicated, OAH provides DOH with a copy of a final order, but is not mandated to provide DOH with a running list of outstanding civil fines. DOH has not implemented adequate controls to ensure timely revenue collection. These conditions contribute to lost revenue that could be used to enhance FSHISD business operations.

DISCUSSION

DOH sanitarians are responsible for conducting inspections of food and health-related establishments. If a sanitarian finds violations of the District Food Code during an inspection, the establishment is issued a Notice of Closure, which states the reason for the closure and violations observed. DOH reviews all supporting documentation pertaining to the establishment's closure and documents the information on a Notice of Infraction (NOI)²¹ that is submitted to its attorney for review.²²

DOH issues NOIs to establishments that violate any provision of 16 DCMR §§ 3200.1 – 3201.1. The owner of such establishment can incur civil fines or penalties up to \$16,000.²³

²¹ Pursuant to D.C. Code §§ 2-1802.01(b)(1-9) (West Supp. 2011), a NOI contains: 1) the name and address of the respondent; 2) a citation of the law or regulation alleged to have been violated; 3) the nature, time, and place of the infraction; 4) where appropriate, the date by which the respondent must comply to avoid incurring a fine and penalty; 5) the amount of the fine applicable to the infraction; 6) the manner, place, and time in which the fine and penalties, if any, may be paid; 7) notice that failure to pay monetary sanctions may result in suspension of respondent's permit or license; 8) notice that failure to answer the notice of infraction within 15 days after the date of service, or other period which the Mayor may establish by rule, shall result in a penalty equal to twice the amount of the civil fine for the infraction set forth in the notice; and 9) notice of the respondent's right to request a hearing with respect to the infraction, and the procedure for requesting a hearing.

²² DOH mails the NOI to OAH and the establishment after approval by its attorney.

²³ Note that “[a]ny person who knowingly violates any provision of this Code [i.e., the District Food Code] shall, upon conviction, be punished by a fine not to exceed ten thousand dollars (\$10,000), imprisonment not to exceed one (1) year or both for each violation.” 25-A DCMR § 4722.1.

FINDINGS AND RECOMMENDATIONS

Table 6, on the following page, displays the District’s schedule of fines and classes of infractions.

Table 6. Classes of Infractions and Related Fines

<i>CLASSES</i>	<i>DEFINITION OF INFRACTIONS²⁴</i>	<i>FINE AMOUNTS</i>
Class 1	Egregious infractions that result from flagrant, fraudulent, or willful conduct, or unlicensed activity, or that are imminently dangerous to health, safety, or welfare of persons within the District of Columbia.	First Offense: \$2,000 Second Offense: \$4,000 Third Offense: \$8,000 Fourth Offense : \$16,000
Class 2	Other serious infractions that result from flagrant, fraudulent, or willful conduct, or unlicensed activity, or that are imminently dangerous to health, safety, or welfare of persons within the District of Columbia.	First Offense: \$1,000 Second Offense: \$2,000 Third Offense: \$4,000 Fourth Offense : \$8,000
Class 3	Infractions that involve a failure to comply with a law or rule requiring periodic renewal of licenses or permits, or infractions that are serious and have an immediate, substantial impact on health, safety, or welfare of persons within the District of Columbia.	First Offense: \$500 Second Offense: \$1,000 Third Offense: \$2,000 Fourth Offense : \$4,000
Class 4	Infractions that involve a failure to post required licenses or permits, or infractions that are minor, but have the potential to be hazardous to the health, safety, or welfare of persons within the District of Columbia.	First Offense: \$100 Second Offense: \$200 Third Offense: \$400 Fourth Offense : \$800
Class 5	Infractions that collectively create a nuisance, but individually do not pose a threat to the health, safety, or welfare of persons within the District of Columbia.	First Offense: \$50 Second Offense: \$100 Third Offense: \$200 Fourth Offense : \$400

Although OAH has no statutory authority requiring it to collect civil fines, OAH is currently receiving civil fine revenue for several District agencies, including DOH. The process for collecting civil fine revenue for food establishments begins once DOH has closed an establishment for violating the District Food Code. Once the NOI is issued, OAH enters the information into its case management system called E-Court, a system used to store financial history and details of court hearings. OAH waits for the establishment owner to respond to the NOI by admitting, admitting with explanation, or denying the violation.

According to D.C. Code §§ 2-1802.02(d) and (e), an establishment owner who admits to a violation noted on the NOI is legally required to pay the fine within 15 calendar days.²⁵ Per D.C. Code § 2-1801.04(a)(2), an establishment owner who fails to answer the final order within the allotted time, may be assessed a penalty equal to twice the amount of the civil fine for the infraction set forth in the notice. According to OAH, failure to respond without good cause to a first and second notice will result in the issuance of a Final Order of Default, which imposes

²⁴ Pursuant to 16 DCMR § 3201.2: “An infraction shall be a repeat infraction and shall carry the enhanced penalties set forth in § 3201.1 if [t]he infraction is a violation by the same person of the same provision of a law or rule committed within 3 years following the initial infraction”

²⁵ D.C. Code § 2-1802.05 allows the respondent 15 calendar days (20 calendar days for service by mail) to take any action specified or answer the NOI.

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the authorized fine as well as a statutory penalty for failing to answer. The authorized fine and statutory penalty equal twice the amount of the initial fine. OAH gives the establishment a 30- to 35-day grace period to make a civil fine payment in case of mailing discrepancies. If the establishment owner admits to the violation with explanation, the owner submits a letter to DOH and the OAH judge explaining the infraction. In the letter, the establishment owner may request a reduced fine or suspension of the fine. If DOH disagrees with the establishment's explanation, OAH will schedule a hearing. If the establishment denies the violation, the case will be assigned to an administrative law judge (ALJ) from OAH and a court hearing will be scheduled on the next available date.

According to OAH, a final order disposes all matters in the case but is subject to judicial review or administrative appeal pursuant to D.C. Code § 2-510 (2011) and D.C. Code § 2-1831.16 (2007). Final orders are issued by an ALJ after hearings and in circumstances where the establishment fails to provide an answer when an NOI is issued. The time it takes OAH to issue the final order varies from case to case. Further, the entire process for issuing the final order may take up to 2 months. OAH reviews its calendar for available dates to schedule a hearing, which takes approximately 3 weeks. Once the hearing date is determined, OAH notifies both DOH and the establishment through a written order, which is mailed to each party. During the hearing, the parties provide the judge with explanations for their case and are allowed to provide exhibits that may assist in explaining their legal position. Once both parties have presented their case, the judge dismisses the parties and reviews all information provided during the hearing in order to render a decision and produce a final order at a later date.

As previously mentioned, final orders are not issued directly after the hearing. Based on review of the hearing record and evidence presented, it could take the ALJ 2-3 weeks to issue the final order. Once the ALJ has entered a final order, OAH will mail a copy to DOH and the establishment owner, and also provide DOH a hand-delivered copy. In accordance with the ALJ's decision, the establishment may be ordered to pay the total amount of the fine to OAH. However, we found that establishments have not always paid OAH the entire fine amount as set forth in the final order. Ultimately, however, OAH submits the revenue collected to DOH. Exhibit B contains a flowchart depicting the process for civil fine collection.

FINDINGS AND RECOMMENDATIONS

Uncollected Civil Fine Revenue

OAH was unable to generate a listing of outstanding fines due to the limitations of its prior case management system called ProLaw. As a result, we reviewed the civil fine documentation that DOH provided for FYs 2007-2009. Based on our review, we found that DOH did not collect revenue for some civil fines issued during the period under review. Specifically, DOH issued 444 civil fines totaling \$448,700. However, DOH did not collect \$260,100 (58 percent) from 229 (52 percent) civil fines issued. Of the 229 outstanding fines, there were 53 (23 percent), 78 (34 percent), and 98 (43 percent) fines that DOH did not collect in FYs 2007, 2008, and 2009, respectively. Table 7, below, summarizes our results.

Table 7. Uncollected Civil Fine Revenue (FYs 2007-2009)

Year	Revenue Not Collected from Establishment	Outstanding Final Orders	Outstanding Payments	No Final Order of Payment	Balance After Partial Payments	TOTAL NOI REVENUE
2007	\$26,350	\$3,000	\$0	\$15,000	\$1,000	\$45,350
2008	\$61,600	\$23,600	\$28,600	\$6,100	\$2,110	\$122,010
2009	\$24,890	\$65,850	\$1,000	\$0	\$1,000	\$92,740
TOTAL REVENUE UNCOLLECTED						\$260,100

We identified the following six reasons why DOH was unable to collect revenue from civil fines issued:

- ***Funds Not Collected From Establishments*** There were establishments that received final orders, but failed to pay civil fines. In FYs 2007, 2008, and 2009, respectively, we found that 20, 24, and 22 civil fines were uncollected, amounting to \$26,350, \$61,600, and \$24,890 in lost revenue. Thus, the amount of uncollected civil fines totaled \$112,840 during this 3-year period.
- ***Outstanding Final Orders*** In several cases, OAH failed to issue final orders resulting from hearings on DOH-issued NOIs. We found that OAH failed to issue final orders for the following civil fine amounts: 1) \$3,000 for 1 case in FY 2007; 2) \$23,600 covering 17 cases in 2008; and 3) \$65,850 covering 60 cases in FY 2009. The total dollar amount on outstanding final orders totaled \$92,450 during FYs 2007-2009.

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- **Outstanding Civil Fine Payments** An outstanding civil fine payment occurs when OAH issues a final order to an establishment and DOH has communicated with the establishment about a future payment. For FY 2008, we found 20 outstanding civil fine payments totaling \$28,600 and 1 outstanding fine for \$1,000 in FY 2009, for a total of \$29,600.
- **No Response from OAH** Once DOH issues an NOI, it is mailed to both OAH and the establishment. DOH issued 19 NOIs totaling \$15,000 in FY 2007 and 4 NOIs totaling \$6,100 in FY 2008. DOH failed to seek assistance from OAH to provide final orders for these NOIs, but we did not receive a response for our request. For DOH, this condition represents potential loss of revenue totaling \$21,100.
- **Civil Fine Partial Payments** Partial payment of a civil fine occurs when the establishment owner pays only a portion of the civil fine. In FY 2007, there were two partial payments with a total remaining balance of \$1,000. There were four partial payments with a remaining balance of \$2,110 in FY 2008. In FY 2009, there were two partial payments with a remaining balance of \$1,000. Had DOH collected the remaining balances owed, it would have received \$4,110 for the 3-year period.
- **Change to Establishment Ownership** According to DOH, if a previous owner closes an establishment or transfers ownership without paying an outstanding civil fine, the new owner is not required to pay the civil fine, and a lien cannot be imposed against the establishment. Changing ownership or closing the establishment after receiving a final order to pay a civil fine makes it difficult for DOH to search for the previous owner in order to collect an outstanding civil fine, unless the previous owner opens another establishment in the District.

