



City of New York

OFFICE OF THE COMPTROLLER

Brad Lander
COMPTROLLER



MANAGEMENT AUDIT

Audit Report on the Department of
Consumer and Worker Protection's
Response to Price Gouging on
Essential Products

MD21-076A

February 22, 2022

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

February 22, 2022

To the Residents of the City of New York:

My office has audited the New York City Department of Consumer and Worker Protection (DCWP) to determine whether the agency has established proper procedures and internal controls to ensure compliance with the emergency rule it instituted to address price gouging during a declared state of emergency. We perform audits such as this as a means to ensure that agencies operate in accordance with their procedures and in the best interest of the public.

The audit found that DCWP has established procedures and implemented internal controls to help ensure compliance with the emergency rule it instituted to address price gouging. However, the audit identified a number of operational limitations that should be remedied. Specifically, the agency has not formalized written protocols for how the General Counsel Division should prioritize price gouging complaints for inspection, nor has it established an independent review process for the priority determinations made. In addition, DCWP has not established productivity measures, including timeliness standards, for its inspections in response to price gouging complaints.

To address these issues, the audit makes four recommendations that DCWP should memorialize in writing its criteria for its enforcement of the price gouging rule; establish an independent review process for its complaint selection determinations; establish criteria for how often businesses with multiple complaints should be inspected; and establish and monitor performance measures with specified timeframes for resolving price gouging complaints and ensure they are documented in writing and complied with.

The results of the audit have been discussed with DCWP officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander

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CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit of the Department of Consumer and Worker Protection's Response to Price Gouging on Essential Products

MD21-076A

EXECUTIVE SUMMARY

The Department of Consumer and Worker Protection (DCWP), formerly the Department of Consumer Affairs (DCA), seeks to protect and enhance the daily economic lives of New Yorkers to help create thriving communities.

On March 15, 2020, DCWP promulgated an emergency rule, pursuant to the authority granted by sections 1043(i) and 2203 of the New York City Charter (City Charter) and sections 20-701 and 20-702 of the New York City Administrative Code, declaring as unconscionable the practice of price gouging for any personal or household good or service that is needed to prevent or limit the spread of or treat coronavirus (COVID-19).¹ The emergency rule added a new section 5-42 of Title 6 of the RCNY and amended the penalty schedule in Section 6-47. The emergency rule covers personal and household goods and services—such as disinfectants, soap and cleaning products, diagnostic products and services, medicines, and tissues—that aid in diagnosing or monitoring disease symptoms, prevent the spread of disease or treat disease during a declared state of emergency in the City. The emergency rule makes it illegal to increase prices by 10 percent or more above what a buyer in the City could pay for the same or similar good or service 30-60 days prior to the declaration of the state of emergency.²

Effective May 13, 2020, DCWP extended the emergency rule for 60 days to allow time for the issuance of the permanent rule through the City Charter's normal rulemaking procedure. The permanent rule was eventually established on June 24, 2020, making it illegal to price gouge on any products or services essential to health, safety, and welfare during a declared state of emergency.

¹ Price gouging is a term that refers to the practice of raising the price of goods, services, or commodities, to an unreasonable or unfair level.

² Exceptions under the emergency rule exist (1) when a merchant has increased its price to an excessive price as a direct result of costs imposed on the merchant by the supplier or is directly attributable to additional costs for labor or materials used to provide the goods or service, provided the increase charged to the buyer is comparable; or (2) when the merchant charged the excessive price 30 days prior to the declaration of the state of emergency and has not since increased the price except as a direct result of the increases imposed by suppliers or the above-mentioned increased labor or supply costs.

The overwhelming majority of the price gouging complaints DCWP received was through the City's 311 system, but DCWP also received complaints via email and from other agencies.

Audit Findings and Conclusion

DCWP has established procedures and implemented internal controls to help ensure compliance with the emergency rule it instituted to address price gouging. However, we identified a number of operational limitations that should be remedied. Specifically, the agency has not formalized written protocols for how the General Counsel Division should prioritize price gouging complaints for inspection, nor has the agency established an independent review process for the priority determinations made. As a result, DCWP's ability to ensure that counsel's priority determinations consistently align with established protocols is limited.

