

Nassau County
Office of the Comptroller



Limited Review of the Department of Health's
Inspection of Food Service Establishments

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Executive Summary

The Nassau County Department of Health monitors Food Service Establishments (“FSEs”) compliance with the New York State Sanitary Code¹ and the Nassau County Public Health Ordinance through its Office of Food Protection (“Food Protection”)². Monitoring is performed utilizing a staff of 20 inspectors.

The New York State Sanitary Code requires that owners and operators of an FSE operate their premises in such a way as to avoid imminent health hazards. The NYS Environmental Health Manual³ requires that local health departments be responsible for inspection and regulation of establishments where food is consumed on premise or sold ready-to-eat for off premises consumption.

FSEs include restaurants, delicatessens, retail bakeries, school cafeterias, taverns, as well as mobile units and temporary stands at fairs and festivals. Food Protection monitors approximately 6,500 FSEs compliance with applicable regulations through the use of permits, unannounced inspections and an enforcement process. Inspections are aimed at protecting and promoting health and the prevention of disease by assuring the safety and quality of food establishments.

Purpose:

The major purpose of the audit is to determine that the Nassau County Department of Health is in compliance with New York State Food Sanitary Code and the Nassau County Public Health Ordinance as it relates to the inspection of FSEs located in Nassau County.

Key Findings:

Our review found:

- At least 74% of high risk FSEs did not receive the NYS recommended second annual inspection for high risk establishments. In 2012-2013 DOH did not make 4,855 FSEs second inspections.
- Risk classification errors may have caused 12% fewer inspections on low and medium risk FSEs. These errors occurred where food establishments that were rated as low risk should have been rated medium risk, medium risk should have been rated high risk, etc.
- NCDOH is not compliant with voluntary FDA staffing standards needed to meet food inspection targets.
- The resolution of complaints from the public regarding food establishments were not always tracked and documented in the complaint log according to NCDOH’s procedures.
- The County has a food manager training program to educate safe food handling procedures and to minimize the spread of food borne illness. DOH’s current procedures

¹ Title 10, Chapter 1, Section 14-1.1

² The Office of Food Protection is a unit within the Nassau County Bureau of Environmental Sanitation, part of the Division of Environmental Health, a division of the Nassau County Health Department.

³ NYS Environmental Health Manual Technical Reference CEHFP 843 TR DATE: 08/06/07.

Executive Summary

do not ensure that high risk FSEs comply with Food Manager Training (“FMT”) requirements.

- Nassau County does not require a certified food manager be on the premises during all hours of operation.
- The manual and disjointed data management processes as well as the lack of mobile technology compromise the completeness and accuracy of FSE data and hampers adequate supervision of FSEs.
- DOH does not have a summary managerial report that details assessed food protection fines and the related payments by FSE case. Instead, each FSE file would have to be perused on a case by case basis in order to determine the portion of the assessed food protection fines that had been adjusted or paid during any particular period
- NCDOH does not have an expedited process for handling common violations, as is the case with other Counties.
- DOH needs to enhance quality control and perform increased shadowing of food inspections and not rely on a three year rotation of inspectors to protect against fraud, collusion and abuse.

Key Recommendations:

We recommend that NCDOH:

- ensure that the NYS recommended number and type of FSE inspections are performed.
- ensure that the appropriate risk levels are assigned to FSEs and entered and updated in EHIPS in a timely manner.
- ensure staffing is adequate so that the recommended number of annual full inspections is performed.
- should computerize the complaints handling process, develop periodic exception reporting and require management oversight to ensure all complaints are addressed timely. The Food Borne Illness complaint procedures should also be updated to incorporate the deficiencies noted.
- develop a database to associate FMT Certificate holders with the FSEs they represent, identify FSEs without Certified Food Managers, require the inspector to examine a photo ID matching the FMT certificate holder and update the Nassau County Public Health Ordinance to require that an individual with a current FMT certificate be present during all hours of operation. NCDOH should also consider offering online registration and payment to attend FMT courses, or even an online course.
- scan all inspection reports into the NYS EHIPS in a timely manner.
- compare and reconcile NYS EHIPS data to the corresponding data reported to the County’s Performance Management System quarterly and, retain sufficient evidence supporting all reconciliations for audit trail purposes.

Executive Summary

- create the interface necessary to complete the NYS EHIPS permitting module integration, investigate the use of mobile devices by inspectors, rectify connectivity issues, implement the use of the printer purchased in 2013, obtain additional training for EHIPS reporting functions, and obtain more useful administrative access rights for EHIPS;
- consult with other counties to find alternative proprietary software (EHIPS compatible) to improve productivity and alleviate system constraints.
- implement a recurring reporting process that quantifies and lists the assessed fine amounts, related payments and adjustments, for each FSE and in total for all FSEs, as well as an Aging Report of outstanding fines. This level of reporting is necessary for proper monitoring, collection and audit trail purposes.
- implement procedures to develop an expedited enforcement process for common violations, and implement multiyear contracts for Administrative Law Judges.
- rotate inspectors more frequently and utilize quality control shadow field inspections to provide more oversight of the inspectors' work, ensuring consistency and helping to minimize the potential for collusion.
- consider a program whereby the FSE ratings assigned by NCDOH are posted by the FSE for the public to view before entering.

Table of Contents

	<u>Page</u>
INTRODUCTION.....	1
Background.....	1
Audit Scope, Objectives, and Methodology	3
FINDINGS AND RECOMMENDATIONS	5
(1) At Least 74% of High Risk Food Establishments Did Not Receive the Recommended Second Annual Inspection	5
(2) Risk Classification Errors May Have Caused 12% Fewer Inspections on Low and Medium Risk FSEs.....	6
(3) DOH is not Compliant with Voluntary FDA Staffing Standards to Meet Food Inspection Targets.....	8
(4) Almost 10% of Public Health Complaint Resolutions Were Not Adequately Tracked and Documented on the Complaint Log According to DOH Procedures	9
(5) Required Food Manager Training at High Risk FSEs Could Not Be Confirmed.....	11
(6) Current DOH Procedures Do Not Allow Inspectors to Verify That the Certificate Holder is the Certified Food Manager Working On Site at the FSE	11
(7) Manual and Disjointed Data Management Processes Compromise Completeness and Accuracy of FSE Data Used by Food Protection.....	12
(8) The Lack of Mobile Technology Hampers Adequate Supervision of FSEs	14
(9) Payment of Assessed Fines and Amounts Outstanding by FSE Enforcement Case Are Not Summarized in a Management Report to Substantiate Collections and Amounts Owed.....	16
(10) Nassau County DOH Does Not Have an Expedited Process for Handling Common Violations, as is the Case with Suffolk and Westchester Counties.....	17
(11) Three Year Rotation of Inspectors is Not Adequate to Protect Against Fraud and Abuse	18
Appendix I – Description of High, Medium and Low Risk Establishments, as per the New York State Environmental Health Manual	20
Appendix II - Annual Inspections by Service	21
Appendix III - Nassau County Department of Health Response to the Nassau County Comptroller 2015 – Food Protection Program Audit	22

Introduction

Background

The New York State Sanitary Code⁴ requires that owners and operators of Food Service Establishments (“FSEs”) operate their premises in such a way as to avoid imminent public health hazards. FSEs include, but are not limited to, restaurants, delicatessens, retail bakeries, school cafeterias, taverns, as well as mobile units and temporary stands at fairs and festivals.⁵ An imminent health hazard is any violation, combination of violations, condition or combination of conditions making it probable that the food or drink served to the public by the establishment (or its continued operation) can injure the health of the consumer or the public.

The Nassau County Department of Health’s (“DOH”) mission is to promote and protect “the health of all who live, work, and play in Nassau County”. The Nassau County Board of Health and the DOH were created in 1938 by the Nassau County Charter. Members of the Board of Health are appointed by the County Executive to five-year terms. The Board enforces the New York State Public Health Law as well as New York State and local sanitary codes.