According to the OAH Director, OAH receive civil fines for DOH-issued NOIs that result in OAH final orders. However, we noted that DOH was ineffective in its efforts to collect numerous outstanding civil fines, resulting in significant revenue loss that could be used to improve FSHISD operations. We believe that OAH and DOH officials should execute an MOU to govern this process, and establish formal policies and procedures that would strengthen controls over collecting outstanding civil fines and penalties.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATIONS

We recommend that the Director, DOH:

18. Coordinate with OAH officials to develop a Memorandum of Understanding between DOH and OAH to include all processes necessary to establish accountability for collecting outstanding civil fines and penalties in a timely manner.

DOH Response

DOH agrees with this recommendation. DOH's CFO will develop a Memorandum of Understanding with OAH's CFO to collect revenues on behalf of DOH on contested citations. Within 15 days after the end of each quarter, OAH will provide DOH with the year-to-date settlement agreements, final arbitrated amounts and the associated funds for all contested citations. In addition, all installment payments resulting from final arbitration will be payable directly to DOH. DOH proposes that all fees associated with uncontested citations be submitted directly to DOH. Contested citations will continue to be sent to OAH.

OIG Comment

Our review shows that DOH's comments and actions taken are responsive and meet the intent of this recommendation. However, DOH did not provide estimated target dates for completing planned actions for this recommendation. Thus, we respectfully request that DOH provide target dates for planned corrective action within 60 days of the date of this final report.

19. Adopt a routine review process of final orders to ensure the proper collection of civil fines and penalties.

DOH Response

DOH agrees with this recommendation. DOH stated that it will work with OAH to review and process final orders to ensure the proper collection of civil fines penalties.

OIG Comment

Our review shows that DOH's comments and actions taken are responsive and meet the intent of this recommendation. However, DOH did not provide estimated target dates for completing planned actions for this recommendation. Thus, we respectfully request that DOH provide target dates for planned corrective action within 60 days of the date of this final report.

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20. Establish formal policies and procedures for collecting civil fines from the responsible business owner after a change of business ownership.

DOH Response

DOH agrees with this recommendation. DOH stated that the agency will work to address this issue with OAH.

OIG Comment

DOH's response is noted and partially meets the intent of this recommendation. The full intent of the recommendation was to formulate policies and procedures to establish controls over the notification of business licenses that transfer ownership. Therefore, we request DOH provide a revised response with estimated target dates for this recommendation within 60 days of the date of this final report.

21. Coordinate with DCRA officials to prepare a Memorandum of Understanding (MOU) between DOH and DCRA whereby DCRA notifies DOH before a food or health-related establishment transfers ownership of a business license.

DOH Response

DOH agrees with this recommendation. DOH stated that the agency will work to address this issue with DCRA.

OIG Comment

Our review shows that DOH's comments and actions taken are responsive and meet the intent of this recommendation. However, DOH did not provide estimated target dates for completing planned actions for this recommendation. Thus, we respectfully request that DOH provide target dates for planned corrective action within 60 days of the date of this final report.

FINDINGS AND RECOMMENDATIONS

We recommend that the Chief Administrative Law Judge, OAH:

22. Collect \$260,100 in outstanding civil fines.

OAH Response

OAH stated that the agency “collects” fines only insofar as it is the place where parties may pay their fines. It has no authority to undertake collection efforts on its own, but the law gives DOH authority to initiate a number of efforts, both at OAH and elsewhere, to compel payment of unpaid fines.

OIG Comment

Upon reviewing OAH’s response, OAH has no statutory authority to undertake collection efforts. Therefore, we will redirect this recommendation to DOH to provide comment within 60 days of the date of this final report.

23. Upon receipt of proper notice regarding civil fine nonpayment, impose the sanctions provided in D.C. Code §§ 2-1802.03(f) & (i)(1) and § 2-1801.03(b)(7), which include license suspension, lien imposition, and sealing the establishment owner’s real or personal property, business, or work site.

OAH Response

OAH stated it does not have the authority to impose such sanctions, on its own initiative.

OIG Comment

Upon reviewing OAH’s response, OAH has no authority to impose sanctions on its own initiative. Therefore, we will redirect this recommendation to DOH to provide comment within 60 days of the date of this final report

FINDINGS AND RECOMMENDATIONS

FINDING 7: EXPIRED BUSINESS LICENSES

SYNOPSIS

FSHISD was unable to identify the number of food and health-related establishments that operate in the District of Columbia. DCRA officials have not implemented controls to routinely inform FSHISD of food establishments that obtain new business licenses or renew expired ones. Also, DCRA does not maintain accurate and complete information regarding these business licenses. We found several food establishments with expired licenses in DCRA's database. FSHISD cannot conduct food and hygiene safety inspections of establishments that do not have current, valid business licenses. FSHISD's failure to inspect these establishments prevents DOH from detecting and preventing food and health hazards in order to effectively protect the health, safety, and welfare of District residents, visitors, and employees.

DISCUSSION

Although DOH is not responsible for licensing businesses operating in the District, DOH is required to perform inspections of food and health-related establishments. In performing these inspections, DOH verifies that the owner's license is valid and current. We noted that FSHISD conducted food safety inspections of establishments which DCRA's database incorrectly showed possessed expired licenses during FYs 2007-2009. We determined that these establishments renewed their licenses prior to the inspections because the license date is reflected on the inspection reports. Therefore, DCRA's database is not complete and current because it does not track license renewals.

According to DOH, it is difficult to determine the number of food establishments in the District because DCRA does not maintain an accurate account of food establishments in its database. The business licensing process begins when an applicant submits payment to obtain a BBL. DCRA enters the applicant's data, such as company name, billing and premise address, FEIN, and other pertinent information into the database. DCRA uses the data for its official records. We found that DCRA did not update expired or suspended license information in the database. According to FSHISD officials, DOH relies on food establishment owners to schedule inspections for license renewal and patron complaints to know when possible health-code violations have occurred at food establishments.

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As of September 2009, FSHISD indicated that the District had approximately 5,100 food establishments on average, depending on the number of establishments opening and closing per month. DCRA provided us with a list of all establishments in its database that received business licenses as of October 2009, which revealed 10,330 food establishments.²⁶ The list from DCRA contained 5,230 more establishments than the number FSHISD provided. Table 8, below, details the number of food and other establishments recorded by DCRA and DOH.

Table 8. Comparison of the Number of Establishments Recorded by DCRA and DOH

<i>Category</i>	<i>DCRA</i>	<i>DOH</i>
Food Establishments	10,330	5,100
Mobile Food Vendors	0 ²⁷	1,100 ²⁸
Swimming Pools	269	220
Cosmetology Salons/Shops	1,381	450
Massage Therapy/Health Spas	168	25
Bed Manufacturers	0	4
Total	12,148	6,899

DOH and DCRA do not share information on the number of food establishments receiving and renewing business licenses. When conducting our review of routine food safety inspections for the 366 food establishments in our sample, we discovered 46 establishments (12.6 percent) in DCRA's database with expired business licenses between FYs 1999 and 2006. Nevertheless, we found that DCRA listed those 46 establishments in its database along with establishments that had current business licenses. We also found that FSHISD sanitarians conducted inspections in FYs 2007-2009 for these establishments and verified that 36 of the 46 establishments (78 percent) had current and valid business licenses, which directly contradicts the information in DCRA's database. Additionally, we found one food establishment with an expired license that did not receive routine inspections, but received other types of inspections. Further, we found that 9 of the 46 food establishments did not receive any inspections, but FSHISD did not provide any rationale for why these entities did not receive routine inspections.

²⁶ The list actually contained 14,342 food and health-related establishments. We removed establishments from DCRA's list that are not inspected by DOH, such as patent medicine and funeral establishments, which reduced the number to 12,148.

²⁷ DCRA does not license mobile food vendors.

²⁸ We removed 500 mobile food vendors from DOH's list because not all mobile food vendors operate at the same time.

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Overall, DCRA did not maintain complete and accurate business license information. This in turn impacted FSHISD's ability to effectively inspect and monitor food and health-related establishments. Without accurate and current licensing information, FSHISD cannot effectively perform inspections of food establishments. The inability to perform safety inspections of all food establishments in the District places FSHISD in a reactive rather than a proactive posture in regard to controlling potentially hazardous foodborne illnesses and public health conditions.

RECOMMENDATIONS

We recommend that the Director, DOH:

24. Coordinate with DCRA officials to develop a Memorandum of Understanding requiring DCRA to provide DOH with a list of food and health establishments receiving and renewing business licenses on a monthly basis, along with copies of business licenses reflecting the name of the establishment and the issue and expiration dates.

DOH Response

DOH agrees with this recommendation. DOH will coordinate with DCRA in order to develop a Memorandum of Understanding requiring timely and accurate transfer of food and health establishments receiving and renewing business licenses until the time that the licensing function is transferred to DOH from DCRA.

OIG Comment

Our review shows that DOH's comments and actions taken are responsive and meet the intent of this recommendation. DOH did not provide estimated target dates for completing planned actions for this recommendation. Thus, we respectfully request that DOH provide target dates for planned corrective action within 60 days of the date of this final report.

We recommend that the Director, DCRA:

25. Maintain current, complete, and accurate licensing information in DCRA's database and share this information with DOH to correctly identify food and health-related establishments with valid business licenses to facilitate FSHISD food safety and hygiene inspections of these establishments.

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DCRA Response

DCRA agrees with this recommendation. DCRA has a management system, which is updated daily when customers obtain and/or renew their business license. The DCRA Business License Division utilizes the Accela data system for the processing of all license applications received. DCRA and DOH have agreed to implement the transmittal of the new and renewal licenses processed on a monthly basis. This information will afford DOH the ability to reconcile its records with those processed by DCRA. DCRA will not issue a license for a new establishment unless and until an applicant receives prior signatory approval from DOH.

OIG Comment

Our review shows that DCRA's comments and actions taken are responsive and meet the intent of this recommendation. However, DCRA did not provide estimated target dates for completing planned actions for this recommendation. Thus, we respectfully request that DCRA provide target dates for planned corrective action within 60 days of the date of this final report.

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<p>FINDING 8. BENCHMARKING FOOD SAFETY AND HYGIENE INSPECTION PROGRAM OPERATIONS</p>

SYNOPSIS

During our audit fieldwork, we decided to conduct a benchmarking review with jurisdictions similar to the District. As part of our review of food safety and hygiene inspection program operations, we obtained and reviewed information from six other U.S. metropolitan areas in order to identify practices that could improve the efficiency and effectiveness of DOH's operational process for the food safety and hygiene inspection program.

DISCUSSION

Benchmarking is a structured approach for identifying best practices from similar industries or jurisdictions aimed at achieving a more efficient and effective process for intended results. Our benchmarking efforts were to determine whether DOH's food safety and hygiene inspection operations could benefit from information gained about other state agencies that have similar food and health protection programs to the District of Columbia.

During our benchmarking efforts, we reviewed the operational processes of the food safety and hygiene inspection programs in the following jurisdictions:

- Baltimore, Maryland;
- Philadelphia, Pennsylvania;
- Chicago, Illinois;
- Newark, New Jersey;
- Boston, Massachusetts; and
- Miami, Florida.

We researched each jurisdiction's business license fees, food safety budget, food regulations, frequency of inspections, civil fines and penalties, and the ratio of staff to the number of establishments inspected.

