# City of New York

## OFFICE OF THE COMPTROLLER

**Scott M. Stringer**
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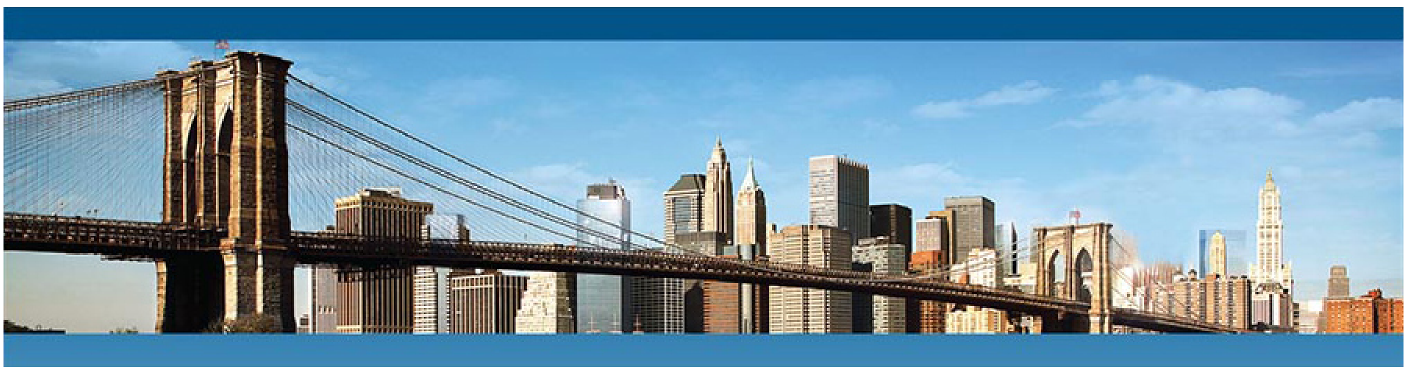

## MANAGEMENT AUDIT

**Marjorie Landa**
Deputy Comptroller for Audit

# Audit Report on the New York City Department of Consumer Affairs' Compliance Inspections

MJ15-105A
**June 28, 2016**
**http://comptroller.nyc.gov**

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

June 28, 2016

To the Residents of the City of New York:

My office has audited the New York City Department of Consumer Affairs (DCA) to determine whether it carries out its annual and biennial inspections in an equitable and timely manner to ensure adequate coverage of business locations throughout the City and in accordance with applicable regulations and the agency's internal protocols. We perform audits such as this to increase accountability and to ensure that agencies enforce applicable City rules and regulations.

The audit found that DCA's protocols for scheduling business locations for inspections helped ensure that DCA's inspections of businesses were fairly distributed throughout each of the City's 59 community districts and that DCA's supervisory staff generally completed the required periodic follow-up checks of field inspectors under their supervision. However, the audit found that DCA did not consistently conduct timely inspections of licensed businesses and of businesses with scales. In addition, for inspections DCA categorized as high priority because the businesses previously had been cited for violations, DCA conducted only 25 percent within its internal expedited thresholds.

To address these issues, the audit recommends that DCA reallocate its resources as needed to ensure that mandated inspections of licensed businesses are conducted at least once every two years and that commercial scale devices are inspected and tested for accuracy at least once a year. If reallocation of resources is not feasible or sufficient, DCA should consider seeking additional funding from the City's Office of Management and Budget to enable it to hire additional inspectors to help achieve its mandated inspections. DCA should also ensure that inspections deemed high priority due to violations on prior inspections are conducted in a timely manner to help ensure that conditions leading to those violations have been adequately addressed.

The results of the audit have been discussed with DCA 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,

Scott M. Stringer

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# THE CITY OF NEW YORK
# OFFICE OF THE COMPTROLLER
# MANAGEMENT AUDIT

## Audit Report on the New York City Department of Consumer Affairs' Compliance Inspections

## MJ15-105A

## EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City (City) Department of Consumer Affairs (DCA) carries out its annual and biennial inspections in an equitable and timely manner to ensure adequate coverage of business locations throughout the City and in accordance with applicable regulations and the agency's internal protocols. DCA is charged with promoting a fair and vibrant marketplace in the City. It seeks to accomplish this by licensing and regulating nearly 80,000 businesses in 55 different industries and by enforcing the New York City Consumer Protection Law (CPL),[1] along with other consumer protection and business regulations. The CPL prohibits unfair trade practices when dealing in consumer goods or services.

DCA's Division of Enforcement performs on-site inspections of businesses to ensure compliance with the CPL, as well as with City and New York State (State) regulations governing licensing and weights and measures.[2] Businesses may be inspected based on a request from consumers or other DCA units or as part of a "patrol inspection," which occur as part of an inspector's regularly scheduled route.

Certain business types, such as electronics stores, second hand auto dealers and garages are required to have licenses in order to maintain or operate businesses. DCA is mandated to inspect these businesses at least once every two years to determine whether the businesses comply with various regulatory requirements (e.g., refund policies are posted, per unit pricing for items are displayed and cash register receipts for transactions are provided). Further, the City and State weights and measures regulations require commercial scales (weighing and/or measuring devices and accessories) to be inspected and tested for accuracy at least once a year.