The DOH’s Office of Food Protection (“Food Protection”) does the following:

- enforces the New York State Sanitary Code and the Nassau County Public Health Ordinance;
- generates and manages FSE permits and the master list of FSEs in the DOH’s Management Information and Permitting System (“MIPS”);
- performs inspections and investigates and reports foodborne disease outbreaks to NYS, including scanning of inspection reports into the NYS Environmental Health Inspections and Permitting System (“EHIPS”);
- provides food safety training for food industry personnel; and
- reviews plans for new and renovated FSEs.

Classification and Grouping of FSEs

FSEs are classified by risk⁶ into the following three categories which determine the recommended number of inspections an FSE should periodically receive:

- **High** risk establishments, (inspected twice per year);
- **Medium** risk establishments (inspected once each year); and
- **Low** risk establishments (inspected once every two years).

Food Protection divides the FSEs into 20 territories which are grouped geographically into three main areas and managed by three area supervisors who report to the Program Director. There are

⁴ Title 10, Chapter 1, Section 14-1.1.

⁵ Supermarkets, groceries, convenience stores, wholesale clubs, bakeries, fish, meat and produce markets along with food manufacturers and other food selling establishments are not considered FSEs. The aforementioned are licensed and inspected by the New York State Department of Agriculture and Markets.

⁶ See Appendix I for a detailed description of High, Medium and Low risk establishments, as per the NYS Environmental Health Manual.

Introduction

also two additional territories (one for Mobile FSEs and another for Institutional FSEs) and their inspectors report directly to the Program Director. Exhibit I summarizes Food Protection's FSEs by Risk Category:

Exhibit I

Number of Food Service Establishments by Risk Category

(As of June 30 each year)

<u>Risk¹</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
High	3,273	3,275	3,525
Medium	2,057	2,055	2,368
Low	480	463	604
Total	<u>5,810</u>	<u>5,793</u>	<u>6,497</u>

Source of Data: New York State - Environmental Health Inspection and Permitting System, known as EHIPS

¹ High (inspected an average of twice/year), Medium (inspected once/year), Low (inspected once/every two years). See Appendix I for more detailed descriptions of the risks.

Every FSE must pay a permit fee annually or every two years, based on its risk rating. According to the County's Environmental Health Fee Schedule, dated August 2012, Food Protection related permit fees ranged from \$435 to \$1,325. Food Protection related permit fees received in 2012, 2013 and 2014 totaled \$3 million, \$3.4 million and \$3.4 million, respectively.

In addition to performing NYS recommended inspections, Food Protection takes a proactive approach by placing chronic violators and FSEs with failing inspections on a Priority Inspection List where they are inspected quarterly until satisfactory results are achieved. Repeat offences and severe violations could escalate into the formal enforcement process and lead to a hearing and/or a Board Order to correct the violations, cease and desist, and/or pay civil penalties. Enforcement fines assessed in 2012, 2013 and 2014 totaled \$179,700, \$223,630 and \$171,315 respectively.

The Nassau County Public Health Ordinance requires that every owner, operator, manager or person in charge of a high risk FSE attend, and satisfactorily complete, a Food Manager's Training program.

Exhibit II below summarizes the number of high, medium and low risk inspections performed for the 12 months ending June 30, 2012 and 2013 and the first 6 months of 2014.

Exhibit II

Annual Inspections by Risk Category

(As of June 30)

Risk¹	2012	2013	2014
	12 Months	12 Months	6 Months
High	4,510	5,245	3,151
Medium	2,019	2,258	1,161
Low	200	247	201
Total²	6,729	7,750	4,513

Source of Data: New York State - Environmental Health Inspection and Permitting System, known as EHIPS

¹ High (inspected an average of twice/year), Medium (inspected once/year), Low (inspected once/every two years). See Appendix I for more detailed descriptions of the risks.

² The total for each period shown includes annual full inspections of 4,475, 5,378 and 3,248 for 2012, 2013 and 2014, respectively. See Appendix II for the complete summary of the other types of inspections that make up the remainder of the totals.

Audit Scope, Objectives, and Methodology

The major objective of the audit is regulatory in nature and designed to determine that the Nassau County DOH is in compliance with New York State Food Sanitary Code and the Nassau County Public Health Ordinance as it relates to the inspection of food service establishments located in Nassau County.

The specific objectives were to determine that:

- the DOH has a process in place which identifies all the FSEs under its jurisdiction;
- FSEs are risk rated and an inspection plan exists to ensure that FSEs are scheduled to be inspected regularly in accordance with their risk rating;
- the DOH's inspection plan is followed and inspections are being performed in a timely manner;
- inspection reports are prepared and distributed to the appropriate parties in a timely manner;

Introduction

- enforcement fines are assessed and paid as required and violations are followed up;
- a process exists and is followed to ensure that consumer complaints are responded to and resolved in a timely manner; and
- the DOH has implemented checks and balances to ensure the integrity of inspectors.

We reviewed written policies and procedures and interviewed employees to determine their responsibilities, duties and work procedures. We also reviewed internal controls and performed testing of the inspection records.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

The matters covered in this report have been discussed with the officials of the Health Department. On April 8, 2015 we submitted a draft report to the Health Department for their review. The Health Department provided their response on April 30, 2015. They also requested an Exit Conference which was held on May 27, 2015. Their response and our follow up to their response are included at the end of this report.

Findings and Recommendations

Audit Finding:

(1) At Least 74% of High Risk Food Establishments Did Not Receive the Recommended Second Annual Inspection

Our review found that the DOH Food Protection unit had not performed 74% of the NYS recommended second annual inspections for High Risk⁷ FSEs in 2012 and 2013. Food Protection management acknowledged this finding and identified insufficient staffing as the main issue.

NYS recommends that High Risk FSEs be inspected an average of two times a year, Medium Risk once per year and Low Risk once every two years.

High Risk FSEs serve potentially hazardous foods that can require a great deal of processing on the premises, requiring more frequent inspections. This category includes establishments that often serve large numbers of meals to the aged, children, or the sick.

The auditors randomly selected 65 active FSEs from the NYS Environmental Health Inspections and Permitting System (“EHIPS”), (25 High Risk, 20 Medium Risk and 20 Low Risk) and requested inspection reports for both 2012 and 2013. The auditor’s examination of these sample cases found 4% of the High Risk FSEs had not received any recommended inspections, 12% of High Risk FSEs were repeat violators, 33% had at least one critical violation and 100% had not received the second recommended inspection. Critical violations can include “imminent health hazards⁸” that require the FSE to be closed until the health hazard no longer exists. This emphasizes the importance of diligently performing all first and second annual recommended inspections for those establishments categorized as High Risk FSEs, thus ensuring potential public health hazards are detected timely.

Based on the number of High Risk FSEs not receiving second annual inspections in the random sample above, the auditors requested reports from the NYS Health Department’s oversight system, EHIPS, covering the entire audit period (one for 2012 and another for 2013). As shown below in Exhibit III, the EHIPS reports identified an average of 74% of the High Risk FSEs did not receive a second annual inspection in 2012 and 2013 (2,252 missed High Risk inspections in 2013 and 2,603 were missed in 2012).

⁷ Detailed explanations of High, Medium and Low Risk establishments can be found in Appendix I of this report.

⁸ Examples of imminent health hazards include major vermin infestations causing adulterated food, sewage in food storage and processing areas and/or lack of proper refrigeration (extended power outage).

Findings and Recommendations

Exhibit III

High Risk FSE's
Reported Without Second Inspections in EHIPS
2012 - 2013

<u>Year</u>	<u>Total Number of High Risk FSEs</u>	<u>Total Without Second Inspections in EHIPS</u>	<u>% Without Second Inspections</u>
2013	3,275	2,252	69%
2012	3,273	2,603	80%
Average % Without Second Inspection			<u>74%</u>

In effect, by not performing second inspections, approximately 2,430 High Risk establishments were essentially misclassified each year as Medium Risk. As a result, these High Risk FSEs incurred less scrutiny than recommended by NYS, receiving only one annual inspection.