Baltimore, MD. The Division of Environmental Health (DOEH) within the Baltimore City Health Department (BCHD) works to improve the health and well-being of Baltimore residents in partnership with other agencies, healthcare providers, community organizations, the media, and funders. DOEH oversees the Bureau of Food Control and the Bureau of Ecology and Institutional Services (BEIS) to enforce the city health code. The Bureau of Food Control's mission is to ensure that all food sold and served is safe for consumption. The Bureau of Food

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Control defines a food establishment as any place, with or without charge, that:

- prepares food for sale or service on the premises or elsewhere; or
- manufactures, processes, stores, packages, handles, distributes, or sells food.

Some examples of food establishments include restaurants, grocery stores, mobile food carts, bars/taverns, market stalls, public and private schools, caterers, special event food vendors, daycare centers, summer camps, bakeries, and church kitchens. "Food" includes ice, non-alcoholic beverages, and chewing gum or any substance used as a component of chewing gum.

BEIS protects the health and safety of city residents through routine inspections and complaint investigations of daycare centers, group homes, assisted living facilities, adoption homes, and foster care homes. In addition, BEIS investigates noise and odor complaints and sewage overflows, and assists in investigating vector-borne and waterborne disease outbreaks.

Philadelphia, PA. The mission of the Philadelphia Department of Public Health (PDPH) is to protect the health of all residents and to promote an environment that allows healthy lives. The Office of Food Protection (OFP) ensures that Philadelphia has a safe and healthy food supply, and reduces the incidence of foodborne diseases. OFP conducts regular inspections of food and health establishments, regulates food-handling practices, and provides food handlers with education about the causes and prevention of foodborne diseases.

PDPH-OFP defines a "food establishment" as a retail food store, room, building, place (or portion thereof), a vehicle, stationary or movable stand/cart, basket, box or vending machine used for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing, or otherwise preparing or transporting or handling food. The term includes those portions of public eating and drinking licenses, which offer food for sale or for off-premises consumption, except those portions of establishments operating exclusively under milk or milk products permits. The agency considers swimming pools, beauty shops, barbershops, and tattoo parlors as health-related establishments.

Chicago, IL. The Chicago Department of Public Health's (CDPH) Environmental Health Division includes programs that promote a safer food supply by inspecting retail food establishments, mobile food vendors, and food at outdoor festivals. In addition, CDPH Environmental Health Division reduces the risk of waterborne illness by inspecting public swimming pools and spas at parks, hotels, and other facilities. CDPH classifies retail food and health-related establishments the same as in the District. (see p. 1). However, CDPH refers complaints for health-related establishments to the State of Illinois.

FINDINGS AND RECOMMENDATIONS

Newark, NJ. The Environmental Health Division of the Department of Child and Family Wellbeing (DCFW) provides comprehensive delivery of inspection services, investigations, and education programs to citizens and consumers in order to assure a healthful and protected environment. The mission of DCFW is to provide and advocate for comprehensive healthcare, social, and environmental services for Newark citizens and other consumers to ensure an optimal level of health and wellbeing.

The Food & Drug Bureau inspects all schools, restaurants, delicatessens, grocery stores, indoor and outdoor festivals, street vendors, supermarkets, and any other type of food industry servicing or storing food or beverage in the City of Newark, and responds to all environmental complaints. The Weights and Measures Division inspects every establishment in the City of Newark that has a measuring device (scale). These establishments include gas stations, laundry mats, indoor and outdoor fruit and vegetable markets, all delicatessens, grocery stores, and supermarkets.

Boston, MA. The Boston Inspectional Services Department (BISD) is comprised of five regulatory divisions aimed at protecting and improving the quality of life for all Boston residents by effectively administering and enforcing building, housing, health, sanitation, and safety regulations mandated by city and state governments. The Division of Health Inspections defines a food establishment as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as:

- a) a restaurant; satellite or catered feeding location when these locations are equipped with facilities to prepare, store or serve food; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; retail bakery; vending location; institution; food bank; residential kitchens in bed and breakfast homes and bed and breakfast establishments; residential kitchens for retail sale;
- b) a delivery service that relinquishes possession of food to a consumer directly or indirectly through a home delivery of grocery orders or restaurant takeout orders, or delivery service provided by common carriers;
- c) a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

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d) a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

Miami (Dade County), FL. The city of Miami has three agencies that manage the inspection of food and health-related establishments: Department of Health, Department of Business and Professional Regulation, and Department of Agriculture and Consumer Services.

Department of Health (Miami DOH). Miami DOH inspects food service and vending machines in schools; food establishments located on the site of a facility (e.g., a college campus); assisted living facilities under state agencies; detention centers; migrant labor facilities; theaters with normal theatre fare; adult daycare facilities; civic and fraternal organizations; food operation at bars that do not prepare food on-site; and drug, alcohol, and mental health facilities (that provide group food service for 11 or more people).

Department of Business and Professional Regulation (DBPR). DBPR inspects food service establishments not regulated by Miami DOH. These establishments include restaurants; mobile food service units; boarding homes; caterers; hotel bars that prepare food on site; and movie theater food services that do not serve traditional theater food, such as hot dogs, popcorn, and nachos.

Department of Agriculture and Consumer Services (DOACS). DOACS inspects food processing facilities, bakeries, minor food establishments (i.e., coffee shops and ice cream parlors), and stationary and mobile food outlets that do not prepare food on the vehicle. If a food establishment has outlet and food service functions, DOACS inspects the operation with the largest revenue.

Business Licensing and Fees

We learned that these jurisdictions require a business license to operate food and health-related establishments. Also, we found that the District leads in the cost to purchase a business license, and its requirements and stipulations are more stringent than the jurisdictions surveyed. The cost for obtaining business licenses varied among jurisdictions, as follows:

- D.C. DCRA fees range from \$200 to \$2,730, and business licenses are valid for 2 years;
- BCHD Division of Environmental Health cost ranges from \$10 to \$550;
- The City of Boston Clerk's Office fee ranged from \$75 to \$1,200;
- The Chicago Department of Business Affairs and Consumer Protection charges from \$660 to \$1,100;
- Miami DOH fees range from \$85 to \$315; and
- The City of Newark License Bureau and the Hall of Records fees range from \$25 to \$1,000.

FINDINGS AND RECOMMENDATIONS

The Department of Licenses and Inspections in Pennsylvania issues business licenses. We could not reach that agency to obtain information regarding its business licensing process.

Food Safety Program Budget

The budget for a food and safety program provides the necessary financial resources to hire appropriate regulatory personnel in order to more effectively enforce public health safety standards and regulations. In researching the budgetary data for other jurisdictions during FYs 2007-2009, we found that the District had the highest annual budget for its food and health safety program for each of the comparison years. Although, Boston could not provide food and health safety program budgetary information for FY 2007, we noted that the city had the second highest annual budget. Table 9, below, presents the program budgets for each of the six jurisdictions reviewed during our benchmarking study.

Table 9. Food Program Safety Budgets (in millions)

<i>Jurisdiction</i>	<i>Fiscal Year 2007</i>	<i>Fiscal Year 2008</i>	<i>Fiscal Year 2009</i>
D.C. ²⁹	\$5.9	\$6.6	\$7.3
Baltimore	\$3.7	\$4.0	\$4.1
Chicago	\$5.0	\$5.0	\$5.0
Boston	-	\$6.2	\$6.4
Philadelphia	\$4.4	\$4.4	\$4.4
Newark	\$1.3	\$1.3	\$1.3

Ratio of Staff to the Number of Establishments

Our benchmarking review revealed that the District ranks sixth in the area of the number of sanitarians employed. Although Philadelphia and Chicago have relatively the same number of establishments as the District, these two jurisdictions have more sanitarians. We found that the District ranks first with the highest number of mobile food vendors and second with the most health-related establishments (with over 60 percent more establishments than the other jurisdictions). Therefore, FSHISD lacks a sufficient number of human resources to conduct routine inspections of food establishments, health-related establishments, and mobile food vendors in the District. Without adequate staffing, inspections of the establishments cannot

²⁹ Throughout the course of the audit, no one at DOH could provide accurate budgetary data for our review. The DOH CFO, HRLA Administrative Service Manager, nor the FSHISD Program Manager could accurately state the food program budget during our review. They kept providing how much revenue was collected for FY's 2007-2009. Additionally, no DOH official could provide documentary evidence of FSHISD's budget. Therefore, the audit team used data from DC's CFO annual operating budget for the FY's listed above. It is possible the numbers we reported may be inclusive of animal and rodent control. The Program Manager did state that his budget is entangled with those divisions and he has to seek approval from that Division's program manager to obtain supplies, etc. Further, in a meeting with the FSHISD Program Manager, he stated he never receives a breakdown for the budget and believes the budget for food, animal, and rodent control Divisions was roughly \$1.5 million (which still contradicts the CFO's budgetary data, if all three is included in the numbers in the chart); however, he could not provide documentation to support that information.

FINDINGS AND RECOMMENDATIONS

occur. As a result, the District is vulnerable to legal liability if a patron frequenting an unlicensed or uninspected establishment becomes ill from a foodborne illness or unsanitary conditions. Table 10, below, summarizes our benchmarking results with a comparative breakdown of the level of staff to the number of establishments, as well as a comparison of food code regulations followed and the status of electronic health inspection system implementation in all seven jurisdictions.

Table 10. Ratio of Inspections

Jurisdiction	Sanitarians	Food Est.	Mobile Food Vendors	Pools	Other Est.	Total No. of Est.	Ratio of Staff to Est.	Follow FDA Code	Follow State Code	Follow Other Code	Electronic Health System
D.C.	16	10,330	1,100	220	479	12,129	758	Y	N	Y	Y
Baltimore	23	6,500	214	90	18	6,822	297	N	Y	Y	N
Philadelphia	33	12,000	880	220	40	13,140	398	Y	N	N	Y
Chicago	32	15,000	150	0	250	15,400	481	Y	N	N	Y
Newark	7	618	394	0	119	1,131	162	Y	Y	N	N
Boston	18	5,661	355	184	192	6,392	355	Y	Y	N	Y
Miami	21	1,100	0	0	6,105	7,205	343	N	Y	N	Y

Food Regulations

The District and Boston established food safety regulations modeled after the FDA 1999 Food Code. Philadelphia and Chicago follow the 2005 FDA Food Code. The remaining jurisdictions follow city and state regulations.

Frequency of Inspections

The most fundamental goal of a health inspection program is to protect the public from health hazards, such as foodborne or public health illnesses. The best way to achieve this result is through frequent inspections of food and health-related establishments to identify and correct deficiencies, such as poor food and hygiene safety practices and conditions. Our research consisted of determining how often these jurisdictions conduct inspections.

Washington, DC. FSHISD conducts routine inspections of food establishments between one and five times within a 13-month cycle, depending on the risk level assigned to the establishment. Mobile food vendors receive inspections every 6 months to renew the vendor's health inspection certificate. FSHISD inspects health-related establishments on a pre-operational or complaint basis, but public swimming pools receive two inspections every summer.

FINDINGS AND RECOMMENDATIONS

Baltimore, MD. BCHD conducts inspections of food establishments annually using a priority assessment. A food establishment assessed as a high priority receives three inspections. A facility classified as a moderate priority receives one inspection. Both mobile food vendors and health-related establishments receive one inspection per year.