In addition to these regulatory requirements, in an effort to ensure that businesses comply with the CPL, DCA has established a number of internal inspection thresholds for certain business categories. This audit focused only on business categories that have annual (within 365 days) and biennial (within 730 days) inspection thresholds. Businesses in those categories that have not been inspected within the annual and biennial thresholds are categorized as "high priority." In

[1] See generally, New York City Administrative Code: Title 20.
[2] NYC Administrative Code Title 20 Chapter 3 §20-581; New York State Weights and Measures Regulations 1, New York State Codes, Rules and Regulations (NYCRR), Part 220 § 220.5a

addition, business establishments that receive a violation for non-compliance with the CPL are also categorized as “high priority” and DCA sets expedited timeframes for them to be re-inspected—nine months for businesses inspected on an annual basis and 18 months for businesses inspected biennially.

## Audit Findings and Conclusion

Our audit found that DCA’s protocols for scheduling business locations for inspections helped ensure that DCA’s inspections of businesses were fairly distributed throughout each of the City’s 59 community districts. The audit also found that DCA’s supervisory staff generally completed the required periodic follow-up checks of field inspectors under their supervision.

However, we found that DCA did not consistently conduct timely inspections of licensed businesses and of businesses with scales. DCA met its statutorily mandated timeframes to conduct inspections of DCA-licensed businesses only 86 percent of the time and met its mandated timeframes to conduct annual scale inspections only 36 percent of the time. For inspections DCA categorized as high priority because the businesses previously had been cited for violations, DCA conducted only 25 percent within its internal expedited thresholds. For inspections DCA categorized as high priority because the business locations were not inspected within its annual and biennial threshold, 75 percent of them were still outstanding 90 days after the threshold dates had passed.

One factor that may have contributed to these deficiencies is insufficient staffing resources. We also found that the agency’s tracking methods hinder its ability to ensure the timeliness of inspections. Because DCA has not programmed its database to assign each business a unique identifier, its ability to identify the specific businesses that require inspections is limited.

The degree to which DCA is able to conduct these re-inspections has a direct impact on the risk that consumers may be subjected to deceptive business practices, such as dishonest advertising practices, false or misleading representations concerning the reason for price reductions, and unacceptable sale of expired food. In addition, the degree to which DCA is able to inspect high priority businesses in a timely manner has a direct impact on the risk that certain business owners may commit consumer fraud and such instances go undetected.

## Audit Recommendations

Based on the audit, we make seven recommendations, including:

- DCA should reallocate its resources as needed to ensure that licensed businesses are inspected at least once every two years as mandated by Title 6 §1-16 of the Rules of the City of New York (RCNY).
- DCA should reallocate its resources as needed to ensure that commercial scale devices are inspected and tested for accuracy at least once a year as mandated by the City and State weights and measures regulations.
- If a reallocation of resources is not feasible or sufficient, DCA should consider seeking additional funding from the City’s Office of Management and Budget to enable it to hire additional inspectors to help achieve its mandated inspections.

- DCA should ensure that inspections deemed high priority due to violations on prior inspections are conducted in a timely manner to help ensure that conditions leading to those violations have been adequately addressed.
- DCA should explore options in its database that would permit each business it must inspect to receive a unique identifier that would facilitate tracking.

## Agency Response

In its response, DCA generally agreed with the audit's recommendations. However, it disagreed with some of the audit's findings, stating that it "believes the City Comptroller's report misconstrues DCA's enforcement efforts in 2014 and 2015. . . [and] contends that key aspects of the analysis reflected in this report are inaccurate and mischaracterize DCA's internal control mechanisms." After carefully reviewing DCA's arguments, we find no basis to alter any of our audit's findings or the report's overall conclusion.

# AUDIT REPORT

## Background

DCA is charged with promoting a fair and vibrant marketplace in the City. To accomplish this, DCA licenses and regulates nearly 80,000 businesses in 55 different industries, and enforces the CPL, along with other consumer protection and business regulations. The CPL prohibits unfair trade practices when dealing in consumer goods or services. These include false advertising, deceptive sales practices and special offers with hidden conditions. As part of its enforcement efforts, DCA issues violation notices, represents consumer interests at administrative court hearings and seeks consumer restitution through various means, including mediation.

DCA's Division of Enforcement performs on-site inspections of businesses to ensure compliance with the CPL, as well as with City and State regulations governing licensing and weights and measures. Businesses may be inspected based on a request from consumers or other DCA units, or as part of a "patrol inspection," which occur as part of an inspector's regularly scheduled route.

Certain business types, such as electronics stores, second hand auto dealers and garages, are required to have licenses in order to maintain or operate businesses.[3] Section 1-16 of Title 6 of the RCNY mandates that DCA-licensed businesses must be inspected at least once every two years. DCA inspections are conducted to determine whether the businesses comply with various regulatory requirements (e.g., refund policies are posted, per unit pricing for items are displayed, and cash register receipts for transactions are provided). Further, the City and State weights and measures regulations require commercial scales (weighing and/or measuring devices and accessories) to be inspected and tested for accuracy at least once a year.

In addition to these regulatory requirements, in an effort to ensure that businesses comply with the CPL, DCA has established a number of internal inspection thresholds for certain business categories, ranging from annual inspections to inspections conducted every five years. For the purposes of this audit, we focused on business categories having annual (within 365 days) and biennial (within 730 days) internal inspection thresholds. Table I shows a breakdown of business types to be inspected every year and every two years:

[3] A complete listing of business types that require licenses as per the CPL is found in Appendix I.