In addition, DCWP has not established productivity measures, including timeliness standards, for its inspections in response to price gouging complaints. We found that DCWP conducted inspections in response to approximately 28 percent of the price gouging complaints it received and that those inspections occurred on average 43 days after the complaints were received, and in 16 percent of the cases, more than 90 days after receipt. Without time targets (or other productivity measures), DCWP's ability to ensure that complaints are addressed as soon as is feasible and without unnecessary delays is diminished.

Audit Recommendations

Based on the audit, we make four recommendations:

- DCWP should memorialize in writing its criteria for its enforcement of the price gouging rule.
- DCWP should establish an independent review process for its complaint selection determinations.
- DCWP should establish criteria for how often businesses with multiple complaints should be inspected.
- DCWP should establish and monitor performance measures with specified timeframes for resolving price gouging complaints through timely inspections and follow-up action and ensure that they are documented in writing and complied with.

Agency Response

In its response, DCWP agreed with all four of the audit's recommendations.

AUDIT REPORT

Background

DCWP, formerly DCA, seeks to protect and enhance the daily economic lives of New Yorkers to help create thriving communities. DCWP licenses more than 59,000 businesses in more than 50 industries. The agency strives to create a culture of compliance in the marketplace by performing onsite inspections of businesses and enforcing license regulations, weights and measures regulations, and the NYC Consumer Protection Law. DCWP also educates street vendors and responds to complaints about general vendors and mobile food vendors by conducting inspections.

On March 5, 2020, amid concerns created by an outbreak of COVID-19, DCWP's Commissioner declared face masks in short supply, and that declaration was extended to hand sanitizer and disinfectant wipes on March 10, 2020. The declarations were made under Title 6, Section 5-38, of the Rules of the City of New York (6 RCNY §5-38), which authorizes the commissioner to declare certain items temporarily in short supply for 30 days during extraordinary circumstances.

On March 15, 2020, DCWP promulgated an emergency rule, pursuant to the authority granted by sections 1043(i) and 2203 of the New York City Charter (City Charter) and sections 20-701 and 20-702 of the New York City Administrative Code, declaring as unconscionable the practice of price gouging for any personal or household good or service that is needed to prevent or limit the spread of or treat coronavirus (COVID-19).³ The emergency rule added a new section 5-42 of Title 6 of the RCNY and amended the penalty schedule in Section 6-47. The emergency rule covered personal and household goods and services—such as disinfectants, soap and cleaning products, diagnostic products and services, medicines, and tissues—that aid in diagnosing or monitoring disease symptoms, prevent the spread of disease or treat disease during a declared state of emergency in the City. The emergency rule makes it illegal to increase prices by 10 percent or more above what a buyer in the City could pay for the same or similar good or service 30-60 days prior to the declaration of the state of emergency.

During the audit scope period, the fine for price gouging was \$350 per item or service.⁴ If businesses are paying more to obtain these items themselves, they must provide proof to DCWP, and any increase must be comparable. Retailers can appeal fines imposed with proof of comparable increased costs from suppliers to supply the good or service. Effective May 13, 2020, DCWP extended the emergency rule for 60 days to allow time for the issuance of the permanent rule through the City Charter's normal rulemaking procedure. The permanent rule was eventually established on June 24, 2020, making it illegal to price gouge on any products or services essential to health, safety, and welfare during a declared state of emergency. According to a DCWP press release, the neighborhoods with the most price gouging complaints were Black and Hispanic neighborhoods, and many of these same neighborhoods were hit the hardest by COVID-19. The same press release cited some of the most egregious violations including businesses selling 8 ounce bottles of hand sanitizer for \$28 and selling N95 masks for \$20 per mask.

³ Price gouging is a term that refers to the practice of raising the price of goods, services, or commodities, to an unreasonable or unfair level.

⁴ In its response to the draft report, DCWP stated that as of January 24, 2022, the fine amount was raised to \$525 for the first violation, \$1,050 for a second violation, and \$3,500 for a third violation.