Philadelphia, PA. Although PDPH assigns a risk category between 1 and 4 to food establishments in order to determine the frequency of routine inspections, food establishments only receive inspections once a year. Mobile food vendors also receive annual inspections. With the exception of swimming pools, health-related establishments only receive inspections generated from complaints. Sanitarians conduct seasonal inspections of swimming pools.

Chicago, IL. CDPH inspects food establishments and mobile food vendors by predetermined risk levels assigned to the establishment. Risk level 1 establishments should be inspected at least twice per year; however, CDPH officials stated that sometimes these establishments only receive one annual inspection due to limited staffing. Risk level 2 establishments receive one inspection per year, while risk level 3 establishments receive an inspection every other year. One sanitarian annually inspects tattoo and tanning facilities within the city of Chicago. CDPH does not assign risk levels to tanning and tattoo establishments.

Newark, NJ. DCFW inspects food establishments according to ranking factors. However, food establishments, mobile food vendors, and health-related establishments receive annual inspections. DCFW inspects public recreational bathing places biannually.

Boston, MA. Food establishments in Boston receive inspections at least once a year according to a risk-based schedule: urgent, high, medium, and low risk. Establishments found to have an urgent risk level will receive up to three inspections throughout the year. Mobile food vendors in Boston receive one inspection annually. Health-related establishments receive routine inspections annually in addition to inspections generated from complaints.

Miami, FL. The frequency of inspections for food establishments in Miami depends on whether the establishment is a limited or full food service entity. Limited food service establishments may receive one or two inspections. Full food service establishments may receive an inspection four times a year. DBPR and DOACS did not provide the frequency of inspections for mobile food vendors. The Biomedical Waste Unit inspects tanning establishments biannually and inspects tattoo and body piercing facilities annually.

FINDINGS AND RECOMMENDATIONS

Table 11, below, illustrates the frequency of routine inspections conducted in each jurisdiction.

Table 11. Comparison of Inspections for Food Establishments, Health-related Establishments, and Mobile Food Vendors

<i>JURISDICTION</i>	<i>FREQUENCY OF INSPECTIONS (FOOD ESTABLISHMENTS)</i>	<i>FREQUENCY OF INSPECTIONS (HEALTH-RELATED ESTABLISHMENTS)</i>	<i>FREQUENCY OF INSPECTIONS (MOBILE FOOD VENDORS)</i>
D.C.	Risk Based	Preoperational Inspection and Complaint-Generated	Every 6 Months
Baltimore	Priority Assessment	Annually	Annually
Boston	Risk Based	Annually Complaint-Generated	Not Provided
Chicago	Risk Based	Annually	Risk Based
Newark	Annual	Biannually: Recreational Bathing Places Annually: All Others	Annually
Philadelphia	Risk Based	Seasonally: Swimming Pools All Others: Complaint-Generated	Annually
Miami	Full Service Limited Service	Annually: Body Piercing Biannually : Tanning Parlors	Not Provided

We found that five of the six jurisdictions use a risk or priority assessment to determine the frequency of inspections for food establishments, similar to the District’s risk-based inspection schedule. The frequency of inspection for food establishments in Miami depends on whether the establishment is a limited or a full food service entity.³⁰ Additionally, we found that three jurisdictions inspect mobile food vendors annually, whereas the District of Columbia inspects mobile food vendors biannually. The other two jurisdictions did not provide the frequency of inspections for mobile food vendors.

The frequency of inspections for health establishments varied by jurisdiction. We found that three jurisdictions inspect health-related establishments annually. We also found that one jurisdiction inspects tanning and tattoo establishments annually. Another jurisdiction inspects tanning establishments biannually and inspects tattoo and body piercing facilities annually. However, the District of Columbia inspects health-related establishments only when a complaint is received about the establishment.

³⁰ Per Florida Administrative Code 64E-11.002, a Limited Food Service is defined as any establishment with a food operation, so limited by the type and quantity of foods prepared and the equipment utilized that it poses a lesser degree of risk to the public’s health and requires less time to monitor.

FINDINGS AND RECOMMENDATIONS

Civil Fines and Penalties

A civil fine or penalty may be assessed by a government agency against an individual or establishment for failure to adhere to an applicable rule or regulation. Our review was geared toward identifying the type of fines issued in other jurisdictions for establishments violating food and health regulations.

Washington, DC. DOH imposes civil fines and penalties for specific infractions or violation of any provision of the food and health code regulations, including establishments that do not obtain valid business licenses to operate in the District. FSHISD issues civil fines and penalties to establishments that it closes due to health code violations. Civil fines and penalties are issued in accordance with 16 DCMR §§ 3620-25. The fines imposed for violation of the food and health-related codes range from \$50 to \$16,000.

Baltimore, MD. In Baltimore, basic civil fines and penalties do not exceed \$1,000. If a food establishment operates without a license, the department imposes civil fines and penalties up to \$1,000 and/or imprisonment not exceeding 1 year. BCHD did not provide information regarding civil fines and penalties imposed against health-related establishments.

Chicago, IL. CDPH assesses civil fines and penalties against restaurant owners depending on the severity of the violation: \$500 for each critical violation, \$250 for each serious violation, and \$250 for each minor violation that is not corrected upon re-inspection. Chicago levies fines and penalties against health-related establishments, but a representative from CDPH could not provide fine amounts.

Newark, NJ. A representative from DCFW stated that Newark civil fines and penalties are similar to the District of Columbia. In most cases, when a food or health-related establishment violates a provision of the health regulations, the fine and penalty amounts are decided by court judgments.

Boston, MA. Any person who violates any provision of 105 CMR 590 (Minimum Sanitation Standards for Food Establishments), upon conviction, shall be fined not more than \$100 for the first offense and not more than \$500 for a subsequent offense unless a different penalty is set by statute 105 CMR 590.019(A). Any person who fails to comply with any order issued pursuant to 105 CMR 590 shall be fined in the same manner as above 105 CMR 590.019(B). Each day of failure to comply with an order shall constitute a separate offense. *Id.*

FINDINGS AND RECOMMENDATIONS

Miami, FL. The Miami DOH official who responded to our questionnaire was not aware of civil fines or penalties for local food establishment violations. However, the Miami Dade Legal Office determined that state statutes reference a \$5,000 penalty for food establishments that do not obtain current business licenses. The Miami DOH or Legal Office did not provide civil fines or penalty information for health-related establishments.

Overall, we found that the District imposes more stringent civil fines and penalties for Food Code violations than the other jurisdictions in our benchmarking survey. Two of the six jurisdictions levy fines against health-related establishments similar to the District of Columbia. We could not reach officials with the Philadelphia Department of Licenses and Inspections to obtain information regarding civil fines and penalties for food and health-related establishments operating in that jurisdiction.

Electronic Health Inspection Systems

An electronic health inspection is designed to improve health operations by managing the following activities: issuing permits, scheduling inspections, querying unlimited reports on data, billing infractions, tracking violation history and repeat violations, and accessing food regulations.

Washington, DC. DOH introduced the Digital Health electronic inspection system to the public on July 16, 2010. The Digital Health System schedules inspections, maintains inspection history, monitors the number of complaints, and allows visitors and residents of the District to view current inspection reports.

Baltimore, MD. The department provides general inspection procedures and establishment closures on the agency's website. Currently, BCHD is researching implementing an electronic health inspection system.

Philadelphia, PA. The agency uses the Digital Health electronic inspection system. The citizens of Philadelphia can view inspection reports on the agency's website.

Chicago, IL. The agency uses the Digital Health electronic inspection system; however, inspection reports cannot be viewed online.

Newark, NJ. The department is in the process of implementing an electronic health inspection system.

Boston, MA. BISD conducts inspections using a system called Selectron. The agency also uses the Hansen database system. BISD posts inspection violations on the city's website.

FINDINGS AND RECOMMENDATIONS

Miami, FL. Miami DOH implemented an online system for citizens to check inspections conducted in the past year. The online information includes the name of the establishment, date and type of inspection, inspection results, the number of inspection violations, and the inspection score. The system does not include a copy of the actual inspection report or specific details about the violations.

Our results revealed that four of the six jurisdictions implemented an electronic health inspection system similar to D.C. DOH FSHISD. The other two jurisdictions are researching the possibility of or working toward implementing an electronic health inspection system. We believe that a system like this assists health inspection programs by providing better controls that increase efficiency and effectiveness of food and hygiene operations.

Our benchmarking efforts provide FSHISD with best practices that could help improve the effectiveness and efficiency of office operations, such as inspecting health-related establishments similar to Baltimore, Boston, Newark, and Miami, which inspect health-related establishments either annually or biannually.

RECOMMENDATION

We recommend that the Director, DOH:

25. Augment the FSHISD staff to enable the office to conduct routine inspections of all food establishments, health-related establishments, and mobile food vendors in the District.

DOH Response

DOH is in full agreement with recommendation.

OIG Comment

DOH fully agrees with this recommendation. However, DOH did not provide estimated target dates for completing planned actions for this recommendation. Thus, we respectfully request that DOH provide target dates for planned corrective action within 60 days of the date of this final report.

**EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM THE AUDIT**

Recommendation	Description of Benefit	Amount and Type of Benefit	Status³¹
1	Internal Control. Ensures FSHISD enforces the best and most current food safety practices.	Non-Monetary	Closed
2	Compliance and Internal Control. Provides assurance that the amendments to the D.C. Food Code are instituted making DOH accountable to adhere to set policies and procedures.	Non-Monetary	Unresolved
3	Compliance and Internal Control. Provides DOH with governance to perform routine inspections of tattoo, body art, and body piercing establishments.	Non-Monetary	Closed
4	Compliance and Internal Control. Provides DOH with governance to perform routine inspections of tanning establishments.	Non-Monetary	Open
5	Compliance and Internal Control. Ensures that tanning, tattoo, body art, and body piercing establishments adhere to health and safety regulations.	Non-Monetary	Unresolved
6	Compliance and Internal Control. Ensures implementation of finalized health regulations over inspecting tanning, tattoo, body art, and body piercing establishments and citing these establishments for violations.	Non-Monetary	Unresolved

³¹ This column provides the status of a recommendation as of the report date. For final reports, “Open” means management and the OIG are in agreement on the action to be taken, but action is not complete. “Closed” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “Unresolved” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM THE AUDIT**

Recommendation	Description of Benefit	Amount and Type of Benefit	Status³²
7	Compliance and Internal Control. Ensures implementation of finalized health regulations to govern tattoo, body art, and body piercing establishments.	Non-Monetary	Closed
8	Compliance and Internal Control. Ensures that routine inspections of food establishments are in accordance with the frequency risk-based inspection schedule.	Non-Monetary	Unresolved
9	Compliance and Internal Control. Ensures that night and health-related establishments adhere to health and safety regulations.	Non-Monetary	Unresolved
10	Internal Control. Ensures DOH conducts routine inspections of night establishments.	Non-Monetary	Unresolved
11	Internal Control. Ensures DOH conducts routine food sampling.	Non-Monetary	Unresolved
12	Internal Control and Compliance. Ensures DOH does not use resources to conduct inspections for establishments located outside of the District.	Non-Monetary	Unresolved
13	Internal Control. Ensures that records of inspection are adequately and properly maintained.	Non-Monetary	Unresolved
14	Internal Control. Ensures that records are readily accessible.	Non-Monetary	Unresolved
15	Internal Control and Compliance. Ensures that business license fees are transferred to DOH in a timely manner.	Non-Monetary	Closed