**Table I**

List of Business Categories Inspected Annually (Every Year) and Biennially (Every Two Years)

| Inspect Every Year | Inspect Every Two Years |
|---|---|
| Electronics Stores<br>Garage<br>Parking Lot<br>Garage and Parking Lot<br>Megastore<br>Secondhand Dealer – Auto<br>Secondhand Dealer – Firearm<br>Stoop Line Stand[4]<br>Supermarket | Cigarette Retail Dealer<br>Drug Store Retail<br>Furniture Sales<br>Grocery-Retail<br>Hardware-Retail<br>Immigration Service Provider<br>Misc. Non-Food Retail<br>Newsstand<br>Pawnbroker<br>Retail Store<br>Salons and Barbershops<br>Secondhand Dealer [General]<br>Sidewalk Café<br>Tow Truck Company<br>Wearing Apparel |

Business locations that have not been inspected within the annual and biennial thresholds are categorized as "high priority." DCA does not set an expedited timeframe for these "high priority" businesses to be inspected, but has represented that it attempts to inspect them as soon as is expedient. In addition, those that receive a violation for non-compliance with the CPL are also categorized as "high priority" and DCA sets expedited timeframes for them to be re-inspected: nine months for businesses inspected on an annual basis and 18 months for businesses inspected biennially.

To determine the areas to be visited, DCA Enforcement inspectors submit route projections to their supervisors. These route projections are prepared utilizing a desktop mapping application that uses geocodes and data gathered from the agency's ACCELA database—a database used by the DCA Enforcement Division to record and store inspection information—to identify the locations that need to be inspected.[5] With this mapping tool, inspectors are able to identify those Community Districts in their assigned regions where there are a significant number of high priority locations and, based on that information, can focus their patrols on those areas.[6]

When visiting a business, inspectors are required to collect and document evidence such as flyers and business cards that may be needed in the event a violation is issued and disputed at a hearing and as confirmation that the inspector has visited the establishment. At the end of the visit, the inspector issues a certificate of inspection to the business. If the inspector issues one or more violation the inspector completes a Notice of Hearing (NOH) form, which specifies the nature and description of the violations. Thereafter, the business owner and/or representative is given the opportunity to appear before an Administrative Law Judge (ALJ) at a hearing and present a defense to the charge(s) in the NOH. The ALJ will also hear testimony from the DCA's

[4] A stoop line stand is a stand or booth outside of and directly next to an existing store or retail establishment used for the sale or display of merchandise and/or services).
[5] A geocode is the latitudinal and longitudinal coordinates (i.e., X, Y coordinates) of a physical address.
[6] The mapping tool assigns a priority level to a location based on how much time has passed since the most recent inspection and whether the last inspection resulted in a violation. If a location received a violation on its last inspection or if a licensee has never been inspected, then that location reaches a high priority level faster.

representative. DCA may issue business owners an *Offer for Settlement* letter prior to the hearing date, giving the owners an opportunity to plead guilty to the violations and pay any associated fines instead of attending the hearing.

As of January 2015, the Enforcement Division employed a total of 35 inspectors, including seven supervisors, throughout its borough units who performed the inspections included in our audit scope. According to data obtained from DCA's ACCELA database, 73,424 inspections were conducted in Calendar Year 2015, of which 33,447 pertained to licensing and 7,823 pertained to scales. The remainder of the inspections pertained to those businesses that do not require licenses, such as certain retail stores, furniture and hardware stores.

## Objective

To determine whether DCA carries out its annual and biennial inspections in an equitable manner to ensure adequate coverage of business locations throughout the City and in a timely manner in accordance with applicable regulations and the agency's internal protocols.

## 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. 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 covered inspections that were due to be conducted during the period of January 1, 2014, through December 31, 2015. This audit did not review the quality of DCA's inspections or the outcome of violations issued. In addition, the audit scope did not cover the Tobacco and Petroleum units under the jurisdiction of DCA's Enforcement Division. The Detailed Scope and Methodology section at the end of this report describes the specific procedures and tests that were conducted.

## Discussion of Audit Results with DCA

The matters covered in this report were discussed with DCA officials during and at the conclusion of this audit. A preliminary draft report was sent to DCA and discussed at an exit conference held on June 3, 2016. On June 13, 2016, we submitted a draft report to DCA with a request for comments. We received a written response from DCA officials on June 23, 2016. DCA generally agreed with the audit's recommendations, stating that due to its "existing internal controls and recent process improvements, the agency has been making significant progress towards achieving the majority of the recommendations in the report." However, DCA disagreed with some of the audit's findings stating:

> [T]he report fails to credit DCA's prioritization of businesses that had not been inspected since 2012 or earlier over businesses that had been inspected more recently. . . . Because the City Comptroller's analysis is focused only on businesses that were inspected in 2013, 2014, and 2015, it fails to recognize that DCA's routing decisions in 2014 and 2015 were appropriately focused on locations

> that were relatively higher priorities. . . . DCA believes the City Comptroller's report misconstrues DCA's enforcement efforts in 2014 and 2015.

DCA's contention that the audit failed to credit DCA for its prioritization of businesses to be inspected is incorrect. As discussed on page 13 of this report, we acknowledge that due to limited resources, DCA directed its inspectors to focus their efforts on businesses that had not been inspected for a long period of time. Additionally, DCA's argument supports the audit's finding that high priority inspections are not consistently conducted in a timely manner.

In its response, DCA also contends that key aspects of the audit's analysis are "inaccurate and mischaracterize DCA's internal control mechanisms," stating:

> Despite consistent attempts by DCA to correct misunderstandings throughout the audit, from the survey phase to the exit conference, the audit report mischaracterizes our inspection cadences. The inspection cadences are intended to inform the mapping tool for the purposes of resource optimization, rather than setting a threshold for inspection as described (e.g., within 9 months or 18 months for high priority locations).