Audit Recommendation(s):

We recommend that the DOH take the necessary steps to ensure that the NYS recommended number and type of inspections are performed for the County's food service establishments.

Audit Finding:

(2) Risk Classification Errors May Have Caused 12% Fewer Inspections on Low and Medium Risk FSEs

We tested the accuracy of the risk shown in EHIPS as of July 2014 for 40 FSEs (20 Low Risk and 20 Medium Risk) and determined that the rating in EHIPS was incorrect for five of the 40 FSEs. Two were risk rated as "Low" that should have been "Medium" and three had a "Medium" rating that should have been "High" resulting in about a 12% classification error rate. The incorrect risk rating in EHIPS could result in performing fewer full inspections than recommended as well as cause errors in the data reported to NYS. Management agreed with our findings but was unable to explain the errors or why EHIPS had not been properly updated.

Our testing consisted of reviewing the FSEs menu and the permit for the nature and size of the population served. We compared this information to the criteria that determines whether an FSE should be rated High, Medium or Low. We also looked at the risk rating on the inspection reports in the FSEs' files and whether there were change forms in the files to support a change in

Findings and Recommendations

the risk rating. Exhibit IV summarizes why we determined that five of the 40 FSEs had the incorrect risk rating on EHIPS.

Exhibit IV

<u>FSE Name</u>	<u>EHIPS Risk Rating July 2014</u>	<u>Audit Finding: What Risk Should Be</u>	<u>Justification for Audit Finding</u>
A	Low	Medium	Ratings on Inspection Reports in the files indicated the risk had changed from Low to Medium.
B	Low	Medium	Menu change noted; ratings on Inspection Reports in the files indicated the risk had changed from Low to Medium.
C	Medium	High	Menu change noted; ratings on Inspection Reports in the files indicated the risk had changed from Medium to High.
D	Medium	High	Ratings on Inspection Reports in the files indicated the risk had changed from Medium to High.
E	Medium	High	Risk status was High on Inspection Reports in the files since 2009.

According to the NYS Environmental Health Manual, Food Protection should categorize all FSEs into three groups (High, Medium and Low) based on the risk of causing foodborne illness. Risk is assigned based on certain predefined criteria including the menu, food preparation processes and the nature and size of the population served. The risk does not mean that one FSE is more or less safe than the other, but rather the nature of the FSEs menu and the population served creates a greater potential for a foodborne illness to occur. As stated earlier in the report, NYS recommends two full inspections per year for High Risk, one inspection per year for Medium Risk and one full inspection every other year for Low Risk.

Audit Recommendation(s):

We recommend that DOH take the necessary corrective actions to ensure appropriate risk levels are assigned to FSEs and the risk is entered and updated in EHIPS in a timely manner, as required by NYS.

Findings and Recommendations

Audit Finding:

(3) DOH is not Compliant with Voluntary FDA Staffing Standards to Meet Food Inspection Targets

Voluntary National Retail Food Regulatory Program Standards⁹ issued by the FDA (“FDA Standards”) dictate that one Full Time Equivalent (“FTE”)¹⁰ inspector be devoted to food protection for every 280-320 inspections performed. As shown in Exhibit V below, we estimated that based on the NYS Environmental Health Manual Recommendations, Food Protection should have performed a minimum of 8,837 inspections in 2013. According to the FDA Standards, this effort required at least 28 FTEs. Our review noted that Food Protection had only 18¹¹ FTE Food Inspectors in 2013; leaving Food Protection approximately 10 Food Inspectors short, according to the FDA Standards. Our review also determined that in 2013, 3,459 of the NYS recommended annual full inspections at all risk categories were not performed by Food Protection.

Exhibit V

<u>Risk</u>	<u>Number of FSEs in 2013</u>	<u>Number of Recommended Full Inspections/ FSE by Risk¹</u>	<u>Total Number of Full Inspections Recommended Annually</u>	<u>Annual Inspections Performed in 2013</u>	<u>Recommended Inspections Not Performed</u>
High	3,275	2	6,550	3,268	3,282
Medium	2,055	1	2,055	1,892	163
Low ²	463	0.5	232	218	14
Total	5,793		8,837	5,378	3,459
Full Inspections Recommended Annually			8,837		
Divided by FDA Recommended Number of Inspections per FTE ³			320		
FTE's Recommended Per FDA			28		

¹ Per the NYS Environmental Health Manual.

² The number of recommended inspections is .5 to reflect one inspection every other year for the low risk FSEs.

³ Voluntary National Retail Food Regulatory Program Standards issued by the FDA advise staffing of one FTE be devoted to food for every 280-320 inspections performed.

Source of Data: EHIPS

⁹ The FDA Voluntary National Retail Food Regulatory Program Standards – January 2013 #8 - Program Support and Resources.

¹⁰ Full-Time Equivalent (“FTE”) is defined as the number of productive hours (conducting retail food inspections) contributed by one person working full-time for one year.

¹¹ We were told that, although there were 20 full-time inspectors, the amount of time they devoted to performing inspections equated to 18 FTEs.

Findings and Recommendations

Of additional concern, we noted that three individuals (the Bureau Director, the Office Chief of Plan Review and a Territory Supervisor) are scheduled to retire from Food Protection by September 2015.

Audit Recommendation(s):

We recommend that Food Protection take the necessary steps to ensure staffing is adequate so that the recommended number of annual full inspections is performed.

Audit Finding:

(4) Almost 10% of Public Health Complaint Resolutions Were Not Adequately Tracked and Documented on the Complaint Log According to DOH Procedures

Food Protection's Complaint logs are not maintained on EHIPS or on an EHIPS compatible computer system as required by the NYS Environmental Health Manual. Instead, general complaints are logged and tracked in a manual log and a second manual log is used to record Foodborne Illness ("FBI") complaints; information in this second log is eventually transferred to an Access database (that is not EHIPS compatible). The General Complaint Log was not consistently updated and management was not aware that 9% of the log entries were incomplete. Our review of a sample of the more critical complaints in the FBI Log determined that they were all reviewed and resolved.

The determination of whether a complaint is a General or a FBI complaint is made by Food Protection staff at the time the complaint is received. "Should the caller not want to provide personal or detail information, including but not limited to 72 hour food history information, staff will document it as a general complaint."¹² A review of the descriptions in the general complaint log indicated that some of the complaints involved roaches, bare hand handling of food, hair or lack of hairnets, general foodborne illness (no 72 hour food history provided) and unsanitary conditions.

General Complaint Log

We noted that Food Protection's internal control process was entirely manual and did not ensure that all general complaints were investigated and reviewed timely. A review of the log by someone other than the Log Supervisor was not required or performed.

Our testing of the General Complaint Log from January 2012 to August 12, 2014 revealed that:

- 172 of the 1,923 (9%) manually logged general complaints were not properly documented as being resolved and reviewed; and
- no inspector was listed as assigned for 159 of the 172 unresolved general complaints.

¹² Nassau County DOH, Office of Food Protection, Foodborne Illness Procedure, page 1.

Findings and Recommendations

We selected six of the 172 unresolved complaints and reviewed the FSE records to determine if there was any evidence of an inspection that addressed the complaint and found that two of the six had no evidence of inspection or follow-up.

Manual processes are inefficient and provide minimal ability for management to monitor compliance. Handwritten manually filed documents can easily be misplaced or lost and do not provide data analysis capabilities. For example, it is not easy to identify frequent offenders without manually perusing the individual documents and/or logs.

Efficient and complete response to even general complaints could lead to the identification of serious violations and can reduce the risk of spreading a Foodborne Illness. Computerization of the General Complaint Log is required by NYS and is preferable because it also provides a searchable resource to identify exceptions and easily perform trend analyses.

Foodborne Illness Complaint Log

The auditors tested 40 of 75 more potentially critical complaints in the FBI Log in early 2014 and determined that they were all responded to within an average of one to two days.

Our review noted that the FBI complaint procedures were not complete, in that references to links, sample letters and other documents were not included. Additionally, the procedures did not include an explanation of the method to respond to FBI complaints during non-business hours, as required by the New York State Department of Health¹³. The lack of updated FBI procedures increases the risk of non-compliance with NYS regulations.