³² This column provides the status of a recommendation as of the report date. For final reports, “Open” means management and the OIG are in agreement on the action to be taken, but action is not complete. “Closed” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “Unresolved” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A. PROCESS FOR COLLECTING CIVIL FINES
FROM FOOD ESTABLISHMENTS**

Recommendation	Description of Benefit	Amount and Type of Benefit	Status³³
16	Internal Control. Ensures that DOH receives accurate transfers.	Non-Monetary	Closed
17	Internal Control and Compliance. Provides assurance that transfers are received in accordance with set policies and procedures.	Non-Monetary	Unresolved
18	Internal Control. Ensures that civil fines and penalties are received by OAH and then accurately and timely transferred to DOH.	Non-Monetary	Closed
19	Internal Control and Compliance. Ensures collection of outstanding civil fines.	Non-Monetary	Closed
20	Internal Control and Compliance. Ensures DOH receives civil fines after an ownership change.	Non-Monetary	Unresolved
21	Internal Control. Ensures DOH is alerted to ownership transfers of business licenses.	Non-Monetary	Closed
22	Efficiency and Economy. Ensures DOH collects outstanding civil fines and penalties.	Monetary \$260,100	Unresolved
23	Compliance. Provides a mechanism to recoup outstanding civil fines and penalties.	Non-Monetary	Closed
24	Internal Control. Ensures DOH receives accurate information regarding the number of establishments receiving and renewing business licenses.	Non-Monetary	Closed

³³ This column provides the status of a recommendation as of the report date. For final reports, “Open” means management and the OIG are in agreement on the action to be taken, but action is not complete. “Closed” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “Unresolved” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A. PROCESS FOR COLLECTING CIVIL FINES
 FROM FOOD ESTABLISHMENTS**

Recommendation	Description of Benefit	Amount and Type of Benefit	Status³⁴
25	Compliance. Ensures DOH receives accurate and current food and health-related establishment information in order to perform inspections.	Non-Monetary	Closed
26	Internal Control. Ensures DOH has the resources to conduct routine inspections of all establishments in the District.	Non-Monetary	Closed

³⁴ This column provides the status of a recommendation as of the report date. For final reports, “**Open**” means management and the OIG are in agreement on the action to be taken, but action is not complete. “**Closed**” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “**Unresolved**” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

EXHIBIT B. PROCESS FOR COLLECTING CIVIL FINES FROM FOOD ESTABLISHMENTS

The flowchart describes in detail the revenue collection procedure for civil fines and penalties. The flowchart outlines DOH's process for issuing civil fines after FSHISD closes a food establishment.

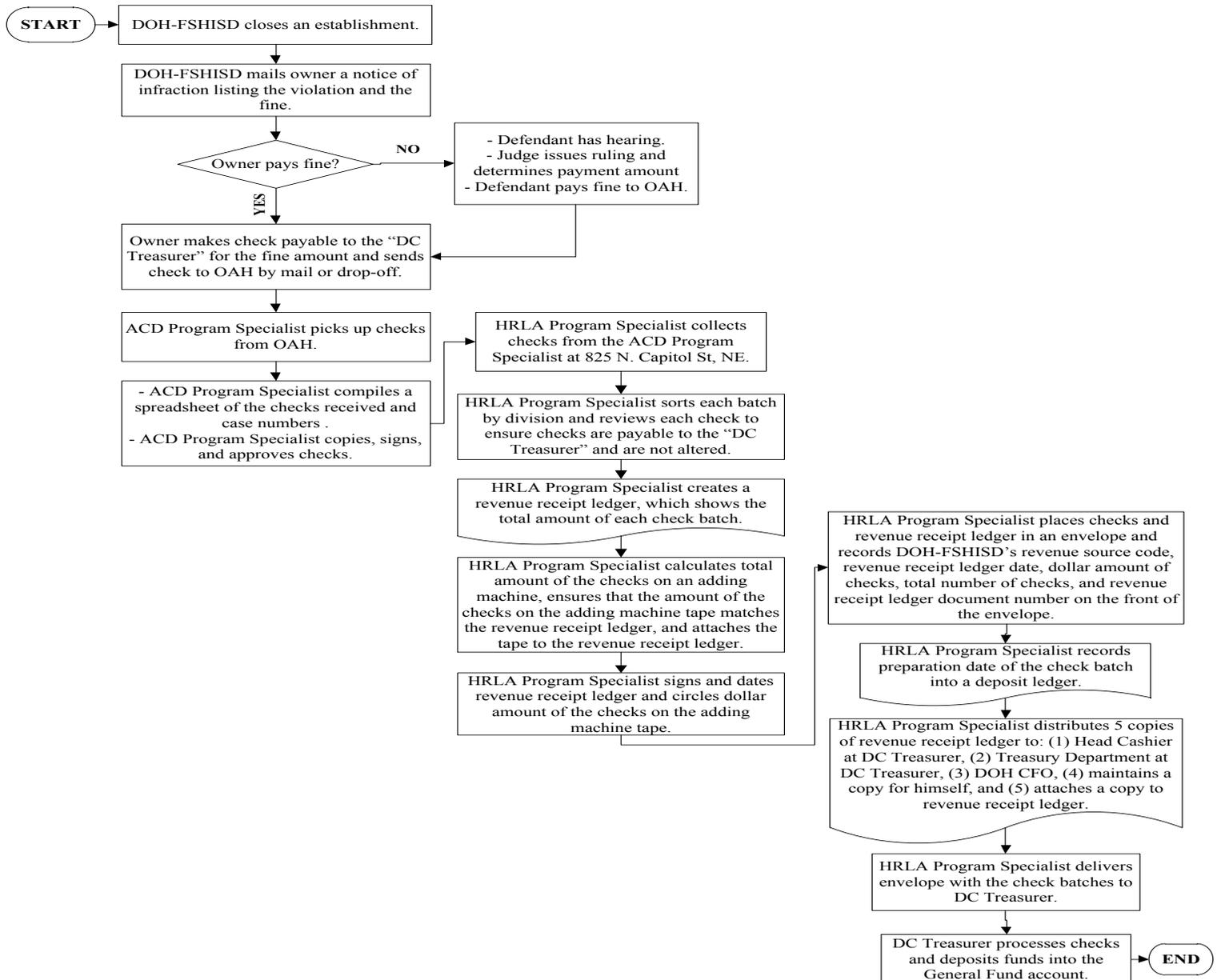


EXHIBIT C. PROCESS FOR COLLECTING BUSINESS LICENSE FEES

The flowchart below describes in detail the revenue collection process of business license fees. The flowchart outlines the deficiencies found during our review, such as DOH not knowing the amount of business license fees due from DCRA, DCRA not maintaining copies of business licenses, and DCRA not properly and accurately recording revenue collected from business licenses.

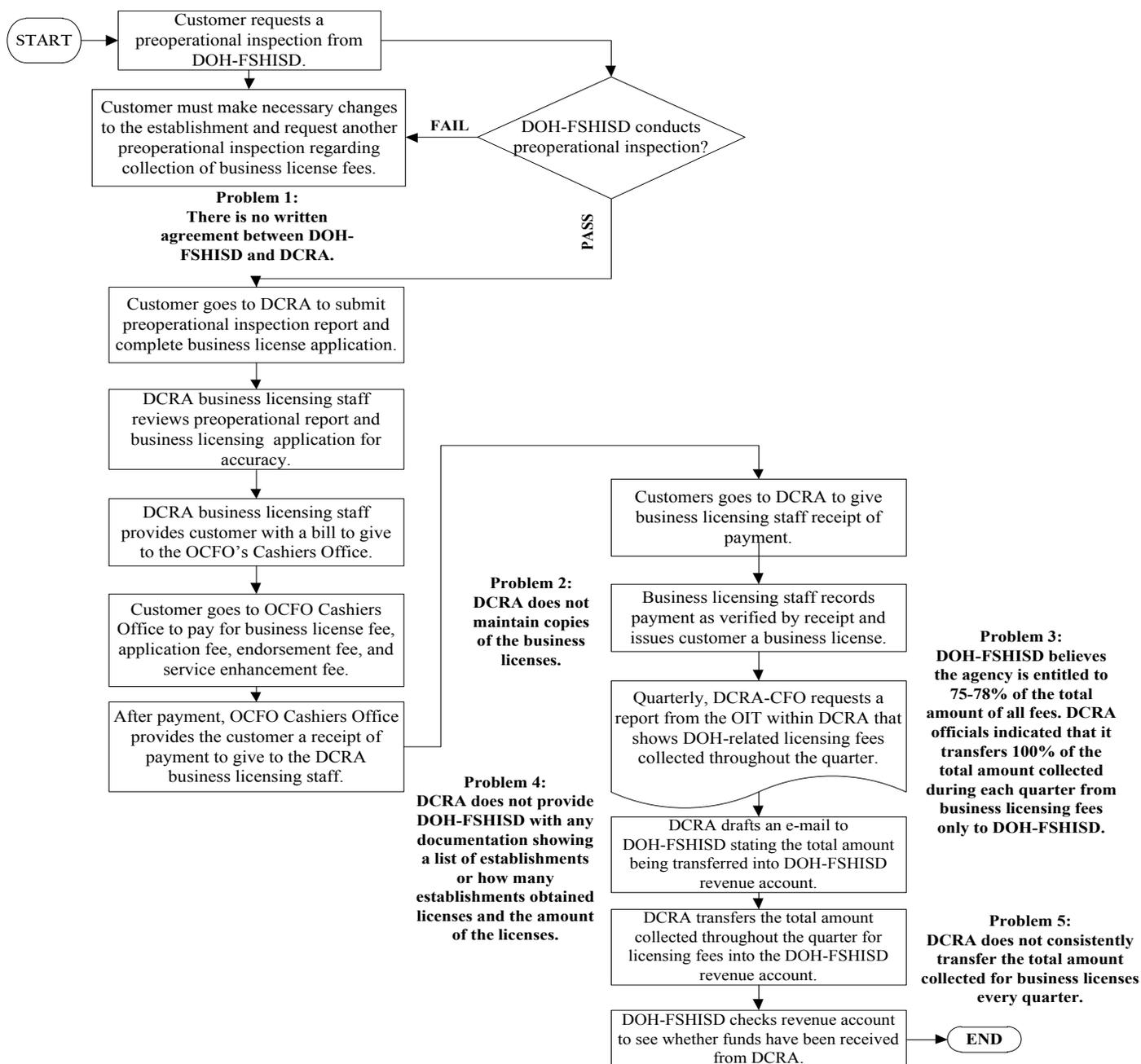


EXHIBIT D. OFFICE OF THE CHIEF FINANCIAL OFFICER RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER



Natwar M. Gandhi
Chief Financial Officer

Charles J. Willoughby
Inspector General
Government of the District of Columbia
717 14th Street, NW, 5th Floor
Washington, DC 20005

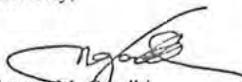
Dear Mr. Willoughby:

This is in response to your letter, dated June 21, 2012, concerning the results of the Office of the Inspector General's (OIG) *Audit of the Department of Health's (DOH) Food and Safety Hygiene Services Division (FSHSD)* (OIG No. 09-2-34LQ).