We disagree with the premise of DCA's argument. DCA established such thresholds (365-days and 730-days for the routine annual and biennial patrol inspections, respectively, and 9 months and 15 months for annual and biennial locations having prior violations, respectively) to denote those locations as high priority that were not inspected within the established timeframes, thereby implying the importance for the inspections to be conducted within those thresholds. The audit report clearly outlines the agency's need to improve controls in this area as it fell short in meeting its internal objectives and obligations.

After carefully reviewing DCA's arguments, we find no basis to alter any of our audit's findings or the report's overall conclusion.

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

# FINDINGS AND RECOMMENDATIONS

Our audit found that DCA's protocols for scheduling business locations for inspections helped ensure that DCA's inspections of business locations were fairly distributed throughout each of the City's 59 community districts. The audit also found that DCA's supervisory staff generally completed the required periodic follow-up checks of field inspectors under their supervision.

However, we found weaknesses in the timeliness of DCA's inspections. Specifically, we found that DCA did not consistently conduct timely inspections of licensed businesses and of businesses with scales. We found that overall DCA met its statutorily mandated timeframes to conduct inspections of DCA-licensed businesses only 86 percent of the time and that it met the mandated timeframes to conduct annual scale inspections only 36 percent of the time. Further, with respect to the agency's internal thresholds for the timing of inspections, we found that its operations for inspecting high priority business locations need improvement. For the inspections DCA categorized as high priority because the businesses previously had been cited for violations, DCA conducted only 25 percent within its internal expedited thresholds. For the inspections DCA categorized as high priority because the business locations were not inspected within its annual and biennial threshold, 75 percent of them were still outstanding 90 days after the threshold dates had passed.

A possible factor contributing to the above-stated deficiencies is insufficient staffing resources. We also found that the agency's tracking methods hinder its ability to ensure the timeliness of inspections. Because DCA has not programmed its database to assign each business a unique identifier, its tracking depends more on location than the identity of an individual business. Therefore, when a business moves to a new location, its prior inspection history, including any previously issued violations, will not be considered by DCA when setting inspection schedules. Consequently, DCA's ability to identify the specific businesses that require inspections is limited.

The degree to which DCA is able to conduct these re-inspections has a direct impact on the risk that consumers may be subjected to deceptive business practices, such as dishonest advertising practices, false or misleading representations concerning the reason for price reductions, and unacceptable sale of expired food. In addition, the degree to which DCA is able to inspect high priority businesses in a timely manner has a direct impact on the risk that certain business owners may commit consumer fraud and such instances go undetected. This may be especially true in certain DCA-identified business categories, such as electronics stores and used car dealerships that are inspected annually because they traditionally have a higher risk of consumer complaints of fraudulent business practices.

These issues are discussed in the following sections of this report.

## DCA Needs to Improve Timeliness of Inspections to Meet Mandated Targets

Title 6 §1-16 of the Rules of the City of New York (R.C.N.Y.): *Inspection of Records and Business Premises* authorizes DCA inspectors to enter the premises of a licensee during business hours for the purposes of inspecting or examining the licensee's place of business in order to verify compliance with the CPL. The rule states that licensed businesses' inspection shall be conducted at least every two years, and additional inspections will be conducted if an inspection reveals alleged violations of the law. Further, the City and State weights and measures regulations establish that businesses with commercial scales (weighing and/or measuring devices and accessories) shall be inspected and tested for accuracy at least once a year. Our review found that DCA needs to improve its timeliness in meeting the mandated timeframes for inspecting licensed businesses and conducting "scale" inspections, as discussed below.

## DCA Did Not Consistently Conduct Inspections of Licensed Businesses Within Mandated Timeframes

We obtained inspection data from DCA's ACCELA database for the three-year period from January 1, 2013, through December 31, 2015. Using geocodes downloaded from DCA's mapping software, we identified 7,762 locations where businesses with valid DCA licenses were inspected by DCA in 2013. In accordance with City rules, DCA was required to inspect these businesses again at some point during the succeeding two years.

Of the 7,762 locations, the businesses at 1,553 had their license—or licenses if they held more than one—expire at some point during the subsequent two-year period. Our analysis regarding the remaining 6,209 locations containing businesses with active licenses found that DCA met its mandated timeframe to re-inspect licensed businesses at least once in a two-year cycle for only 5,351 (86 percent) of them. Failure to conduct the required inspections undermines DCA's ability to ensure that these businesses are in compliance with the provisions of the CPL (e.g., their refund policy is adequately posted, the per unit pricing is displayed, and cash register receipts are provided for all transactions). It is important for DCA to conduct the mandated inspections to help ensure the protection and relief of the public from deceptive, unfair and unacceptable business practices. The failure to inspect licensed businesses within the mandated timeframes increases the risk that these businesses may be out of compliance and that such non-compliance may go undetected.

> ***DCA Response:*** "Cigarette Retail Dealers (CRD) which are principally inspected by the Tobacco Enforcement Unit are DCA's largest premise licensed category. The tobacco units conducted nearly 15,000 inspections in calendar year 2015. The audit scope did not cover the Tobacco Enforcement Unit. As a result, the audit report is under-representing the volume of inspections performed, and the number of licenses inspected within two years."
>
> ***Auditor Comment:*** DCA is attempting to recast the audit scope and objective. As clearly stated in Scope and Methodology, Tobacco and Petroleum enforcement—which are specialized areas that are separately staffed within the Enforcement Division—are not included in our audit scope. Consequently, we find no basis to alter our audit's conclusions.