Audit Recommendation(s):

We recommend that the DOH:

- a) contact NYS to determine the criteria necessary to maintain complaint data on NYS EHIPS in order to meet NYS Environmental Health Standards;
- b) computerize the complaints handling process and require management oversight to ensure compliance with procedures;
- c) develop periodic exception reporting to ensure all complaints are addressed timely and to potentially provide proactive analysis tools identifying frequent offenders; and
- d) update the FBI complaint procedures to incorporate the deficiencies noted in the finding.

¹³ New York State Department of Health Environmental Health Manual CSFP 803.

Findings and Recommendations

Audit Finding:

(5) Required Food Manager Training at High Risk FSEs Could Not Be Confirmed

The FMT program is provided by the County to educate the management of FSEs about proper food handling procedures as an extra step to minimize the spread of foodborne illnesses. Attendees must register in person to sit for a full ten hour course and pass an exam to receive a certificate and payment can only be made in person or by check. Re-certification is required every three years by sitting for a three hour review course.

The Nassau County Public Health Ordinance requires every owner, operator, manager or person in charge of a High Risk FSE attend and satisfactorily complete a Food Managers Training (“FMT”) program.¹⁴ The required Training Certificate must be prominently displayed at the FSE. Our review found that FMT Certificates were issued and recorded in the attendee’s name but were not linked to an FSE identification number. As a result, there was no way to track a particular FSEs’ compliance with the code.

We also noted that Suffolk County offered online registration and payment as well as the ability to take the FMT course online.

Audit Recommendation(s):

We recommend that Food Protection:

- a) develop a database for all High Risk FSEs by establishment number and associate each FMT Certificate with those FSE numbers to create a functional and searchable database;
- b) establish procedures to crosscheck prominently displayed certificate numbers to the database after each inspection;
- c) periodically run exception reports to determine which establishments may not have current valid Certified Food Managers; and
- d) consider offering FMT registration on-line with on-line payment and provide the ability to take the FMT course on-line as well.

Audit Finding:

(6) Current DOH Procedures Do Not Allow Inspectors to Verify That the Certificate Holder is the Certified Food Manager Working On Site at the FSE

DOH procedures do not allow an inspector to verify that the holder of the FMT Certificate that is posted in the FSE is on site. DOH advised the auditors that Nassau County’s Public Health ordinance does not allow the inspectors to request ID to ensure the individual claiming to be the

¹⁴ Nassau County Public Health Ordinance, Article III, Section 1(F), which is an extra regulation implemented by Nassau County and is not mandated by NYS.

Findings and Recommendations

FMT certified individual is such. Further, we noted that the FMT Certificate does not include a photo of the named individual either. The lack of a procedure to verify that the holder of the FMT certificate is on site increases the risk that an individual could successfully complete the course and receive the certificate that allows the FSE to be considered compliant with the training requirement, but not be working on site while the FSE is open to the public.

We were also informed that NC DOH Food Protection management and staff noted instances where relatives or friends took the course to meet the requirements but did not necessarily work at the FSE.

The FMT program is a valuable tool used to train food service managers on safe storage, handling and food preparation procedures. The Nassau County Public Health Ordinance requires every owner, operator, manager or person in charge of a High Risk FSE to attend and satisfactorily complete the FMT program. Additionally, if a FSE is open for business more than twelve (12) hours in a day, then a second employee from the food establishment must attend and satisfactorily complete the course.

Audit Recommendation(s):

We recommend that Food Protection:

- a) consider updating the Nassau County Public Health Ordinance to require that an individual with a current FMT certificate be present during all hours of operation. We noted that this is currently included in Suffolk County's Sanitary Code which states "there shall be a designated person in charge of the food establishment who holds a valid Food Manager's certificate issued by the Commissioner **during all hours of operation**"¹⁵; and
- b) modify Food Protection inspection procedures to include that the inspector require a photo ID matching the holder of the FMT certificate and record the FMT certificate number on the inspection report. This information should then be confirmed against the DOH records.

Audit Finding:

(7) Manual and Disjointed Data Management Processes Compromise Completeness and Accuracy of FSE Data Used by Food Protection

Food Protection utilizes a variety of manual paperwork processes and systems¹⁶ and controls were not adequate to ensure the accuracy of the data in each system or the easy retrieval of source documents from the files. Specifically, we found the following:

¹⁵ Suffolk County Sanitary Code, Article 13 General Food Regulations §760-1300.

¹⁶ DOH uses the Management Information and Permitting System ("MIPS") and NYS's EHIPS system. It also enters data into the County's BIRT Reporting System, which is used to generate performance data for the Adopted Budget.

Findings and Recommendations

- Two of the systems (MIPS and EHIPS) were not connected, requiring the need to enter certain key data separately into both systems for the addition or deletion of an FSE (adding new FSEs and deleting FSEs that went out of business). In addition, basic controls, such as a control total count of FSEs in each system were not being used to ensure the starting point for determining the number of FSEs that need to be inspected was the same in each system.

For example, once a year, in January, a MIPS Territory Report is generated to establish the population of FSEs that need to be inspected during the year. We were not given any evidence that the number of FSEs on the annual printed MIPS Territory Report were compared to the number of FSEs in EHIPS to validate the accuracy of the population count each January. As a result, we were unable to verify that the number of FSEs in the MIPS system that triggered the number of required inspections were included in the EHIPS system that maintained the results of the inspections.

- Inspection report information is required to be entered into the NYS EHIPS System, which is performed by scanning the reports. Food Protection keeps a manual tally of the number of completed inspections, but only compares the manual tally count to EHIPS for reasonableness of inspections performed vs. inspections scanned. As a result, inspection reports that are not scanned may not be identified. During the testing, the auditors found 32 High Risk FSEs identified in EHIPS as having no inspections that were actually inspected, but not scanned into EHIPS.
- Inspection counts in EHIPS did not agree with the County's BIRT Reporting System, which is used to generate performance data for the Adopted Budget. We requested EHIPS data from the DOH to support the 6,604 primary food inspections shown in the Adopted Budget for 2012 and received two different reports from EHIPS: neither count agreed with the Adopted Budget. One report showed 7,067 primary inspections and the other showed 6,729 primary inspections.
- During our testing, we found inspection reports for unrelated FSEs misfiled within unassociated files we were reviewing. The manual processes included a high volume of paperwork being transferred from file to file each day, which led to misfiled inspection reports.

Audit Recommendation(s):

We recommend that Food Protection:

- a) establish procedures to ensure that FSE control total counts from MIPS and EHIPS are compared, at least annually, and that differences are reconciled to ensure the appropriate number of FSEs is recorded in EHIPS. This will create a reliable baseline for use to ensure that the appropriate number of recommended annual inspections are scheduled and performed for all FSEs. We also recommend that sufficient evidence supporting the reconciliation is maintained for audit trail purposes;
- b) establish controls to ensure that all inspection reports are scanned into EHIPS in a timely manner;

Findings and Recommendations

- c) reconcile differences between EHIPS and the corresponding inspection counts reported quarterly to the County's Performance Management System. We also recommend that sufficient evidence supporting the reconciliation is maintained for audit trail purposes; and
- d) review the paper handling process and implement changes to improve the accuracy of the filing process.

Audit Finding:

(8) The Lack of Mobile Technology Hampers Adequate Supervision of FSEs

Throughout the audit, the auditors noted system-wide inefficiencies that slowed productivity, including reliance on manually updated printed reports to manage territories and the duplication of efforts resulting from systems modules not being interfaced. Specifically, we made the following observations:

- Nassau County inspectors were not equipped with laptops or tablets for use in the field as is the case in Westchester and Suffolk counties, which have utilized them for over seven years.