We have review your report and determined that there are no specific recommendations and/or corrective actions for the Office of the Chief Financial Officer (OCFO). However, the OCFO's Department of Health staff is working with the agency to develop and implement a corrective action plan to improve the overall operations of the program.

If you have any questions, please feel free to contact [REDACTED] Acting Associate Chief Financial Officer, Human Support Services Cluster, at (202) 671-[REDACTED]

Sincerely,


Natwar M. Gandhi

cc: [REDACTED] Acting Associate Chief Financial Officer, Human Support Services
Cluster
[REDACTED] Executive Director, Office of Integrity and Oversight

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

DISTRICT OF COLUMBIA
Department of Health

Office of the Director



July 12, 2012

Charles J. Willoughby
Inspector General
717 14th Street, N.W.
Washington, DC 20005

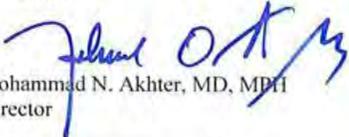
Dear Mr. Willoughby:

The Department of Health is submitting its response to the OIG's *Audit of the Department of Health's (DOH) Food Safety Hygiene Inspection Services Division (FSHISD)* (OIG No. 09-2-34LQ).

DOH has responded to the relevant sections pertaining to the findings related to the Food Safety Inspection Services Division. A number of recommendations for FSHISD are agreed and other recommendations instituted since the inception of the audit report. Financial recommendations affecting DOH, mostly interagency MOUs, are acceptable.

DOH expresses its appreciation for the comprehensive audit of our FSHISD program.

Sincerely,


Mohammad N. Akhter, MD, MPH
Director

cc:



Enclosures

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health

Office of the Director



Food Safety & Hygiene Inspection Services Division

Response to Audit Report
Office of the Inspector General

(OIG No. 09-2-34LQ)

July 2012

INTRODUCTION

The Department of Health's Health Regulation and Licensing Administration's Food Safety and Hygiene Inspection Services Division (FSHISD) is the District agency charged with identifying health risks; educating the public; and preventing and controlling food borne illnesses and outbreaks. The District maintains a partnership with U.S. Food and Drug Administration (FDA) that allows DOH to enforce the most current and scientifically-based model regulations governing food safety.

DOH FSHISD inspects the District's food establishments including delicatessen, bakeries, grocery stores, retail markets, ice cream manufacturers, restaurants, wholesale markets, hotels, and caterers. DOH also is responsible for inspection of barber shops, beauty salons, swimming pools, and bedding manufacturers, as well as enforcing the smoking ban within food establishments. In recent years, the most critical aspects of DOH's responsibility is to inspect the ever increasing volume of mobile vending units. Since 2007, the number of mobile vendors licensed by DCRA has increased substantially without adequate resources to effectively inspect and regulate. DOH believes that this lack of proactive inspections and adequately funded enforcement increases the risk of food borne illness associated with mobile vendors.

Despite the importance of these critical functions, there is inadequate funding of staff and resources to accomplish the minimum requirements of the public health core functions. There is also a continued lack of efficiency and effective customer service response because of the bifurcated system of dual agency licensing and regulation. Recent legislative changes have significantly added the legal requirements for inspections although the funding to support the program has not increased. This adds significant pressure for the current staff with limited resources to conduct the required functions.

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

It is critically important to provide adequate funding for staff and resources within a single agency with both licensing and regulatory functions to make the programs whole and sustainable in protecting the public health and safety of residents. According to the OIG's report, in the Table 9- Food Program Safety Budgets comparison with six (6) jurisdictions, it is inaccurately stated that DOH's Food program budget from FY07 – FY09 ranged from \$5.8 to \$7.3 million even though the actual budget remained constant at \$1.2 million for the past five years. The \$5.8 to \$7.3 million budget reported by OIG may be inclusive of the animal and rodent control functions. However, the budget for the food safety function has been and is currently \$1.2 million.

BACKGROUND

The DOH through inspections, enforcement, education and training ensures that residents and visitors to the District consume safe food. The Division administers an inspection program to address the risk factors known to cause food borne illnesses. The Division enforces regulations that reduce the risk of food borne illness, ensures food products are honestly and accurately represented, publicizes awareness and provides guidance concerning the legal requirements and responsibilities governing the District's food establishments.

The goal of DOH is to protect and ensure the safety of the food supply and reduce the risks of food borne illnesses to the residents and visitors in the District through inspections, enforcement, education and training.

Services

- Investigates complaints of contaminated, suspect, incorrectly labeled or improperly stored food in food establishments.
- Investigates reports of food borne illness
- Investigates reports of possible bio-events that could affect the food supply.
- Conducts routine and complaint-driven inspections of food establishments
- Issues ID cards for certified food protection managers and vendors.
- Inspects and monitors activities at special events such as, presidential inaugurations.
- Conducts food sampling during food borne illness incidences and outbreaks
- Enforces the District Food Code and Health Facilities Standardization Act
- Enforces indoor anti-smoking regulations.

Food Safety Inspections Based Upon Risk Levels

FDA recommends that food establishments be evaluated on their level of risk of transmission of food borne illnesses. FDA recommends that sanitarians perform between 280 and 320 inspections per year. DOH calculates, based on FDA recommendation, that a full staff includes 28 sanitarians to inspect all establishments including those operating after hours. This recommendation only addresses food establishments and does not include non-food health facilities (massage, beauty, barber, etc.). DOH's staff reviews the entire process and all operations at the establishment, such as cooking, cooling, storing and approved sources to determine the risk level. Per the District Code, an establishment is rated from 1-4, and the number of inspections required per year correlates with the risk level. In many cases, the inspection reveals that there are violations of the District Food Code resulting in closure, 5-day notice for critical violations and 45-day notice for non-critical violations.

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

DOH's Responses to Audit Findings

1. Establish formal policies and procedures to inspect tanning, tattoo, body art, and body piercing facilities necessary to prevent the contamination of equipment, supplies, and work surfaces.

Councilmember's Yvette Alexander proposed Bill 19-221, the "Regulation of Tattoo Artists and Body-Piercing Artists of 2012", will authorize DCRA to license and regulate the professionals. This Bill also authorizes the Department of Health to establish and regulate operational requirements for tattoo, body art, and body piercing establishments. Once this Bill is enacted, the regulatory responsibilities for inspecting tattoo, body art, and body piercing establishment will be conducted by DOH.

2. Enactment of Bill 19-221 will authorize the Department of Health to include draft regulations civil infractions schedule of fines in the body art, and body piercing facilities.

Enactment of Bill 19-221 will authorize the Department of Health to draft regulations that will establish operating standards and authority to issue civil infractions for these facilities.

3. Request that the Council of the District of Columbia finalize B19-221, the "Regulation of Tattoo Artists and Body Piercing Artists Act of 2011," to govern the operation of tattoo, body art, and body piercing facilities.

The Department of Health submitted comments on Bill 19-221, the "Regulation of Tattoo Artists and Body-Piercing Artists of 2012", sponsored by Councilmember Yvette Alexander. This proposed legislation would authorize the Department of Health to establish and regulate operational requirements for tattoo, body art, and body piercing establishments. Under this legislation, the Department of Consumer and Regulatory Affairs would regulate the tattoo, body art, and body piercing artists' professional training and services offered to the public.

4. Adopt the new provisions reflected in the 2009 Food Code to promote the best food safety practices for food establishments in the District.

The Department of Health has revised the 2003 Food Code Regulations which are currently awaiting Council review. The Notice of Final Rulemaking for the District's new 2012 Food Code Regulations include the 280 material updates identified in this Audit and incorporates all new provisions from the following FDA Model Food Codes:

FDA's 2001, 2005 and 2009 Model Food Codes

FDA's 2007 Supplement to the 2005 Model Food Code

FDA's 2011 Supplement to the 2009 Model Food Code

The District's new 2012 Food Code Regulations will allow the District to remain current in its regulatory oversight of food establishments, and to protect the public health and safety from new threats to food safety. The legislation now lies in the hands of the DC City Council for final approval. An approved fiscal impact statement has been forwarded by the chief financial officer. Beginning in 2005, the FSHISD began adopting the newest regulations proposed by FDA by policy. Staff within FSHISD attends conferences such as the Conference of Food Protection (CFP) and Institute of Food Technologists which enables the division to keep abreast of the latest scientific trends and methodology. For example, although the prevalence of norovirus is not covered under our current code, FSD has been providing recommendations to food establishments for six years about how to detect and control illnesses associated with norovirus. This allows us to promote the best food safety practices in the forms of recommendations regardless of the current regulations.

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

5. Implement a mechanism for updating the District Food Code every year, equivalent to the FDA's standard, to safeguard the public health of food consumers in the District.
A mechanism is already in place. The DOH maintains a signed partnership with FDA which calls for the adoption of the national program standards initiative. As part of the standards initiative, the District is required to update its regulations every two years. This is DOH's first year of participation in the National Standards Initiative and thus plans to implement all practices called for by this initiative.
6. Establish formal policies and procedures to inspect tanning, tattoo, body art, and body piercing facilities necessary to prevent the contamination of equipment, supplies, and work surfaces.
The regulatory authority of inspecting tanning, tattoo, body art, and body piercing facilities would be conducted by DOH. The Department of Health has already established formal policies and procedures with the publications of two (2) Notices of Proposed Rulemaking for New Tanning Facility Regulations. The Department will publish a Third Notice of Proposed Rulemaking for New Tanning Facility Regulations in Subtitle F of Title 25 of the District of Columbia Municipal Regulations (DCMR) to incorporate substantive changes based on the public comments.
7. Implement the proposed health code regulations to include the issuance of civil infractions for tanning, tattoo, body art, and body piercing facilities.
To protect the health and safety of individuals, especially minors, using tanning equipment and devices, the Office of the Attorney General issued an opinion upholding the Department's exclusive authority to regulate tanning facilities as "radiological and medical devices" pursuant to D.C. Official Code § 7-731(a)(8) of the "Department of Health Functions Clarification Act of 2001" effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731(a) (2008 Repl.). The Department will publish a Third Notice of Proposed Rulemaking for New Tanning Facility Regulations in Subtitle F of Title 25 of the District of Columbia Municipal Regulations to incorporate substantive changes based on the public comments received in response to the Second Notice of Proposed Rulemaking for New Tanning Facility Regulations on January 27, 2012 in the D.C. Register at 59 - No.4 @ DCR 000552.
8. Request that the Council of the District of Columbia finalize B19-221, the "regulation of Tattoo Artists and Body Piercing Artists Act of 2011," to govern the operation of tattoo, body art, and body piercing facilities.
The Department of Health submitted comments on Bill 19-221, the "Regulation of Tattoo Artists and Body-Piercing Artists of 2012", which is sponsored by Councilmember Yvette Alexander. This proposed legislation would authorize the Department of Health to establish and regulate operational requirements for tattoo, body art, and body piercing establishments.
9. Perform routine inspections of food establishments based on risk – based inspection schedule.
DOH's Food Safety Division currently inspects based on risk level determination. This system has been in place for five (5) years.
10. Develop policies and procedures to ensure that night establishments and health related facility inspections.
Currently supervisors and one sanitarian perform night inspections. The program manager also organizes sweeps during summer nights and weekends in order to facilitate the inspection of night establishments. Sanitarians are also assigned to health related facility as sweeps during the months of July and August