## Only One-Third of Scale Inspections Were Conducted Within Mandated Timeframes

We obtained scale inspection data from January 1, 2013, through December 31, 2015. Using geocodes downloaded from DCA's mapping software, we identified all business locations (unique geocodes) that received at least one scale inspection in 2013 and 2014. Based on that population, we identified 5,816 business locations that were due to receive scale inspections in 2014 and 9,225 that were due to receive scale inspections in 2015, for a minimum of 15,041 inspections in all. We calculated the number of scale inspections due in 2014 based on the number of business locations that received scale inspections in 2013. We calculated the number of scale inspections due in 2015 based on the number of business locations that received scale inspections in 2013, plus the number of businesses for which the first recorded scale inspection during our scope period occurred in 2014 minus those that went out of business that same year (5,816 + 3,411 - 2 = 9,225).[7]

Our analysis found that of the 15,041 scale inspections that were due in 2014 and 2015, DCA attempted to conduct 5,355 (36 percent) of them, as shown in Table II below.

**Table II**

Scale Inspections Due in Calendar Years 2014 and 2015

| Calendar Year | Number of business locations with scale inspections due | Number of business locations where a scale inspection was conducted | % | Number of business locations where a scale inspection was not conducted by year-end | % |
|---|---|---|---|---|---|
| 2014 | 5,816 | 1,959 | 34% | 3,857 | 67% |
| 2015 | 9,225 | 3,396 | 37% | 5,829 | 63% |
| **Total** | **15,041** | **5,355** | **36%** | **9,686** | **64%** |

Of the 5,829 business locations for which DCA had not attempted a scale inspection in 2015, 2,091 of them had not received an inspection since 2013. We note that business locations can have multiple scales and because of data limitations, we are unable to ascertain from the available data how many individual scale inspections were actually due. Therefore, we cannot determine whether all scales at each location were inspected.

Failure to conduct the required scale inspections hinders DCA's ability to ensure that these businesses comply with the City and State weights and measures regulations, which increases the risk that businesses with inaccurate commercial scales will overcharge customers, and that such instances will not be detected and remedied.

## Recommendations

1. DCA should reallocate its resources as needed to ensure that licensed businesses are inspected at least once every two years as mandated by Title 6 §1-16 of the RCNY.
2. DCA should reallocate its resources as needed to ensure that commercial scale devices are inspected and tested for accuracy at least once a year as mandated by the City and State weights and measures regulations.
3. If a reallocation of resources is not feasible or sufficient, DCA should consider seeking additional funding from the City's Office of Management and Budget to enable it to hire additional inspectors to help meet its inspection workloads.

   ***DCA Response:*** "We consistently seek ways to optimize resources and will continue to do so, including possible resource enhancements. . . . [W]ith respect to inspecting licensed businesses, over the past two years DCA has prioritized inspecting businesses that had not been inspected in significantly longer than one to two years. Further, there have been a number of additional

[7] Unless otherwise stated, for the purposes of our analyses in this report, we conservatively deemed businesses for which the first recorded inspection during our scope period occurred in 2014 as having not required an inspection in 2013.

> enforcement initiatives over the past few years that required inspector resources. . . . [W]e believe approximately six more full-time staff would be needed to inspect licensed businesses at least once every two years.
>
> With respect to commercial scale devices, DCA is already taking steps to improve inspection coverage through an upgrade to its mapping system…the upgraded system will now prioritize locations that previously received a scale inspection on a one year, high priority inspection cadence. Although our analysis shows that scale compliance rates are extremely high- nearly 99% of scales are found in compliance- we believe approximately nine more full-time staff would be needed to inspect and test for accuracy of commercial scale devices on an annual basis."

## High Priority Inspections Need to Be Performed More Timely

For a business that received a violation on its previous inspection, DCA has an internal threshold to inspect such a business within nine months if the business is on an annual inspection schedule or 18 months if it is on a biennial schedule. For a business that has not been inspected within its applicable 365-day or 730-day threshold, DCA tries to inspect these as soon as is expedient.

DCA's *Mapping Tool Baseline Schedule* provides a baseline for patrol mapping. Locations on a one-year schedule that received a violation will reach high priority at the nine-month mark (275 days) and locations on a two-year schedule will reach high priority at the 18-month mark (550 days). The mapping tool classifies business locations that are to be inspected every year as high priority after 365 days and businesses that are to be inspected every two years as high priority after 730 days. Our review of DCA's inspection data found that DCA needs to improve the timeliness of high priority inspections for businesses.

### *Delays in Inspecting Businesses Classified as High Priority Because of Violations Issued During Previous Inspection*

In Calendar Years 2013 and 2014, 11,094 businesses were issued violations as a result of the last inspections performed during these two years: for businesses inspected annually, 2,687 were issued violations in 2013 and/or 2014 (322 of the businesses were issued violations in both years); and for businesses inspected biennially, 8,407 were issued violations in 2013. The total number of inspections that resulted in violations being issued was 11,416.

Our review of DCA's inspection data found that the agency conducted only 25 percent of the subsequent inspections for these business locations within its own internal 275-day or 550-day thresholds, as shown in Table III below.