The mechanism DCWP uses to address price gouging complaints is to inspect the business the complaint references. However, the agency does not conduct an inspection in response to every complaint. Rather, the agency assigned an attorney in its General Counsel Division to review all price gouging complaints and select those that warrant inspections, based on DCWP's established criteria. Such complaints are then referred to the Enforcement Division for inspection, as described below. DCWP's data indicates that during our audit scope period, the agency conducted inspections in response to approximately 28 percent of the price gouging complaints it received.⁵

The overwhelming majority of the price gouging complaints DCWP received was through the City's 311 systems, but DCWP also received complaints via email and from other agencies. Complaints directed to DCWP through the City's 311 systems (311 complaints) are received and reviewed by DCWP's Intake unit in the agency's Consumer Services Division, where complaints related to price gouging are flagged as such in DCWP's Accela system, the agency's system of record.⁶ The Intake unit then closes out the price gouging complaints in Accela, and the Information Technology unit sends an Excel file containing the price gouging complaints to the assigned attorney in DCWP's General Counsel Division. The attorney adds the complaints to a master tracking spreadsheet she maintains, reviews them, selects those that she determines should be addressed through an inspection, and color codes the selected complaints in yellow in the tracking spreadsheet. The staff attorney then emails a separate list of those complaints back to the Intake unit, where staff are supposed to reopen the Accela records of the listed complaints and enter the attorney's inspection requests in Accela.

The attorney also emails the same list of the inspection requests to the Enforcement unit so that Enforcement is aware of the next set of inspection requests being entered. Once the inspection requests are entered in Accela, the information is transferred from that system to DCWP's separate Automated Inspection Management System (AIMS) so that the Enforcement unit can schedule the inspections.⁷

According to DCWP, there has been a significant increase in the volume of complaints that the agency has received since the pandemic began. Officials stated that the agency received 38,010 complaints during the period March 2020 through February 2021, a 114 percent increase from the 17,770 complaints it received during the previous 12-month period (March 2019 through February 2020). During our scope period (March 2020 through November 2020), DCWP received more than 12,000 price gouging complaints, issued more than 600 summonses, and identified more than 15,200 violations (a summons can include more than one violation).

⁵ We calculated 28 percent by dividing the 3,235 complaints that DCWP inspected by the 11,708 complaints DCWP received as of September 16, 2020. According to DCWP officials, approximately 1,000 of the 11,708 complaints that DCWP received were not actionable due to either incomplete addresses or because the complaint was not within DCWP's jurisdiction. However, DCWP does not have a system in place to identify or track the complaints that were not actionable, so we were unable to determine the number of these complaints.

⁶ Accela, also called ALBA, is a web-based application that is used by DCWP's Licensing, Enforcement, Collections and Finance Divisions and by two units within the General Counsel Division: Consumer Services and Legal Settlement & Case Support.

⁷ AIMS consists of two components: the CRM application – a browser-based system that allows data management and processing on desktop computers; and the mobile application available on a handheld iPad which is used by inspectors to manage assigned routes, review important business information, take pictures, indicate inspection start and end times, and perform other functions while conducting inspections.

Objective

To determine whether DCWP has established proper procedures and internal controls to ensure compliance with the emergency rule it instituted to address price gouging during a declared state of emergency.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was March 4, 2020 through November 16, 2020.

Discussion of Audit Results with DCWP

The matters covered in this report were discussed with DCWP officials during and at the conclusion of this audit. A preliminary draft report was sent to DCWP and discussed at an exit conference held on December 16, 2021. On January 26, 2022, we submitted a draft report to DCWP with a request for written comments. We received DCWP's written response on February 9, 2022. In it, DCWP agreed with all four of the audit's recommendations.

The full text of DCWP's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DCWP has established procedures and implemented internal controls to help ensure compliance with the emergency rule it instituted to address price gouging. However, we identified a number of operational limitations that should be remedied. Specifically, the agency has not formalized written protocols for how the General Counsel Division should prioritize price gouging complaints for inspection, nor has it established an independent review process for the priority determinations made. As a result, DCWP's ability to ensure that counsel's priority determinations consistently align with established protocols is limited.

In addition, DCWP has not established productivity measures, including timeliness standards, for its inspections in response to price gouging complaints. We found that DCWP conducted inspections in response to approximately 28 percent of the price gouging complaints it received and that those inspections occurred on average 43 days after the complaints were received, and in 16 percent of the cases, more than 90 days after receipt. Without time targets (or other productivity measures), DCWP's ability to ensure that complaints are addressed as soon as is feasible and without unnecessary delays is diminished.