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

11. Institute policies that create a day and night work shift for sanitarians in order to accommodate inspections of night establishments.
An increase in staff will enhance our capability to implement inspections of night/after-hour establishments.
12. Perform weekly routine food sampling to prevent incidences of foodborne illness.
A Memorandum of Understanding between DOH and the Public Health Lab is needed to address the funding issues. DOH also needs to hire one (1) FTE microbiologist to perform routine food sampling. Currently, foodborne illness and outbreak sampling occurs as needed.
13. Conduct inspections for establishments in the District only.
Special events often predicate the inspection of facilities located outside of the District. The inspections are generally associated with an event being held in DC thus necessitating the inspection. This occurs 5 – 10 times per year, and may also be associated with the National Security Safety Events (NSSE) as outlined by Homeland Security Administration.
14. Develop formal record keeping policies and procedures to ensure efficient and effective management of records related to inspection activities.
The food safety inspection digital application program developed by Garrison Enterprises is now in place and running. The program was pushed to live view for the public on May 24, 2010. Inspectors began using the field units on December 1, 2010. Currently, 13 inspectors are using the units to complete field inspections. All administrative and supervisory personnel have been trained and are using the Digital Health system. Historical data goes back to 2007. Data is uploaded to the system daily. Supervisors perform reviews of the inspections prior to posting. In most cases, inspections are generally posted within 5 days after the inspection has been completed. The system has completely eliminated the need for paper filing of hard copy documents. The documents are now completely stored on a server which makes retrieval of an inspection instantaneous.
15. Arrange and file hardcopy records for backup purposes prior to implementing access via the Digital Health System.
Historical data (inspection reports) are available electronically as far back as 2008. Current data is uploaded to the system daily. Supervisors perform reviews of the inspections prior to posting. In most cases, inspections are generally posted within 5 days after the inspection has been completed. The system has completely eliminated the need for paper filing of hard copy documents. The documents are now completely stored on a server which makes retrieval of an inspection instantaneous. Any remaining paper files are properly stored to meet our needs.
16. Coordinate with DCRA officials to prepare a Memorandum of Understanding requiring basis, along with appropriate supporting documentation reflecting the names of the food and health-related establishments that paid for and obtained licenses.
DOH's CFO will work with DCRA's CFO to finalize a MOU that details the license fees categories (food establishments, barber shops, beauty salons, spas, massage establishments and patent medicine). The MOU will specify how much (either by percentage or dollar amount) of each license fee should be transferred to DOH. This information will support the amount of funds that should be transferred to DOH. This reconciliation and transfer of funds must be done quarterly.

* 90% of the income generated from the various license fees categories comes from renewals (10% from initial license issuance). Because the information relative to the types and numbers of establishments that renew their licenses comes solely from DCRA, it is extremely difficult for DOH to validate this data.

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

As such, DOH seeks a permanent solution to have the licensing function for all establishments that are licensed by DCRA on behalf of DOH as proposed by the Department of Health Facilities Sanitary Standard Act of 2011 be transferred to DOH.

17. Establish a mechanism for routine supervisory review of all transfers from DCRA in order to promptly identify and address errors.

According to DOH's CFO, within fifteen days after the end of each quarter, DCRA CFO will provide DOH CFO with a list of the names, addresses and types of all food establishments that were either issued or renewed their license. The information provided by DCRA will be reviewed and validated by either the DOH FSHISD Program Manager or HRLA Administrative Services Manager and compared to the DOH's database (Garrison system). Inconsistencies will be identified, researched and corrected as needed.

* 90% of the income generated from the various license fees categories comes from renewals (10% from initial license issuance). Because the information relative to the types and numbers of establishments that renew their licenses comes solely from DCRA it is extremely difficult for DOH to validate this data.

As such, DOH seeks a permanent solution to have the licensing function for all establishments that are licensed by DCRA on behalf of DOH as proposed by the Department of Health Facilities Sanitary Standard Act of 2011 be transferred to DOH.

18. Establish procedures and policies to ensure proper collection of business license fees from DCRA. According to DOH's CFO, * 90% of the income generated from the various license fees categories comes from renewals (10% from initial license issuance). Because the information relative to the types and numbers of establishments that renew their licenses comes solely from DCRA it is extremely difficult for DOH to validate this data.

As such, DOH seeks a permanent solution to have the licensing function for all establishments that are licensed by DCRA on behalf of DOH as proposed by the Department of Health Facilities Sanitary Standard Act of 2011 be transferred to DOH.

19. Coordinate with OAH officials to develop Memo of Understanding between DOH and OAH to include all processes necessary to establish accountability for collecting outstanding civil fines and penalties in a timely manner. DOH's CFO will develop MOU with the OAH's CFO to collect revenues on behalf of DOH on contested citations. Within fifteen days after the end of each quarter OAH will provide DOH with the year to date settlement agreements, final arbitrated amounts and the associated funds for all contested citations. In addition all installment payments resulting from final arbitrations will be payable directly to DOH.

*DOH proposes that all fees associated with citations that are NOT being contested be submitted directly to DOH. Citations that are being contested will continue to be sent to OAH.

20. Adopt a routine review process of final orders to ensure the proper collection of civil fines and penalties. DOH will work with OAH to review and process final orders to ensure the proper collection of civil fines and penalties.

EXHIBIT E. DEPARTMENT OF HEALTH RESPONSE TO DRAFT REPORT

21. Establish formal policies and procedures for collecting civil fines from the responsible business owner after a change of business ownership.
DOH agrees with this recommendation and will work to address this issue with OAH.
22. Coordinate with DCRA officials to prepare a memorandum of Understanding between DOH and DCRA whereby DCRA notifies DOH before a food or health related establishment transfers ownership of a business license.
DOH agrees with this recommendation and will work to address this issue with DCRA.
23. Collect \$260,100 in outstanding civil fines.
OAH collects civil fines on behalf of DOH after the final order.
24. Request that the Council of the District of Columbia amend the D. C. Code to grant the agency enforcement authority for penalty assessment regarding civil fines.
Response from Chief Administrative Law Judge, OAH
25. Upon receipt of proper notice regarding civil fine nonpayment, impose the sanctions provided in DC Code 2-1802.03 & 2-1801.13 which include license suspension, lien imposition, and sealing the establishment owners real on property, business, or work site.
Response from Chief Administrative Law Judge, OAH
26. Coordinate with DCRA officials to develop a Memorandum of Understanding requiring DCRA to provide DOH with a list of food and health establishments receiving and renewing business licenses on a monthly basis, along with copies of business licenses reflecting the name of the establishment and the issue and expiration dates.
DOH will coordinate with DCRA in order to develop a MOU requiring a timely and accurate transfer of food and health establishments receiving and renewing business licenses until the time that the licensing function is transferred to DOH from DCRA.
27. Maintain current, complete, and accurate licensing information in DCRA's database and share this information with DOH to correctly identify food and health related establishments with valid business licenses to facilitate FSHISD food safety and hygiene inspections of these establishments.
Response from Director, DCRA
28. Augment the FSHISD staff to enable the office to conduct routine inspections of all food establishments, health related establishments, and mobile food vendors in the District.
DOH is in full agreement with this recommendation.

EXHIBIT F. DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



Office of the Director

MEMORANDUM

DATE: August 16, 2012

TO: Charles Willoughby
Inspector General

FROM: Jed Ross 
Acting Deputy Director

SUBJECT: DCRA Response to DOH Audit Recommendations

Please find DCRA's responses to the Office of the Inspector General's (OIG) recommendations from the OIG Audit of the Department of Health's Food Safety and Hygiene Inspection Services Division.

EXECUTIVE DIGEST Pgs i-iii:

1. "DOH was not aware of the correct amount for business license fees, and payment transfers from the Department of Consumer and Regulatory Affairs (DCRA) to DOH for business license were not timely completed" "DCRA did not provide DOH with accurate and complete information reflecting all establishments with valid business licenses."

RESPONSE: The Department of Consumer and Regulatory Affairs (DCRA) provided to DOH and, in some instances the Office of Inspector General (OIG) representative directly, the statistical data available at the time of the request. In fact, DCRA provided Excel spreadsheets with the list of food establishments via email (8/17/10, 10/25/10, 1/4/2011 and most recently 6/20/2012).

DCRA and DOH have agreed to implement the transmittal of the new and renewal licenses processed on a monthly basis. This information will afford DOH the ability to reconcile its records with those processed by DCRA. **It is to be noted that DCRA will not issue a license for a new establishment unless and until an applicant has received prior signatory approval from DOH.**

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EXHIBIT F. DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS RESPONSE TO DRAFT REPORT

2. "...we recommend that DCRA update its management information system to ensure that it consistently reflects accurate and complete information"

RESPONSE: DCRA has a management system which is updated daily when customers obtain and/or renew their business license. The DCRA Business License Division utilizes the Accela data system for the processing of all the license applications received.

Findings and Recommendations Pg. 15 (7)

"Request that the Council of the District of Columbia finalize B19-221, the "Regulation of Tattoo Artists and Body-Piercing Artists Act of 2011, 'to govern the operations of tattoo, body art, and body piercing establishments.'"

RESPONSE: DCRA supports any regulation which will continue to promote the health, safety and welfare of the citizens and businesses in the District of Columbia. The relationship between DOH and DCRA has been a formidable exchange. In fact, DC Code §7-731(2)(b) has specifically supported this relationship by authorizing "[f]or the purpose of this section, the term 'regulate' shall include all licensing, certification, investigation, inspection.....and enforcement functions, including the issuance of civil infractions, except that the Department of Consumer and Regulatory Affairs shall continue to issue licenses for businesses engaged in functions as set forth in subsection....." Therefore, we will make every effort to support DOH in obtaining the legislation needed to encourage the DC Council in passing and implementing the new laws.

Findings and Recommendations Pg. 37 (15)

"Coordinate with DCRA officials to prepare a Memorandum of Understanding requiring DCRA to transfer the correct amount of funds from business license fees to DOH on a quarterly basis, along with appropriate supporting documentation reflecting the names of the food and health-related establishments that paid for and obtained licenses."

RESPONSE: DCRA financial staff will coordinate with DOH financial staff to facilitate the transfer of the correct amount of funds from business license fees to DOH on a quarterly basis, along with appropriate supporting documentation reflecting the names of the food and health-related establishments.

Findings and Recommendations Pg. 43 (21)

"Coordinate with DCRA officials to prepare a Memorandum of Understanding between DOH and DCRA whereby DCRA notifies DOH before a food or health-related establishment transfers ownership of a business license."

RESPONSE: It is the policy of DCRA that no license is issued, renewed and/or transferred without the prior signatory approval from DOH. Therefore, any new applicants or transferred license applicant (which is processed as new) will not receive a license without prior signatory approval from DOH. Thus, DOH is made aware of any new applications before the applicant comes to DCRA to obtain the license. And, if an applicant attempts to circumvent the process by coming to DCRA first; the staff immediately directs the applicant to DOH to obtain the requisite signatory approval.