**Table III**
Timeliness of High Priority Inspections Following the Issuance of a Violation

| Type of inspection | Number of High Priority Inspections Due | Number of inspections conducted within expedited timeframes | % | Number of inspections not conducted within expedited timeframes | % | Number of inspections pending as of December 31, 2015 |
|---|---|---|---|---|---|---|
| Annual | 3,009 | 812 | 27% | 2,197 | 73% | 756 |
| Biennial | 8,407 | 2,006 | 24% | 6,401 | 76% | 1,813 |
| **Total** | **11,416** | **2,818** | **25%** | **8,598** | **75%** | **2,569** |

As shown in Table III, 2,569 (30 percent) of the 8,598 high priority inspections that did not take place within the expedited timeframes were still pending as of December 31, 2015. (A frequency distribution for the timeliness of these inspections is found in Appendix II.)

It is possible that the deficiencies cited in the violations may have been corrected at the time of the inspection. Nevertheless, failure to conduct these inspections increases the risk that the conditions leading to those deficiencies may not have been corrected and those deficiencies may reappear. Significant delays in inspecting high priority business locations also increase the risk of business owners engaging in deceptive business practices (such as failure to publicly display prices or to display their refund policy) and that such instances may go undetected.

For example, DCA inspected a garage on February 13, 2013, and issued the owner a violation. (The records we obtained from DCA do not indicate the nature of the violation.) DCA did not inspect the location again until May 7, 2014 (408 days later)—nearly six months past the 275-day goal. At that time, the owner was issued a violation for exceeding the licensed vehicle capacity. The owner was also issued a violation for failing to post a "capacity full" sign at each public entrance when it reached maximum capacity. DCA's next inspection was not until September 29, 2015 (506 days later), again well past its 275-day threshold. This inspection also yielded a violation for exceeding vehicle capacity.

### *Delays in Inspecting Businesses Classified as High Priority Due to Inspections Not Performed within DCA's Internal Thresholds*

As noted above, DCA has established internal thresholds for performing inspections annually (within 365 days) or biennially (within 730 days), depending on the business type. If the inspections are not performed within these thresholds, DCA will designate these business locations as high priority.

Our analysis of DCA's compliance inspections during Calendar Years 2013 and 2014 identified 29,360 business locations that were due to receive 33,526 inspections in 2014 and 2015. (Of these, 7,127[8] were due to receive 11,293[9] annual inspections and 22,233 were due to receive biennial inspections.) Our review found that DCA conducted 12,952 (39 percent) inspections within its internal time thresholds. The breakdown is as follows:

[8] This figure is comprised of the 4,390 businesses that were inspected in 2013 and an additional 2,737 businesses for which the first recorded inspection occurs in 2014.
[9] 4,166 businesses were to be inspected in both 2014 and 2015.

- Of the 11,293 annual inspections that were due in 2014 and 2015, DCA conducted 2,978 (26 percent) within 365 days of the dates of their last inspections in 2013 and 2014, respectively.
- Of the 22,233 biennial inspections that were due in 2015, DCA conducted 9,974 (45 percent) within 730 days of the dates of their last inspections in 2013. (Frequency distributions illustrating the timeliness of the annual and biennial inspection attempts can be found in Appendix III.)

Consequently, the remaining 20,574 (33,526 – 12,952) inspections that were not conducted within their respective 365-day or 730-day thresholds were to be designated as high priority. Our review of the inspection data revealed that after attaining high priority status, DCA had not conducted 75 percent (15,503) of the inspections 90 days after the initial threshold dates had elapsed; at the 270-day (approximately six-month) mark, more than half (11,098) had still not been conducted. As of December 31, 2015, the inspections for 8,809 business locations remained outstanding, including 496 annual inspections that had been outstanding since 2013. (Frequency distributions for the timeliness of these inspections are found in Appendix IV.)

Possible factors contributing to DCA's non-adherence with its mandated inspections and with its own internal thresholds could be an insufficient level of inspectors that DCA has assigned to conduct these inspections and its inability to effectively use the mapping tool to track specific businesses requiring inspections. (Further discussion of the mapping tool is found in the following section of this report.) Until DCA is able to determine the impediments to its conducting timely inspection of businesses, at a minimum, DCA should concentrate on conducting mandated inspections of DCA-licensed businesses and scale inspections to ensure that they are performed within the two-year and one-year cycles, respectively, as well as focus on those inspections of businesses considered high priority due to previously being cited for violations.

At the exit conference, DCA officials acknowledged the need for additional staffing resources in order for them to conduct the required inspections, including meeting the mandated inspections. They noted that this is particularly the case because inspectors are also responsible for other tasks throughout the year, some of which are labor intensive and take time away from performing these inspections. These other tasks include performing qualifying inspections for new and renewal licenses and mandated compliance inspections of nearly 200 sightseeing buses and 70 horse drawn cabs. They also participate in special projects and initiatives, such as inspecting certain seasonal industries (e.g., income tax preparers during tax season) and assist city agencies on certain law enforcement initiatives.

Due to limited staffing resources, DCA officials stated that inspectors were directed to focus their efforts on businesses that had not been inspected for a long period of time. Officials argued that the audit does not take into consideration DCA's efforts in 2014 and 2015 to conduct the inspections of businesses that were not inspected in 2013 and 2014, respectively. According to DCA, 18,461 business locations inspected in 2014 were not inspected in 2013, and an additional 9,035 business locations inspected in 2015 were not inspected in either 2013 or 2014. However, officials were unable to identify how many of these locations were comprised of businesses that had been in operation during those respective years and how many were comprised of new businesses.