The details of our findings are discussed in the following sections of the report.

DCWP Has Not Formalized Protocols for Selecting and Prioritizing Price Gouging Complaints for Inspection

The audit found that DCWP has not formalized written protocols for determining which price gouging complaints should be selected and prioritized for inspection. The agency attorney designated for this task did not identify any written management policies and procedures that the attorney used for the purpose of determining which complaints warranted an inspection, and no one reviewed the attorney's decisions during the period our audit covered. As a result, DCWP has limited assurance that the attorney's determinations consistently align with management's policy direction and priorities for how its limited inspectional resources should be applied.

DCWP indicated that the first step in prioritizing complaints is to determine whether a complaint provides insufficient information to conduct an inspection or refers to a product not covered by its price gouging rule. The attorney then uses five additional criteria in determining how to prioritize a complaint:

- 1) whether the location in question has been the subject of multiple complaints;
- 2) whether the complaint satisfied DCWP's internal thresholds, memorialized in the agency's enforcement checklist for price gouging inspections;
- 3) the egregiousness of the complaint (i.e., complaint that a business was selling a 10-pack of face masks for \$300 or involved price gouging of multiple products);
- 4) the age of the complaint; and
- 5) whether DCWP had already conducted an inspection at the location in question.

However, this process was not documented in any written policies. Additionally, the attorney's selections were not independently reviewed by a supervisor to confirm that these protocols were consistently followed.

Comptroller's Directive #1, *Principles of Internal Control*, explains that agencies need documented management policies and procedures as part of a sound internal control environment to ensure that agency staff understand and carry out management's direction. The directive states, in part, at Section 4.3 *Control Activities*, "Internal control activities help ensure that management's directives are carried out. They are, basically, the policies, procedures, techniques, and mechanisms used to enforce management's direction. They must be an integral part of an agency's planning, implementing, review and accountability for stewardship of its resources and are vital to its achieving the desired results." The directive further states, at Section 5.11, *Appropriate Documentation of Transactions and Internal Controls*, that "[i]nternal controls should be documented in management administrative policies or operating manuals."

According to DCWP's 311 complaint data, DCWP received 11,708 price gouging complaints between March 4, 2020 and September 16, 2020. Our analysis of DCWP's complaint and inspection data indicates that DCWP's Enforcement unit inspected the businesses associated with 3,235 (28 percent) of those complaints (irrespective of inspections requested by the staff attorney designated for reviewing price gouging complaints).⁸ DCWP officials explained the relatively low rate of inspections to complaints by noting that DCWP had limited resources and that it had received thousands of price gouging complaints at the height of the pandemic while most staff were working from home, with the exception of the inspectors who were conducting in-person inspections of businesses.

However, if the protocols for prioritizing inspections are not formalized in writing, there is an increased risk that those protocols may not be fully understood and applied on a consistent basis, thereby diminishing the effectiveness of DCWP's price gouging inspection process, particularly where inspectional resources are limited. For example, according to DCWP's complaint data, of the 168 businesses that received multiple price gouging complaints, 43 (26 percent) received no inspections. In the absence of written protocols for prioritizing inspections, and no independent review to ensure that protocols are consistently followed, DCWP may be hindered in ensuring that the businesses that pose a greater risk for engaging in price gouging practices are identified and inspected, reducing the agency's ability to ensure that those businesses discontinue the unlawful practice.

Recommendations

1. DCWP should memorialize in writing its criteria for its enforcement of the price gouging rule.

DCWP Response: "DCWP agrees to memorialize in a written management protocol its established criteria and policy for enforcement of the price gouging rule."

2. DCWP should establish an independent review process for its complaint selection determinations.

DCWP Response: "As noted on page 2 of the Audit Report, we established procedures and implemented internal controls to help ensure compliance with the emergency rule. To complement these practices, DCWP agrees to establish an independent review process for its complaint selection."

⁸ The 3,235 does not include 67 duplicates where there was a change in inspection status, not another inspection.