It is to be noted that on July12, 2011, DOH issued a Memorandum outlining a significant policy change for expired and renewal licenses. Dr. Akhter issued a change in the "sign-off"

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requirements for inspection and license renewal. The change provided that “a ‘sign-off’ or inspection for license renewal will no longer be required. This change is an effort to streamline the renewal process for customers. This policy change will be in effect until further notice.”

Findings and Recommendations Pg. 46 (26)

“Maintain current, complete, and accurate licensing information in DCRA’s database and share this information with DOH to correctly identify food and health-related establishments with valid business licenses to facilitate FSHISD food safety and hygiene inspections of these establishments.”

DCRA has a management system which is updated daily when customers obtain and/or renew their business license. The DCRA Business License Division utilizes the Accela data system for the processing of all the license applications received.

DCRA and DOH have agreed to implement the transmittal of the new and renewal licenses processed on a monthly basis. This information will afford DOH the ability to reconcile its records with those processed by DCRA. **It is to be noted that DCRA will not issue a license for a new establishment unless and until an applicant has received prior signatory approval from DOH.**

It is the policy of DCRA that no license is issued, renewed and/or transferred without the prior signatory approval from DOH. Therefore, any new applicants or transferred license applicant (which is processed as new) will not receive a license without prior signatory approval from DOH. Thus, DOH is made aware of any new applications before the applicant comes to DCRA to obtain the license. And, if an applicant attempts to circumvent the process by coming to DCRA first; the staff immediately directs the applicant to DOH to obtain the requisite signatory approval.

EXHIBIT G. OFFICE OF ADMINISTRATIVE HEARINGS RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA



OFFICE OF ADMINISTRATIVE HEARINGS

August 24, 2012

VIA ELECTRONIC MAIL and FIRST CLASS MAIL

Charles Willoughby
Inspector General
Office of the Inspector General
717 14th Street, N.W.
Suite 500
Washington, DC 20005

Re: OAH Response to Inspector General Audit (OIG No. 09-2-34LQ)

Dear Inspector General Willoughby:

Thank you for the opportunity to respond to the recommendations concerning the Office of Administrative Hearings ("OAH") that are contained in the Draft Audit Report for the Department of Health's Food Safety and Hygiene Inspection Services Division ("Draft Report"). The Draft Report describes the Notice of Infraction ("NOI") process and contains three recommendations for OAH which are addressed more fully herein.

I have addressed each of the recommendations (Recommendations 22 through 24) in the Draft Report below. I first note that, since the period of time the Draft Report addresses, NOI process has been streamlined by the Council of the District of Columbia to eliminate the issuance of a second NOI which means that cases can be resolved in a shorter period of time.¹ Since the early part of FY 2011, DOH has had the capability of accessing the eCourt case management system directly. DOH can obtain detailed information about individual cases, including hearing schedules, case status (open or closed), and the size of any fine imposed. DOH can also generate reports covering all DOH cases at OAH that includes a list of outstanding fines. In addition DOH can now elect to file NOIs and other documents by email and to receive orders issued by OAH through email.

¹ The NOI process at OAH is different than the description in the Draft Report. When a party answers "deny," an in-person hearing is scheduled. When a party answers "admit with explanation," OAH gives DOH time to file a response. An ALJ then decides the issue based on the paper record. If a party never answers, an ALJ reviews the file and issues a Final Order. A party can ask an ALJ to reconsider the Final Order as well as file an appeal with the appropriate appellate authority, most often the District of Columbia Court of Appeals.

EXHIBIT G. OFFICE OF ADMINISTRATIVE HEARINGS RESPONSE TO DRAFT REPORT

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Recommendation 22. Collect \$260,100 in outstanding civil fines.

A. OAH's Authority to "Collect" Unpaid Fines

The Draft Report states that "OAH was ineffective in its efforts to collect numerous outstanding civil fines." Draft Report at 42. This statement reflects a misunderstanding of OAH's authority and role in the collection of civil fines. OAH is an independent administrative court, authorized to hold hearings and decide whether a civil fine proposed by DOH is legally proper. *See generally* D.C. Official Code §§ 2-1831.01 *et seq.* ("OAH Act"). OAH is the administrative tribunal where cases are decided and fines are assessed. It is also the place where parties pay their fines, but OAH does not institute any collection efforts. DOH, not OAH, has the responsibility for taking legally authorized steps to require parties to pay fines that have been ordered by OAH.

For example, the Civil Infractions Act (D.C. Official Code §§ 2-1801.01 *et seq.*) allows the recording of a lien against property owned by a party who has not paid a fine. That lien then can be added to the property's real estate tax bill and the property can be sold at a tax sale if the amount remains unpaid. The Act, however, explicitly requires "the agency that issued the Notice of Infraction," to record the lien. D.C. Official Code § 2-1802.03(j)(1). This means that DOH, not OAH, must record the lien. Moreover, the Court of Appeals has expressly ruled that OAH has no jurisdiction to enforce such liens or take any action with respect to them. *District of Columbia Department of Consumer and Regulatory Affairs v. Stanford*, 978 A.2d 196 (D.C. 2009). Instead, DOH and the Office of Tax and Revenue ("OTR") have the authority to impose liens and institute tax sales if the liens remain unpaid.

The Civil Infractions Act also permits an Administrative Law Judge to order the suspension of a party's business license or the sealing of a party's premises in order to enforce payment of fines or penalties. D.C. Official Code §§ 2-1802.03(i) and 2-1801.03(b)(7). Administrative Law Judges, like Superior Court Judges, do not issue enforcement orders without an agency's request to do so. The party that obtained a favorable order, (in this instance DOH) is vested with the enforcement discretion to decide whether to seek these specific remedies. If DOH believes that such action is necessary to assist in collecting an unpaid fine, it is free to ask an Administrative Law Judge to issue such an order and OAH will issue the order if DOH's request is legally proper.

DOH has two other available enforcement mechanisms that do not depend upon current ownership of the property where a violation occurred. The Civil Infractions Act allows DOH (but not OAH) to enter the final order as a judgment in Superior Court, and to enforce it like any other Superior Court judgment. D.C. Official Code § 2-1802.03(h). This means that remedies such as garnishment, attachment of bank accounts and other personal property, and other mechanisms of enforcing a Superior Court judgment, are available to DOH. In addition, the Clean Hands before Receiving a License or Permit Act prohibits the issuance of any license or permit to a person who owes more than \$100 in unpaid fines under the Civil Infractions Act. D.C. Official Code § 47-2862(a)(1)(D).

In summary, OAH "collects" fines only insofar as it is the place where parties may pay their fines. It has no authority to undertake collection efforts on its own, but the law gives DOH authority to initiate a number of efforts, both at OAH and elsewhere, to compel payment of unpaid fines.

B. The "Outstanding" Fines

The Draft Report divides uncollected fines into several categories, which are addressed below.

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1. Revenue Not Collected From Establishment. As noted above, DOH has the authority to file liens against the property of parties that do not pay fines, and OTR can sell the properties at a tax sale if the fines remain unpaid. OAH has neither jurisdiction nor a role in the lien process. DOH also has the authority to ask OAH for an order suspending the parties' business licenses or sealing the premises where the violation occurred. If DOH files any such requests, OAH will rule on them promptly. DOH also can institute appropriate proceedings under the Clean Hands law and can record the OAH as a Superior Court judgment and enforce it as such.

2. Outstanding Final Orders. OAH is aware of only one case filed in FY 2007 through FY 2009 that may remain open. We are researching the status of that matter now. If DOH or OIG can provide a list of the specific Final Orders that are alleged to be outstanding, we can provide a fuller response.

3. Outstanding Civil Fine Payments. The Draft Report identifies these as cases in which OAH issues a Final Order and "DOH has communicated with the establishment about a final payment." Draft Report at 42. OAH has no role in any communications between DOH and parties who have not paid fines. As stated above, DOH, not OAH, has the authority to make use of enforcement tools such as liens, license suspensions and orders to seal premises.

4. No Response From OAH. The Draft Report states that there are 23 Notices of Infraction for which OAH "did not provide a response" in FY 2007 and 2008. Draft Report at 42. As explained above, OAH does not "respond" to NOIs. If, for example, a respondent fails to respond to a legally sufficient NOI with proper service, then OAH issues Final Order of Default, and DOH can proceed with whatever enforcement action it deems appropriate. In addition, the difference between these cases and the "Outstanding Final Orders" discussed above is not clear. Here, too, if DOH or OIG can provide a list of the specific cases, we can provide a fuller response.

5. Partial Payments. These are cases in which a party has paid only a portion of the amount due. As with cases in which no payments are made, DOH has the responsibility for initiating enforcement actions such as liens, license suspensions and orders to seal premises.

6. Changes to Establishment Ownership. These are situations in which an owner of an establishment closes it or transfers ownership without paying an outstanding fine. The Draft Report does not assign a dollar value to these cases. Here, too, there are a number of options available to DOH, not to OAH. If DOH records a lien before the transfer of the property, the lien remains enforceable against the property. We also note that DOH's lien authority is not limited to the property where a violation occurred, but extends to any real property owned by a party that does not pay a fine. The options to record the final order as a Superior Court judgment and to refuse to issue any license under the Clean Hands Act also are available in these situations.

Recommendation 23. Request that the Council of the District of Columbia amend the D.C. Code to grant the agency enforcement authority for penalty assessment regarding civil fines.

As noted above, OAH currently has the authority, upon proper request of DOH, to issue orders suspending licenses and sealing premises. No statutory amendment is necessary for that authority. As to other sanctions (liens, Superior Court judgments, Clean Hands proceedings), we have no basis to suggest that the current procedures are inadequate. OAH is an administrative court, not an enforcement authority or regulatory agency. It is obligated to be neutral and independent of the agencies that appear before it. Those agencies, including DOH, have been granted enforcement discretion and are more familiar with the

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circumstances of the parties that they regulate. As a result, they are better equipped to decide initially whether and when drastic steps such as closing a business or encumbering a property should be taken.

Recommendation 24. Upon receipt of proper notice regarding civil fine nonpayment, impose the sanctions provided in D.C. Code §§ 2-1802.03(f) & (i) and 2-1801.03(b)(7), which include license suspension, line imposition, and sealing the establishment owner's real or personal property, business or work site.

Again, OAH does not have the authority to impose such sanctions, on its own initiative. See Responses to Recommendations 22 and 23.

In conclusion, I want to emphasize OAH's commitment to ensuring the best possible process for enforcement of the District's laws, including the food safety and other laws that are the responsibility of the Food Safety and Hygiene Inspection Services Division. We are more than willing to work with DOH and all other agencies within our jurisdiction to facilitate and streamline our processes relating to those agencies' collection efforts, consistent with our statutory and ethical obligations as an administrative court.

Thank you, again, for the opportunity to respond to the Draft Report. Please contact me at (202) 442-9094 if I can provide any additional information regarding these matters.

Sincerely,



Mary Oates Walker
Chief Administrative Law Judge

cc: Saul Levin, M.D., M.P.A.
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