The degree to which DCA is able to inspect high priority business locations in a timely manner has a direct impact on the risk that certain business owners may commit consumer fraud and such instances go undetected. This may be especially true for certain DCA-identified business categories, such as electronics stores and used car dealerships that are inspected annually because they traditionally have a higher risk of consumer complaints of fraudulent business practices. For example, DCA inspected a used car dealer on January 11, 2013, and issued a violation. However, the records we obtained from DCA do not indicate the nature of the violation. DCA did not inspect this business location again until July 3, 2014 (538 days later)—nearly 9 months past the 275-day goal for businesses that were issued violations during previous inspections. As a result of the July 2014 inspection, DCA issued the vendor another violation for displaying vehicles for sale on a public street. DCA's next inspection of this vendor was November 4, 2015 (489 days later), once again exceeding the 275-day goal by more than 7 months. It issued the vendor yet another violation for displaying cars for sale on a public street. The vendor was also issued violations for not posting refund signs and for a missing used vehicle certification.

## Recommendations

4. DCA should ensure that inspections deemed high priority due to violations on prior inspections are conducted in a timely manner to help ensure that conditions leading to those violations have been adequately addressed.

5. DCA should ensure that inspections deemed high priority because they have not been conducted within the agency's internal thresholds take place as soon as is feasible.

***DCA Response:*** "DCA finds fault in the audit's characterization of DCA's internal controls, however, the agency generally agrees with the recommendations. . . .

DCA only recently introduced its mapping tool in mid-2014. Upon introduction, the tool highlighted locations and neighborhoods that had gone several years without inspection, causing DCA's enforcement efforts to shift to those locations. According to the data provided to the City Comptroller's office, 62 percent of locations inspected in 2014 were not inspected in 2013, and 30 percent of all locations inspected in 2015 were not inspected in either 2013 or 2014.

Unfortunately, the City Comptroller's analysis does not reflect the progress because of its limited scope. Specifically, the City Comptroller's analysis is limited to businesses that were inspected in 2013 or later and excludes routing decisions that were appropriately focused on locations with relatively higher priorities that were not inspected from prior years."

***Auditor Comment:*** As we state in the report, DCA officials were unable to identify how many of the locations referenced by DCA were comprised of businesses that had been in operation during those respective years and how many were comprised of new businesses. Further, the data DCA provided inappropriately included inspections performed of businesses in categories not covered by this audit. Nonetheless, DCA's statement that it failed to conduct inspections at a significant number of locations in 2013 and 2014 supports the audit's finding that the agency needs to improve its timeliness in conducting such inspections.

## DCA's Mechanism for Tracking Businesses Due for Inspections Has Deficiencies

DCA does not have an effective method to be reasonably assured that all businesses receive required inspections when they are due. DCA's method for scheduling inspections is more area-specific than business-specific. Businesses are identified based on their location. Inspectors must pre-plan routes using the mapping software to select high priority locations within their designated Community Districts while skipping low priority locations. According to DCA procedures, inspection route pre-planning is to be done in a logical and consistent manner in order to maximize the efficiency of the route and the inspector's performance throughout his or her entire work shift. However, DCA does not track specific businesses to ensure that all are inspected, including those that are considered high priority. Under its current practices, because DCA does not track inspection results by the business entity, there could be missed opportunities for DCA to perform the necessary follow-up inspections of businesses issued violations.

DCA has not programmed ACCELA to assign unique identifiers for all businesses. Some fields in ACCELA could potentially be used as unique identifiers. For example, the business name and address fields each may possibly be used as a unique identifier. However, ACCELA is not programmed to require that these fields be filled out. ACCELA is also not programmed to accept only one version of a business name. For example, a supermarket was entered as "319 MEAT MARKET CORP." during a November 2013 inspection but entered as "319 MEAT CORP." during a subsequent February 2015 inspection. In another example, an electronics store was listed as "KLEARVIEW APPLIANCE" during an October 2013 inspection and subsequently listed as "KLEAR VIEW APPLIANCE CORP." during a December 2015 inspection.

It appears that the most reliable indicator to identify a business is the X, Y coordinate, which is used in the mapping software to pinpoint a location on a map. We used the X, Y coordinate to identify businesses for our audit testing. However, this also has limitations. Our review of the data found the following deficiencies:

- Some businesses had X, Y coordinates of "0, 0" (these businesses were not included in our analysis).
- Some X, Y coordinates were used for more than one business (e.g., Queens Center Mall) (these businesses were not included in our analysis).
- Some businesses had more than one X, Y coordinate (we modified data for data analysis purposes to ensure that the same X, Y coordinate was used).[10]

These weaknesses could impede the reliability of data used to schedule inspections via the mapping software, which may cause businesses to not be inspected timely, if at all. Consequently, the risk that high priority inspections will not be conducted, and that such failure will go undetected, is increased.

### Recommendation

6. DCA should explore options in its ACCELA database that would permit each business it must inspect to receive a unique identifier that would facilitate tracking.

[10] According to DCA officials, a business at the same address could have more than one geocode (X, Y coordinate) because of the City's update to the geocodes.

***DCA Response:*** "DCA acknowledges limitations in its Accela database, especially regarding the correct and consistent entry of a business's name into the system over time. The assertion in this finding, that the business name and address are not required fields, is inaccurate. Rather, these fields are required but the business name is not standardized, which can cause confusion. DCA has commenced a formal review of this issue and will continue to explore options to establish a unique identifier in the database as recommended."

***Auditor Comment:*** DCA's statement that the business name and address fields are required is incorrect; we identified a number of records where the fields for business name and address were left blank. Consequently, we find no basis to change our finding.