Inspectors in these counties utilize laptops to generate their daily schedules and can sort their FSE lists in the field by location, zip code, and those still uninspected. Their system can be updated in real-time as the inspection is performed. In addition, the two counties are now testing and planning for the use of tablets to further facilitate the inspectors' job. Without the use of mobile devices, Nassau County inspectors must manually prepare their daily schedules, routes and inspection reports and return to the office almost daily to perform routine paperwork functions, including submitting inspection reports to their supervisor, reviewing files for future inspections and planning their route for the day.

The failure of Nassau County to acquire proprietary inspection software and mobile devices hampers accuracy and field productivity by:

- not allowing access to key FSE data by inspectors while in the field, requiring they return to the office to look up the information and complete their work;
- not providing automated inspection schedules based on risk and facility type;
- not automating complaints for dispatch and response;
- not allowing the ability to draft and attach sketches or photos to a case history;
- not auto populating standard fields in the inspection report to save time and increase accuracy; and
- not allowing the ability to e-mail or print reports in the field, including sending critical real-time results of inspections to management.

Findings and Recommendations

Auditors witnessed consistent difficulty obtaining basic canned EHIPS system reports, partially due to Food Protection's unfamiliarity with reporting capabilities, system errors and intermittent connection issues. On multiple occasions, we observed EHIPS requests that logged out or froze the computer.

- Food Protection has limited EHIPS systems administrative rights and capabilities, reducing management's ability to create custom reports and analyze data. For instance, Food Protection indicated they are unable to:
 - look up an FSE by address, it can only be looked up by name of facility or number;
 - effectively use EHIPS to manage territories. A search by territory number is not possible, limiting the usefulness of exception reports. As a result, they print multiple hard copy Territory Reports from MIPS to manually track inspection updates. In other cases, they need to manually enter the city or town on EHIPS Reports to delineate the data by territory.
- Food Protection is not using the EHIPS permitting module even though it is used elsewhere in the DOH for Pool and Recreation Permits. Instead, Food Protection double enters information into MIPS, a non-compatible legacy database, making it difficult to correlate the permits data in MIPS to the permit and inspection information in EHIPS.

Additionally, MIPS utilizes an inefficient impact printer, located in a remote facility ten miles away, causing weekly trips to pick up printed permits, while a newly acquired bulk mailer/envelope system and separate laser color printer, purchased in 2013, sit idle in Food Protection offices awaiting an interface to EHIPS.

These inefficiencies cause additional strain on an already limited staff and affect management's ability to effectively supervise and meet the number of annual FSE inspections recommended by NYS.

Audit Recommendation(s):

We recommend that Food Protection work with the Nassau County Department of Information Technology ("NCIT") and/or New York State's Information Technology Department to:

- investigate the use of mobile devices that interface with EHIPS compatible proprietary software, including the ability to interactively document violations, draft sketches, attach photos and remotely update the master files on the propriety system. This will enable inspectors to spend more time performing inspections and less time on paperwork and travel allowing for a more consistent, accurate and efficient process;
- rectify connectivity issues and implement the use of the printer purchased in 2013;
- request additional training for EHIPS reporting functionality;
- request the appropriate level of administrative access rights for EHIPS;

Findings and Recommendations

- create the interface necessary to complete the EHIPS permitting module integration; and
- consult with other counties to find alternative proprietary software (EHIP compatible) to improve productivity and alleviate system constraints.

Audit Finding:

(9) Payment of Assessed Fines and Amounts Outstanding by FSE Enforcement Case Are Not Summarized in a Management Report to Substantiate Collections and Amounts Owed

Our review found that the DOH could not accurately determine the portion of the assessed Food Protection fines that were paid for the audit period. DOH stated they could provide only totals for the fines paid for the DOH as a whole. A recurring report showing the detail by enforcement case was not available to support these totals. In order to determine this information, each file would have to be perused on a case by case basis. A report including the fine and payment detail information by enforcement case is needed to properly monitor and support the status and resolution of assessed fines through the date of payment, as well as the aging and collection of outstanding fines.

When a FSE performs poorly on an inspection, the level of violations found may require the implementation of the enforcement process. The FSE may first be ordered to appear at a Compliance Conference at the Office of Food Protection. Unsuccessful Compliance Conferences, repeat offenders and severe violations will enter the formal enforcement process which results in a hearing before an Administrative Law Judge. The hearing report goes to the Board of Health with recommendations for possible penalties, including fines and/or closure.

Exhibit VI below shows the number Food Protection enforcement cases each year for 2011-2014 and the corresponding total of original fines assessed, including the number of cases dismissed each year causing the original fine to be reduced to zero. We were informed that the Board of Health has the discretion to adjust the original fines recommended by the Administrative Law Judges. As stated above, DOH was unable to provide the related payment information.

Findings and Recommendations

Exhibit VI

Food Protection Enforcement Assessed Fines 2011-2014

Year	Original Assessed Fines		Adjustments Waived Fines		Net Assessed Fines After Adjustments	
	[A] Number of Cases	[B] Total Original Fines	[C] Number of Cases	[D] Original Fine Amount Reduced to Zero	[E] Number of Cases [A]-[C]	[F] Total Adjusted Fines [B]-[D]
2011	27	\$ 64,860	2	\$ 14,650	25	\$ 50,210
2012	121	\$195,300	3	\$ 15,600	118	\$ 179,700
2013	125	\$255,955	5	\$ 32,325	120	\$ 223,630
2014	75	\$171,315	0	\$ -	75	\$ 171,315

Source of Data: DOH's Enforcement Tracking Database

Audit Recommendation(s):

We recommend that the DOH implement a recurring reporting process that provides Food Protection related data quantifying assessed fines and payments and also produces an Aging Report of outstanding fines, both by individual FSE case and in total. This level of reporting is necessary for proper monitoring, collection and audit trail purposes.

Audit Finding:

(10) Nassau County DOH Does Not Have an Expedited Process for Handling Common Violations, as is the Case with Suffolk and Westchester Counties

Our review found that there is no expedited process that allows an FSE to admit to certain common violations and pay a nominal fee, as is the case in Suffolk and Westchester counties. These include such common violations as operating without a permit, not having a FMT certificate, bare hand contact and shellfish violations. Instead, Nassau County requires the FSEs to go through the same process (from the time of the initial violation that escalated to

Findings and Recommendations

enforcement, to the time the fine is assessed) which DOH stated is long and arduous, sometimes taking 18 months before the FSE is fined or closed. We also noted that some of the delay in the enforcement process was due to the failure to finalize the annual contracts for the Administrative Law Judges in a timely manner.

Visits to Suffolk and Westchester Counties and follow-up telephone conversations and emails revealed that:

- Suffolk County utilizes a “Notice of a Formal Hearing” form with a tear off section labeled “Waiver of Formal Hearing” that states the FSE may plead guilty to the cited violations of the Sanitary Code and submit to accept the Civil Penalty of \$300, waiving the full hearing. Westchester County also has a similar expedited process.
- Suffolk County stated that they sent out 1,063 hearing letters during the period 2012 - 2014 of which approximately 80% waived the hearing and paid the waiver amount of \$300, 10% appeared at the hearing (with many eventually paying the waiver anyway), and 10% were held in absentia and a hearing decision was written (absentia hearings cost the respondents \$450 instead of \$300).

Based on the data supplied by Suffolk County, implementation of this expedited process generated waiver fees of approximately \$300,000. The potential savings to Nassau County for a similar process would be generated from the elimination of full hearings for common violations and their related costs. These costs include the amounts that would no longer have to be paid to the Administrative Law Judge based on contracted hourly rates and the prorated portion of wages for the DOH employees who would normally have been involved in such hearings (DOH’s attorney and staff) plus the revenue from fees of \$300/ waiver.

Audit Recommendation(s):

We recommend that the DOH:

- implement procedures to develop an expedited enforcement process for common violations; and
- investigate utilizing a multiyear contract for Administrative Law Judges.