3. DCWP should establish criteria for how often businesses with multiple complaints should be inspected.

DCWP Response: “DCWP established specific criteria tailored to the pandemic context to review complaints to be applied by an experienced attorney that drew upon DCWP’s longstanding experience taking in and mediating consumer complaints and inspecting businesses in over 50 license categories. One of these criteria for determining whether a location should be prioritized for inspection was whether a business had multiple complaints. Going forward, DCWP agrees to also establish specific criteria for how often it should return to businesses with multiple complaints for repeat inspections.”

DCWP Has Not Established Productivity Measures for Addressing Price Gouging Complaints

According to Comptroller’s Directive #1, *Principles of Internal Control*, Section 5.2, *Management Review at Functional or Activity Level*, management should be comparing actual functional or activity level performance data to planned or expected results, analyzing significant variances and introducing corrective action as appropriate. It also states, at Section 5.6, *Performance Measures and Indicators*, that activities need to be established to monitor fiscal performance measurements and indicators, and controls established to validate their propriety and integrity, which are “particularly important in measuring performance of field personnel such as inspectors.”

However, DCWP has not established any timeliness measures with regard to its performance in addressing price gouging complaints. While DCWP has established such measures for resolving mediated complaints (i.e., complaints that are assigned to a mediator who works with both parties to help them reach a middle ground), DCWP officials stated that price gouging complaints are not mediated.⁹

During the period of March 4, 2020 to September 16, 2020, DCWP received 11,708 price gouging complaints, according to data obtained from Accela. Of these, inspection requests were recorded in Accela for 3,340 (29 percent) of them.¹⁰ As of September 17, 2020, DCWP had not conducted inspections for 139 of those complaints (4 percent of those for which inspection requests were recorded), resulting in 3,201 complaints with inspections.¹¹ In addition, we identified 34 complaints that resulted in inspections without documented inspection requests. Of the total 3,235 complaints that resulted in inspections (28 percent of complaints received), the average number of days between DCWP’s receiving the complaint and conducting the inspection was 43, ranging from 2

⁹ As recorded in the *Mayor’s Management Report*, the median number of days it took DCWP to resolve mediated complaints was 28 for Fiscal Year 2021. (A complaint can be resolved/closed in several ways—agreement by consumer and vendor, referral within or outside of the agency, etc.)

¹⁰ Because we could not comprehensively compare the spreadsheets where DCWP initially records its inspection requests with the inspection requests recorded in Accela, due to variations in the recording of business names and other issues in the data, we do not know what percentage of DCWP’s inspection requests were recorded in Accela.

¹¹ After we shared with DCWP the 139 complaints not inspected, DCWP indicated that inspection requests for 109 of these complaints were canceled for various reasons (e.g., another complaint for the location was inspected, non-essential stores were closed, duplicate request, etc.) and 25 complaints were inspected subsequent to the date we were provided the inspection data. For the remaining five complaints, DCWP claimed that inspections were not requested; however, all five complaints had an intake status of “inspection requested” in the original data DCWP provided.

to 181 days.¹² A frequency distribution showing the number of days between receipt and inspection for the 3,235 complaints is shown in Table I below.

Table I

Number of Days between Complaint
Receipt and Inspection

Number of Days	Number of Inspections
0 to 30	1,825
31 to 60	635
61 to 90	273
91+	502
Total	3,235

As shown in the table above, 502 (16 percent) of the 3,235 inspections were conducted more than 90 days after DCWP received the complaints. At the exit conference, a DCWP official explained that this information does not accurately represent the time between receipt of a complaint that triggers an inspection request and the performance of that inspection. According to DCWP, for a location that is the subject of multiple complaints, the inspection request may not necessarily be linked to the most recent complaint that triggers the request but instead be linked to an earlier complaint. However, DCWP did not provide any evidence of instances in which inspection requests were linked to complaints other than the ones that prompted the requests. In the absence of such evidence, we cannot assess the degree to which this occurred, or confirm that it occurred at all.

DCWP also indicated at the exit conference that it has established time targets for other complaints it receives, referencing a service level agreement the agency has with 311 that cites a public commitment (during non-pandemic times) to conduct inspections (not including those involving price gouging) within 35 days. DCWP officials provided us with an Excel file with various complaint resolutions; however, the document makes no reference to a 35-day target.