Audit Finding:

(11) Three Year Rotation of Inspectors is Not Adequate to Protect Against Fraud and Abuse

When asked what monitoring methodology DOH utilizes to protect against possible collusion between inspectors and their assigned restaurants, the auditors were told this is accomplished through the rotation of inspectors’ territories every three years. However, the rotation of an inspector’s territory does not adequately address this concern. Collusion could result in inspectors accepting payments, accepting free food, or arranging discounts on personal events to be held at that location in return for the inspector ignoring the violations.

Findings and Recommendations

As proper internal controls require work performed by one person to be reviewed and signed off by a superior, we believe supervisors need to randomly go into the field to validate the inspectors' observations. One of the counties we interviewed periodically "shadows" an inspector's day by performing independent inspections shortly after the inspector leaves an FSE. This shadowing determines if the inspector is identifying appropriate violations and ensures consistency with departmental standards.

Audit Recommendation(s):

We recommend that Food Protection rotate inspectors more frequently and explore the use of quality control shadow field inspections to provide more periodic oversight of the inspectors' work, ensuring consistency, and helping to minimize the potential for collusion.

Ancillary Recommendation (12)

DOH Food Protection utilizes a sliding scale rating system to establish how well an FSE performed during an inspection. Depending on the number and type of violations noted during an inspection, a rating of A to E is assigned. An A rating is the highest, which allows for up to two critical and five non-critical violations. An example of an E, the worst rating, could be no critical violations but 16 non-critical violations or six critical violations and no non-critical violations.

As DOH assigns a grade to each FSE at each inspection, DOH should consider a program similar to New York City, whereby the ratings are posted on each establishment for the public to view before entering.

Description of High, Medium and Low Risk Establishments, As Per the New York State Environmental Health Manual

High-Risk Establishments

Establishments which serve potentially hazardous foods that require a great deal of processing on the premises, including: manual handling, cooling, re-heating, holding for service – hot or cold, transportation of hot or cold ready-to-eat meals and preparation of foods several hours or days before service. Epidemiologic experience has demonstrated that menu items served by these facilities are common vehicles of foodborne illnesses. This category includes establishments that often serve large numbers of meals to the aged, children, or the infirm.

Examples of establishments in the high-risk category include: those which prepare roasted meats, sauces, gravies, casseroles, potentially hazardous baked goods and foods which contain meat, fish, poultry, dairy products, eggs or shellfish.

Medium-Risk Establishments

These establishments often serve potentially hazardous foods; however, there is a rapid turnover between preparation and service. This group also includes low-risk foods that may or may not be potentially hazardous, but require extensive handling, such as baked goods and pizzas. Many of these establishments serve a large volume of food and, therefore, require close attention, although their foodborne illness risk is low.

Examples of establishments in this group include: fast food restaurants, submarine shops, pizza parlors, some retail bakeries, some mobile food establishments, and short-order breakfast and lunch establishments.

Low-Risk Establishments

Most of these establishments serve no potentially hazardous foods with the possible exception of prepackaged sandwiches and specialty items, such as pickled meats or eggs, cream-filled donuts and other snack foods. The regulatory concern in these establishments relates more to sanitation and maintenance.

Examples of establishments in this category include: bars, taverns, retail doughnut shops, some temporary food operations, and coffee shops.¹⁷

¹⁷ Environmental Health Manual, NYS Department of Health, Office of Public Health, Center for Environmental Health, Technical Reference, Item No: CEHFP 852 TR

Appendix II

Annual Inspections by Service

(As of June 30 each year)

<u>Service</u>	<u>(As of June 30 each year)</u>		
	<u>2012</u> <u>12 Months</u>	<u>2013</u> <u>12 Months</u>	<u>2014</u> <u>6 Months</u>
Inspections	4,475	5,378	3,248
Re-Inspections	1,311	1,443	815
Field Visits	411	351	192
Complaint Investigations	411	446	203
Other	121	132	55
Total	<u>6,729</u>	<u>7,750</u>	<u>4,513</u>

Source of Data: New York State - Environmental Health Inspection and Permitting System, known as EHIPS

Nassau County Department of Health Response to the Nassau County Comptroller
2015 – Food Protection Program Audit

Audit Finding:

(1) At Least 74% of High Risk Food Establishments Did Not Receive the Recommended Second Annual Inspection

Audit Recommendation(s):

We recommend that the DOH take the necessary steps to ensure that the NYS recommended number and type of inspections are performed for the County's food service establishments.

DOH Response:

The Comptroller's finding pertains to SECOND PRIMARY annual inspections at high risk facilities. High Risk facilities are inspected at least once a year. Facilities that fail inspection are put on a PRIORITY inspection list and are inspected at least every 90 days thereafter. This allows the program's staff to focus on inspection of facilities with greater numbers of violations which may represent a greater threat to public health. In 2012, 15,934 inspections were conducted; in 2013, 12,304 inspections were conducted and in 2014, 12,604 inspections were conducted. These include primary inspections, re-inspections, complaint inspections and emergency inspections. Currently, the Department regulates approximately 7,400 Food Service Operations.

Auditor's Follow Up:

*We acknowledge NCDOH's use of the non-mandated Priority Inspections process to mitigate risk by monitoring those facilities that failed previous inspections but we reiterate the fact that NYS recommends that **all High Risk FSE's receive at least 2 annual inspections**. Our review noted that 4855 High Risk FSEs did not receive the recommended second annual inspection during the audit period (2012-2013). We continue to recommend that the NCDOH take the necessary steps to ensure that the NYS recommended number and type of inspections are performed.*

Audit Finding:

(2) Risk Classification Errors May Have Caused 12% Fewer Inspections on Low and Medium Risk FSEs

Audit Recommendation(s):

We recommend that DOH take the necessary corrective actions to ensure appropriate risk levels are assigned to FSEs and the risk is entered and updated in EHIPS in a timely manner, as required by NYS.

DOH Response:

In response to the Comptroller's finding, the Department has reviewed procedures to verify that the appropriate risk levels are assigned in the EHIPS database. Risk categories are cross-referenced at the time of inspection and at the time of permit issuance.

Auditor's Follow Up:

Although the DOH's response does not identify the cause of the 12% of discrepancies found in our testing, we commend them for taking corrective actions to ensure appropriate risk levels are assigned to FSE's and the risk is entered and updated in EHIPS in a timely manner, as required by NYS.

Audit Finding:

(3) DOH is not Compliant with Voluntary FDA Staffing Standards to Meet Food Inspection Targets

Audit Recommendation(s):`

We recommend that Food Protection take the necessary steps to ensure staffing is adequate so that the recommended number of annual full inspections is performed.

DOH Response:

The Department utilizes current staffing levels to conduct Primary Inspections and to follow-up and focus re-inspections at facilities with Sanitary Code Violations.

Auditor's Follow Up:

We continue to recommend that NCDOH Food Protection take the necessary steps to ensure staffing is adequate so that all of the recommended numbers of annual full inspections are performed. We believe this is especially necessary in light of the wide disparity between FDA Staffing Standards and NCDOH staffing levels.

Audit Finding:

(4) Almost 10% of Public Health Complaint Resolutions Were Not Adequately Tracked and Documented on the Complaint Log According to DOH Procedures

Audit Recommendation(s):

We recommend that the DOH:

- a) contact NYS to determine the criteria necessary to maintain complaint data on NYS EHIPS in order to meet NYS Environmental Health Standards;
- b) computerize the complaints handling process and require management oversight to ensure compliance with procedures;
- c) develop periodic exception reporting to ensure all complaints are addressed timely and to potentially provide proactive analysis tools identifying frequent offenders; and
- d) update the FBI complaint procedures to incorporate the deficiencies noted in the finding.

DOH Response:

All complaints were investigated and resolved, however documentation of these efforts in the complaint log was incomplete, as noted in the finding. Although the use of the EHIPS complaint module is an option, the NYSDOH EHIPS system has several limitations and connectivity to EHIPS is often problematic. The NYSDOH has indicated their intention to replace or revise EHIPS with a more dependable and useful system. However, it is the NCDOH's desire to obtain a County owned and managed data system to track all Environmental Health Complaints, including complaints against FSE's. This would allow for greater efficiencies, exception reporting and monthly reporting of complaint status.