In the absence of time targets (or any other productivity measures) for price gouging complaints, DCWP is hindered in ensuring that the price gouging complaints it selects for inspection are addressed as soon as is feasible and without unnecessary delays. In addition, delays in conducting the inspections increases the risk that the inspections will not accomplish their intended purpose of determining the complaint's validity and enabling DCWP to take prompt action to halt violations and penalize violators. That risk increases as time elapses between the complaint and the corresponding inspection, where, for example, price gouging that may have occurred will not be identified because the items involved are no longer available, or where

¹² The data extracted from Accela indicated that DCWP conducted inspections in response to 3,302 complaints, but for the purpose of this test we excluded 67 of those complaints as duplicates—complaints that were listed two times due to changes in associated inspection statuses rather than additional inspections. Thus, the total number of inspections DCWP conducted in relation to the complaints logged during the period we reviewed was 3,235.

ongoing price gouging will not be identified timely and will continue to exist, which would result in consumers' unnecessarily paying high prices for essential items over prolonged periods.

Recommendation

4. DCWP should establish and monitor performance measures with specified timeframes for resolving price gouging complaints through timely inspections and follow-up action and ensure that those measures are documented in writing and complied with.

DCWP Response: “At the outset of the pandemic, DCWP did not establish performance measures with specified timeframes for inspections because it could not predict key inputs, including the number of likely complaints, number of available inspectors, and number of businesses open. That said, DCWP will adopt performance measures with timelines for the application of our price gouging rule in future emergencies, with the caveat that initial timeframes established may need to be amended as part of continuous process improvement based on changes to key inputs over the course of the emergency.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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 objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was March 4, 2020 through November 16, 2020.

To obtain an understanding of DCWP's management of the price gouging complaint and inspection process, we obtained the organization charts of units involved with price gouging operations. To obtain an overview of the price gouging operation, we interviewed the General Counsel, the Assistant Commissioner for Enforcement, and the Chief of Staff of External Affairs.

In addition, to gain an understanding of DCWP's oversight over the price gouging complaint and inspection process and to evaluate controls in place, we conducted walkthrough meetings and observations, and interviewed relevant DCWP officials who play a role in the process, including the Associate General Counsel, a staff attorney, the Director of Consumer Services, a Borough Manager, the Intake Mediation Supervisor, a Mediation Supervisor, the Quality Assurance Supervisor, three Enforcement Supervisors, the Office of Financial Empowerment (OFE) and Consumer Services Hotline Supervisor, the Special Operations Enforcement Associate Supervisor, an Intake Supervisor, a Senior Enforcement Associate, a Senior Inspector, and two Inspectors.

To gain an understanding of relevant policies, procedures, and regulations related to the price gouging inspections, to assess controls in place, and to further determine whether DCWP is complying with related laws, policies and procedures, we reviewed and used as criteria: 1) *5-38 Law Packet*; 2) *5-42 Law Packet* (Permanent Rule, including Notice of Public Hearing); 3) *Inspection Requests*; 4) *5-42 Law Packet Temporary Rule*; 5) *Protocol - Data Entry*; 6) *Protocol - QA Non-Violation Inspections*; 7) *Protocol - Price Gouging Inspections Protocol (Temporary) 20200414*; 8) *Checklist - Price Gouging 6-15-20*; 9) *Closing the Customer Relationship Management (CRM) for Price Gouging*; 10) *Price Gouging Inspector Reference Sheet*; 11) *Comptroller's Directive #1, Principles of Internal Control*; 12) the Department of Information Technology and Telecommunications *Identity Management Security* policy; and other relevant documentation printed from websites or provided by the divisions, units, or staff we interviewed.

Furthermore, to gain an understanding of the information received from DCWP and the capabilities of the computer systems used in recording, tracking, processing and reporting of information related to price gouging complaints and inspections such as the Accela database, and the AIMS database, we requested for review any lists and descriptions of the computer systems used in the process, the systems documentation and the user manuals, including any specifications and relevant information. We further conducted virtual observations of both computer systems.

In addition, to evaluate DCWP's controls over the processing of price gouging complaints, we determined its compliance with the emergency rule that was instituted to address price gouging during a declared state of emergency. We obtained the list of price gouging complaints DCWP

received during the emergency declaration, as well as the inspections conducted, and summonses and violations issued. We randomly selected a sample of 50 311 price gouging complaints from a population of 11,708 price gouging complaints for review to determine whether complaints were properly inspected, and violations and summonses were issued when applicable. We also retrieved from the Accela database screenshots and other related documentation, such as payment, hearing, adjudication, and collection documents for all 50 randomly sampled complaints and reviewed the information to determine DCWP's compliance with the price gouging rules and its own procedures.