Auditor's Follow Up:

The complaint log is a managerial tool which provides summary level data to help quickly determine the status of what has been done and the open items requiring attention. The log can only provide reasonable assurance that open items are easily identifiable when the log is kept up to date. In the absence of a complete and accurate log, NCDOH's claim that all complaints were investigated and resolved can only be validated by reviewing each and every case file,

Appendix III

which is neither practical nor an effective way to manage. Since the implementation of a new or revised system by either the NYSDOH and/or the NCDOH will continue to require time, we continue to recommend computerization and monitoring of the complaints process to ensure that the tracking and resolution of all complaints are adequately documented in the complaint log for management review purposes.

Audit Finding:

(5) Required Food Manager Training at High Risk FSEs Could Not Be Confirmed

Audit Recommendation(s):

We recommend that Food Protection:

- a) develop a database for all High Risk FSEs by establishment number and associate each FMT Certificate with those FSE numbers to create a functional and searchable database;
- b) establish procedures to crosscheck prominently displayed certificate numbers to the database after each inspection;
- c) periodically run exception reports to determine which establishments may not have current valid Certified Food Managers; and
- d) consider offering FMT registration on-line with on-line payment and provide the ability to take the FMT course on-line as well.

DOH Response:

The Department requested the Nassau County Department of Information Technology (NCIT) develop a data system for the Food Managers Training (FMT) program. NCIT initiated development of this data system in early 2014 and delivery of a final product is pending. This system will allow for students to register for the training class and pay fees on-line, and allow NCDOH supervisors to track certificate information and cross reference certificates with FSE's. Currently, compliance with FMT regulations are verified at the time of inspection. The Department does not believe that an on-line course can adequately ensure proper training or testing of FMT Certificate candidates. In fact, the NCDOH has made a conscious effort to move away from accepting outside training courses since these courses have been open to fraudulent activity. Additionally, it is the determination of the NCDOH that the best operational model for education in the food training arena is in-classroom training.

Auditor's Follow Up:

We commend NCDOH for their pursuit of the data system for the FMT program and encourage its implementation and utilization to address parts (a), (b) and (c) of this recommendation.

Appendix III

We concur with NCDOH's pursuit of on-line registration and payment and, respect and accept the explanation and decision by NCDOH to continue the use of in-classroom training only.

Audit Finding:

(6) Current DOH Procedures Do Not Allow Inspectors to Verify That The Certificate Holder is the Certified Food Manager Working On Site at the FSE

Audit Recommendation(s):

We recommend that Food Protection:

- a) consider updating the Nassau County Public Health Ordinance to require that an individual with a current FMT certificate be present during all hours of operation. We noted that this is currently included in Suffolk County's Sanitary Code which states "there shall be a designated person in charge of the food establishment who holds a valid Food Manager's certificate issued by the Commissioner **during all hours of operation**"¹⁸; and
- b) modify Food Protection inspection procedures to include that the inspector require a photo ID matching the holder of the FMT certificate and record the FMT certificate number on the inspection report. This information should then be confirmed against the DOH records.

DOH Response:

As stated in the finding, the Nassau County Public Health Ordinance (NCPHO) does not require a FSE to have a Certified Food Manager on site during all hours of operation. Revision of the NCPHO to include this requirement is under consideration to address this issue. When this requirement is enacted, the Department will need to train and test many more food service workers. Since, the FMT Class is currently at full capacity, additional classes will need to be scheduled, additional training staff will need to be assigned and/or a larger facility would have to be utilized for the program.

Auditor's Follow Up:

We commend the NCDOH's decision to consider updating the Nassau County Public Health Ordinance to require that an individual with a current FMT certificate be present during all hours of operation. We reiterate that the lack of such a requirement weakens the objective and effectiveness of an otherwise commendable FMT program. Although such a change may cause

¹⁸ Suffolk County Sanitary Code, Article 13 General Food Regulations §760-1300.

Appendix III

the need for additional FMT classes and training staff, we believe that the public interest and its safety should be the primary driver for improvements.

As the NCDOH response did not address recommendation (b), we reiterate that NCDOH modify its inspection procedures to include that the inspector require a photo ID matching the holder of the FMT certificate and record the FMT certificate number on the inspection report.

Audit Finding:

(7) Manual and Disjointed Data Management Processes Compromise Completeness and Accuracy of FSE Data Used by Food Protection

Audit Recommendation(s):

We recommend that Food Protection:

- a) establish procedures to ensure that FSE control total counts from MIPS and EHIPS are compared, at least annually, and that differences are reconciled to ensure the appropriate number of FSEs is recorded in EHIPS. This will create a reliable baseline for use to ensure that the appropriate number of recommended annual inspections are scheduled and performed for all FSEs. We also recommend that sufficient evidence supporting the reconciliation is maintained for audit trail purposes;
- b) establish controls to ensure that all inspection reports are scanned into EHIPS in a timely manner;
- c) reconcile differences between EHIPS and the corresponding inspection counts reported quarterly to the County's Performance Management System. We also recommend that sufficient evidence supporting the reconciliation is maintained for audit trail purposes; and
- d) review the paper handling process and implement changes to improve the accuracy of the filing process.

DOH Response:

The annual inspection list generated for each inspector (formerly the MIPS Territory Report) began being generated directly from EHIPS in January 2015.. MIPS is only used to generate renewal applications. Therefore, no reconciliation is necessary as of January 2015. The Food Protection program currently scans inspection data into EHIPS, but with the deployment of iPads that will be provided by NYSDOH, inspection data will be uploaded directly into the EHIPS system. This will eliminate that need for scanning paper inspection sheets and provide greater efficiencies for the Food Protection program. It should be noted, however, that even with the use of iPads, the reporting limitations and connectivity problems associated with the EHIPS system will continue to hinder the Department's ability to manage data and provide readily available

Appendix III

public information. Ultimately, the Department should have a County owned and controlled data system for regulated facility inspection data and permit processing. Furthermore, a County/Department data system should be integrated with the County's GIS and WEB technologies.

Auditor's Follow Up:

We commend NCDOH on its pursuit of iPads to provide greater efficiencies, including the elimination of the need to scan paper inspection sheets into EHIPS. We also encourage the pursuit of a County owned and controlled data system. We also commend NCDOH for creating the annual FSE Territory List directly from EHIPS as of January 2015 and agree that this improvement negates the need for a reconciliation between MIPS and EHIPS going forward.

The NCDOH response did not specifically address recommendation (c). Thus we reiterate that NCDOH reconcile differences between EHIPS and the corresponding inspection counts reported quarterly to the County's Performance Management System.

The NCDOH response did not specifically address recommendation (d). Thus, we reiterate that NCDOH implement changes to improve the accuracy of the filing process.

Audit Finding:

(8) The Lack of Mobile Technology Hampers Adequate Supervision of FSEs

Audit Recommendation(s):

We recommend that Food Protection work with the Nassau County Department of Information Technology ("NCIT") and/or New York State's Information Technology Department to:

- a) investigate the use of mobile devices that interface with EHIPS compatible proprietary software, including the ability to interactively document violations, draft sketches, attach photos and remotely update the master files on the propriety system. This will enable inspectors to spend more time performing inspections and less time on paperwork and travel allowing for a more consistent, accurate and efficient process;
- b) rectify connectivity issues and implement the use of the printer purchased in 2013;
- c) request additional training for EHIPS reporting functionality;
- d) request the appropriate level of administrative access rights for EHIPS;
- e) create the interface necessary to complete the EHIPS permitting module integration; and
- f) consult with other counties to find alternative proprietary software (EHIP compatible) to improve productivity and alleviate system constraints.

Appendix III

DOH Response:

Approximately 35 iPads (for multiple EH programs, including Food Protection) have been requested from the NYSDOH for regulated facility inspection and electronic data entry into EHIPS. The printer and mailing machine are utilized for permit production. The Department has requested that the NYSDOH provide additional EHIPS training. Several staff already have the maximum “administrative access rights for EHIPS” permitted by NYSDOH. Once again, because EHIPS is a NY State owned and controlled data system, the Department continues to have connectivity and reporting difficulties that are inherent to the EHIPS system. The best solution to this problem is to have a County owned and controlled data system for regulated facility inspection data and permit processing that is integrated with the County’s GIS and WEB technologies.