To determine the timeframes for complaint inspections, we calculated the number of days between the complaint submission date and the date of inspection for those complaints that were inspected as of September 17, 2020.

The sampled 50 complaints were related to 49 businesses. We identified 74 inspection records related to these 49 businesses. We conducted audit tests of these 74 inspections to determine whether DCWP had proper procedures and internal controls in place for price gouging inspections, related violations, summonses, fines, and adjudication and collection records. Additionally, we obtained screenshots of the business complaint records and all other related documents for the sampled inspections, hearings, payments, and collection measures from the Accela database to determine if there were adequate approvals in Accela. We determined the accuracy of the record keeping and data entry for the 74 sampled inspections and the related complaints. We also determined whether DCWP processes the sampled inspections and complaints in a timely manner by comparing the submission, the complaint result, and the inspection dates. We specifically determined the timeframes for resolution of 311 price gouging complaints, including the timeframes of DCWP's completion of each step in the price gouging inspection process and we reviewed DCWP's tracking of 311 price gouging complaints. In addition, we obtained the tracking spreadsheet for inspection requests and determined whether the complaints selected for inspection were inspected.

In order to assess the reliability of the computer-processed data for price gouging complaints received from DCWP, we examined a report generated from the Accela Database in Excel format with four tabs of price gouging data: Tab 1 included 11,708 complaint records for the period of 03/04/2020 to 09/16/2020; Tab 2 included 3,808 price gouging inspection records for the period of 03/02/2020 to 09/17/2020; Tab 3 included 1,033 price gouging summonses issued for the period of 03/02/2020 to 09/17/2020; and Tab 4 included 1,282 price gouging violations issued (no dates were provided in this data). Using Audit Command Language (ACL), we joined the datasets to review and ensure that all steps for processing complaints were followed. Using Excel Filtering formulas, Excel ACL Add-In feature, and ACL audit program, we determined whether the data was accurate and complete by looking for gaps, trends and unusual information in critical fields, such as complaint submission date, reference contact ID, reference address ID, record ID, complaint result date, record type, inspection status, inspection date, inspection type, and business name. We also used ACL to identify blank records in these critical fields.

In addition, to determine whether DCWP was in compliance with its own standard operating procedures and practices in processing inspection requests, we reviewed inspection request information maintained in the tracking spreadsheet. We determined whether the data in the tracking spreadsheet inspection requests was reliable by comparing it to the complaint data and information in Accela. To determine whether there were adequate controls over the inspection request and tracking process, we reviewed the complaint data in the tracking spreadsheet for our 50 sampled complaints and the 74 inspections for these businesses.

The results of the above tests, while not projected to their respective populations, provide a reasonable basis for us to assess whether DCWP has established proper procedures and internal controls to ensure compliance with the emergency rule instituted to address price gouging during a declared state of emergency, and its compliance with its own internal guidelines and practices for price gouging inspections.



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February 9, 2022

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RE: DCWP's Comments on the New York City Comptroller's "Audit Report on the Department of Consumer and Worker Protection's Response to Price Gouging on Essential Products" (MD21-076A)

Dear Mr. Carey,

The New York City Department of Consumer and Worker Protection ("DCWP") appreciates the opportunity to respond to the Comptroller's Audit Report, dated January 26, 2022, which reviews DCWP's enforcement of its first-ever application of the new price gouging rule on essential products during the COVID-19 pandemic. The Audit Report acknowledges the difficult circumstances under which DCWP had to work in enforcing our price gouging rule. During the first year of the pandemic, the volume of complaints DCWP received increased dramatically. In March 2020 alone, DCWP received 5,497 price gouging complaints, up 281% from 1,443 complaints received March 2019 and for the full year March 2020 through February 2021, DCWP received 38,010 complaints, an increase of 114% from the 17,770 complaints it received during the previous 12-month period. DCWP had to overcome additional hurdles to ensure that consumers had reasonable access to the essential products necessary to help combat COVID-19 including limited resources, legal staff working remotely, and uncertainty regarding which businesses might remain open for inspection. We intend to use the Audit Report's four recommendations for process improvements to help enhance the policies and procedures already in place to administer this new rule going forward.