Auditor’s Follow Up:

We commend NCDOH on its pursuit of iPads and encourage NCDOH to develop a County owned and controlled data system for regulated facility inspection data and permit processing that is integrated with the WEB for reporting to NYS EHIPS.

Audit Finding:

(9) Payment of Assessed Fines and Amounts Outstanding by FSE Enforcement Case Are Not Summarized in a Management Report to Substantiate Collections and Amounts Owed

Audit Recommendation(s):

We recommend that the DOH implement a recurring reporting process that provides Food Protection related data quantifying assessed fines and payments and also produces an Aging Report of outstanding fines, both by individual FSE case and in total. This level of reporting is necessary for proper monitoring, collection and audit trail purposes.

DOH Response:

All Formal Enforcement Case information is maintained in a data system provided to the Department by NCIT. This data includes all fine amounts assessed and collected. Monthly reports are produced for Fines Assessed, Fines Collected, Outstanding Fines, and Unpaid Fines Referred to the Department Attorney. These reports currently do not segregate cases by program type, although, at the Comptroller’s suggestion, the Department has requested NCIT to provide report production by program. This is a Division of Environmental Health informational data system and is not meant to supplant the Department’s or the County’s Fiscal processes. All unpaid assessed FSE fines are forwarded to the attorney for further legal action. If the FSE

Appendix III

facility is still in business, a permit revocation due process hearing is scheduled before an Administrative Law Judge which compels payment in full, or permit revocation and closure of the facility.

Auditor's Follow Up:

Our review determined that the NCDOH did not have a reporting mechanism in place to provide the auditors with the portion of the assessed Food Protection fines that were paid on an enforcement case level. Our review found that although the enforcement case information was being maintained in a system, the data could not be easily retrieved from the system to provide a recurring consolidated report that aligned the assessed fine by enforcement case with the payment of the fine by the FSE and any amount that remained outstanding. We were told that each FSE file would have to be perused on a case by case basis in order to determine this level of information. As such, we were unable to verify the accuracy of unpaid fines by enforcement case that was provided to the auditors or that all unpaid fines were forwarded to the attorney for further legal action. Therefore, we stand by the recommendation that NCDOH implement a recurring reporting process that provides Food Protection related data (assessed fines and corresponding payments) by individual enforcement case, and in total, as well as an Aging Report of outstanding fines. We also believe that a summary level report that lists each enforcement case and includes the necessary key data to form a complete picture for each enforcement case is essential for effective management review.

Audit Finding:

(10) Nassau County DOH Does Not Have an Expedited Process for Handling Common Violations, as is the Case with Suffolk and Westchester Counties

Audit Recommendation(s):

We recommend that the DOH:

- a) implement procedures to develop an expedited enforcement process for common violations; and
- b) investigate utilizing a multiyear contract for Administrative Law Judges.

DOH Response:

- a) The NCDOH Enforcement Program commenced an expedited system for issuing violation notices for simple charges, such as bare hand contact with ready to eat foods, out of temperature foods, failure to attend and pass the food managers training course. These type of single charge cases do not require a Recommendation for Enforcement to

Appendix III

be completed for commencing an enforcement case, and allow for an expedited process while comporting with state and federal due process requirements. However, the Nassau County Health Department, as a matter of public health policy, does NOT endorse a process whereby payment is submitted by a respondent in lieu of appearing before and Administrative Law Judge. The enforcement component and educational component is vital to the overall success of any sound enforcement program. It is strongly averred by the NCDOH that any expedited payment process which eliminates the need for a respondent to appear before an Administrative Law Judge on matters involving violations of Public Health Law or State Sanitary Code, and thus bypassing the educational and adjudicatory components of the enforcement process, represents a substantial shift in public health protection policy, and considered potentially injurious to public health.

- b) The NCDOH will investigate issuing multi-year contracts for Administrative Law Judges.

Auditor's Follow Up:

Although NCDOH had mentioned plans to develop an expedited process for simple violations, such a process had not been implemented at the time of our audit. We sent an email to NCDOH on 5/13/15 to follow up on the above response and requested a copy of their expedited procedures and the date they were implemented. NCDOH responded to our request on 5/18/15 with a copy of their Appearance Ticket Form and stated it was implemented in January 2014. NCDOH did not provide the related procedures as we requested. We believed that the plans NCDOH mentioned at the time of our audit involved more than an appearance ticket and that they had not yet been implemented. Nonetheless, since the Appearance Ticket Form states that the FSE is still required to appear, we encourage NCDOH to reconsider its response to recommendation (a) and to allow the FSE to pay the fine in lieu of appearing before an Administrative Law Judge and waiting for the Board of Health's final decision.

With respect to NCDOH's response to recommendation (b), we are pleased they accepted our recommendation and plan to investigate a more efficient practice of issuing multi-year contracts for Administrative Law Judges.

Audit Finding:

(11) Three Year Rotation of Inspectors is Not Adequate to Protect Against Fraud and Abuse

Audit Recommendation(s):

We recommend that Food Protection rotate inspectors more frequently and explore the use of quality control shadow field inspections to provide more periodic oversight of the inspectors' work, ensuring consistency, and helping to minimize the potential for collusion.

DOH Response:

The Department uses a three year rotation of inspectors for routine primary inspections. Supervisors also make periodic inspection visits to ensure adequate follow-up of front line staff and to ensure consistency. FSEs that pass inspection and do not fall into the Priority Inspection process are visited approximately three times in that three year period. Facilities that do require Priority Inspections are visited by more than one inspector and are generally inspected by several different staff during the priority inspection period.

Auditor's Follow Up:

We stand by our recommendation that the DOH should rotate inspectors more frequently and explore the use of shadow field inspections to ensure consistency and help to minimize the potential for collusion.

Ancillary Recommendation (12)

DOH Food Protection utilizes a sliding scale rating system to establish how well an FSE performed during an inspection. Depending on the number and type of violations noted during an inspection, a rating of A to E is assigned. An A rating is the highest, which allows for up to two critical and five non-critical violations. An example of an E, the worst rating, could be no critical violations but 16 non-critical violations or six critical violations and no non-critical violations.

As DOH assigns a grade to each FSE at each inspection, DOH should consider a program similar to New York City, whereby the ratings are posted on each establishment for the public to view before entering.

DOH Response:

The Department does not agree that a Grading System posted at the establishment provides any useful information for the public and protection of health. Sanitary conditions and critical violations can change on a daily basis. The Department does advocate for the public to have easy access to the establishments' inspection history that can clearly provide information regarding the sanitary and critical violations noted during inspections. The best way to accomplish this is by the development of a County owned and controlled data system for regulated facility inspection data and permit processing that is integrated with the County's GIS and WEB technologies. Although the State Health Department currently provides such information, it is not user friendly and cannot be customized to best serve the residents of Nassau County. Furthermore, until such time as the New York State Department of Health (NYSDOH) provides and advocates for a uniform grade posting scheme that is consistent throughout the State of New York, which NYSDOH has specifically declined to do, the adoption of a local grade posting scheme is not advised. However, the Department is progressing toward posting the decisions of Administrative Law Judges on the Department website, and thus available for public viewing.

Auditor's Follow Up:

The auditors agree that it is important for the public to have easy access to the FSE inspection history regarding the sanitary and critical violations noted during inspections. We also encourage NCDOH to pursue the development of a County owned and controlled data system to accomplish this effort. However, until such time as a County owned and controlled data system can be implemented, we reiterate the recommendation to post the grade already assigned by NCDOH for the public to view before entering the establishment. The date the letter grade is given should be included on the posting to make the public aware of the timeframe. We believe that posting of grades would provide an even greater incentive to all FSEs to make improvements that would result in replacing a low grade with a higher one.