The Audit Report contains four recommendations, as follows:

- 1. DCWP should memorialize in writing its criteria for its enforcement of the price gouging rule.** DCWP appreciates the Audit Report's acknowledging that we established criteria to select complaints that warrant inspection based on our many years of experience. The initial criteria applied by the senior attorney designated to select complaints for inspections was whether the complaint provided sufficient information and whether a product was covered by our price gouging rule. DCWP triaged out more than 1,000 complaints that contained insufficient information or were about products not covered by our rule. The attorney then used five additional criteria in determining how to prioritize a complaint that could lead to an inspection: (1) whether the location complained about had multiple complaints; (2) whether the complaint satisfied our internal thresholds, memorialized in our enforcement checklist for price gouging inspections; (3) the egregiousness of complaint (i.e., complaint that a business was



selling a 10-pack of face masks for \$300 or involved price gouging as to multiple products); (4) the recency of the complaint; and (5) whether DCWP had already conducted an inspection at the location. DCWP agrees to memorialize in a written management protocol its established criteria and policy for enforcement of the price gouging rule.

2. **DCWP should establish an independent review process for its complaint selection determinations.** At the onset of our price gouging enforcement, the senior attorney designated to select complaints for inspections met with their supervisor and General Counsel Division leadership to agree upon criteria to determine which complaints warranted an inspection. As noted on page 2 of the Audit Report, we established procedures and implemented internal controls to help ensure compliance with the emergency rule. To complement these practices, DCWP agrees to establish an independent review process for its complaint selection.
3. **DCWP should establish criteria for how often businesses with multiple complaints should be inspected.** As discussed above, DCWP established specific criteria tailored to the pandemic context to review complaints to be applied by an experienced attorney that drew upon DCWP's longstanding experience taking in and mediating consumer complaints and inspecting businesses in over 50 license categories. One of these criteria for determining whether a location should be prioritized for inspection was whether a business had multiple complaints. Going forward, DCWP agrees to also establish specific criteria for how often it should return to businesses with multiple complaints for repeat inspections.
4. **DCWP should establish and monitor performance measures with specified timeframes for resolving price gouging complaints through timely inspections and follow-up action and ensure that they are documented in writing and complied with.** DCWP notes that based upon the numbers provided in Table 1 of the Audit Report, DCWP conducted at least half of all price gouging inspections within 0 to 28 days from complaint receipt, and over 70 percent of inspections within 50 days, a herculean task given the many obstacles presented by the pandemic and record number of complaints received. At the outset of the pandemic, DCWP did not establish performance measures with specified timeframes for inspections because it could not predict key inputs, including the number of likely complaints, number of available inspectors, and number of businesses open. That said, DCWP will adopt performance measures with timelines for the application of our price gouging rule in future emergencies, with the caveat that initial timeframes established may need to be amended as part of continuous process improvement based on changes to key inputs over the course of the emergency.

We would like to address two factual issues in the Audit Report:

1. On page 3, the report states that the penalty for price gouging is \$350 per item or service. That was the penalty during the period covered by the audit. But the penalty, as of January 24, 2022, is now \$525 per first violation, \$1,050 for a second violation, and \$3,500 for a third violation. We recommend that the passage clarify that \$350 was the penalty during the audit period.
2. In FN 5, the report states "Accela, also called ALBA, is a web-based application that supports DCWP Law Enforcement divisions. It is used by the staff for licensing, adjudications, collections, consumer services, enforcement, and finance." The reference to "Law Enforcement divisions" is inaccurate. We recommend this edit:



“Accela, also called ALBA, is a web-based application that is used by DCWP’s Licensing, Enforcement, Collections, and Finance Divisions, and by two units within the General Counsel Division: Consumer Services and Legal Settlement & Case Support.”

If you require further information, please contact Katelin Billups, Executive Director of Administration, at (212) 436-0269.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter A. Hatch". The signature is stylized and includes a long horizontal stroke at the end.

Peter A. Hatch
Commissioner