## Periodic Supervisory Follow-up Checks Were Generally Performed

Field inspectors generally received the minimum number of periodic follow-up reviews from DCA supervisory staff. There were 35 inspectors who required reviews during the 18-month review period covering January 1, 2014, through June 30, 2015. Our analysis found that the goal of conducting a quarterly review was met for 32 (91 percent) of the 35 inspectors; for 22 inspectors, the number of reviews conducted exceeded the minimum required number. For the three inspectors for which the review goal was not met, only one of them was missing more than one review (4 of the 6 required reviews were missing).

DCA procedures require supervisors perform follow-up reviews of each inspector and supervisor (if they also conduct inspections) on a quarterly basis (at least one every three months). These are intended to help maintain quality assurance (i.e., inspections conducted in a consistent manner and in accordance with guidelines). According to DCA procedures, follow-up reviews let supervisors effectively track personnel and gauge their proficiency as they patrol designated areas. Moreover, same day follow-ups allow Enforcement supervisory staff to monitor inspector activities in the field in real-time by following their movements throughout the day.

Follow-up reviews are conducted by DCA supervisory staff: supervisors conduct follow-up reviews for their own staff and borough directors conduct the reviews for supervisors. A follow-up consists of reviewing an inspector's work for a set day. The reviewer examines all paperwork produced on that day and visits every business location scheduled (whether it was inspected or not) to assess whether the inspector followed all protocols, policies and procedures.

### Recommendation

7. DCA should ensure that supervisory staff conduct the required minimum number of follow-up reviews for all inspectors in its Enforcement Division.

***DCA Response:*** "DCA contends that the audit finding does not accurately and completely describe the follow-up reviews of inspector staff. The Enforcement Division is currently exceeding the goal of the minimum number of periodic reviews in the aggregate (112 percent for inspectors and 139 percent for borough directors). The follow-up review is well-designed as an internal control and operating effectively. DCA will continue to pursue opportunities for improvement in this regard, as we are indeed committed to this goal.

***Auditor Comment:*** DCA's argument that it is exceeding the minimum number of periodic reviews in the aggregate fails to recognize that the intent of this procedure is to ensure that *each* inspector receives, at a minimum, the required number of reviews. As stated above, three of the inspectors reviewed did not receive the required number of reviews, and DCA provides no evidence in rebuttal. Therefore, we find no basis to alter our finding and urge DCA to implement this recommendation.

# 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 objectives. 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 covered annual and biennial inspections due to be conducted during Calendar Years 2014-2015 (January 1, 2014 through December 31, 2015). This audit did not review the quality of DCA's inspections or the outcome of violations issued. In addition, the audit scope did not cover the Tobacco and Petroleum units under the jurisdiction of DCA's Enforcement Division. Further, our analysis was limited to the business categories according to DCA that are inspected on an annual and biennial basis, as shown in Table I on page 5 of this report.

To understand the organization of DCA, we reviewed organization charts, employee rosters, and related personal services and other than personal services budget information for Fiscal Years 2013-2015.

To gain an understanding of DCA's enforcement responsibilities and the regulations it is mandated to enforce, we reviewed relevant information accessed from DCA's website and other sources, such as the Mayor's Management Reports for Fiscal Years 2013 through 2015. We also reviewed the following regulations:

- New York City Administrative Code, Title 20 (Consumer Protection Law), including Chapter 3, "Weights and Measures"
- Rules of the City of New York (R.C.N.Y), Title 6 (Department of Consumer Affairs)
- New York State Weights and Measures Regulations 1, New York Codes, Rules and Regulations (NYCRR), Part 220

These regulations, along with Comptroller's Directive #1, "Principles of Internal Controls," and DCA's applicable policies and procedures, formed the body of audit criteria.

To assess DCA's internal controls, we interviewed key officials, along with borough directors, supervisors and enforcement inspectors. We conducted walkthroughs of DCA enforcement and inspection operations and processes, and reviewed relevant documentation and reports. We also accompanied an enforcement inspector in performing patrol inspections on June 29, 2015. Furthermore, we performed tests of controls and documented our understanding of those controls in a memoranda and confirmed our understanding with DCA officials.

To familiarize ourselves with the ACCELA, DCA's licensing and business automation computer system, we reviewed the user manual, conducted a walkthrough of the applications functions, and observed the entry of inspection results. In addition, we obtained read-only access and reviewed the database's various inquiry and reporting capabilities. Further, on a limited basis, we reviewed the general controls in place over the database and related systems.

DCA provided us with a copy of inspection data from its ACCELA database covering the three-year period of January 1, 2013, through December 31, 2015. To assess the reliability of ACCELA and the data copy provided by DCA, we randomly selected a sample of 120 inspection records (30 from each of DCA's four borough offices). From the data copy, we identified nine key data elements (e.g., inspection certificate number, result of inspection, inspection date, business address, category of business, etc.), and subsequently traced those elements for each of the sampled records to the related hard copy inspection reports. In addition, we selected a second random sample of 120 inspection records (30 from each borough office), visited the borough offices to obtain the hardcopy inspection records for each of the sampled inspections and traced the same nine data elements from the hardcopy documents to the data copy. With a targeted sample of 58 inspections selected from the data copy, we looked up those records in the live system to verify that the information appearing in the database matched the data copy provided by DCA. Based on the results of these tests, we were reasonably assured that the data copy provided by DCA was sufficiently reliable for audit testing purposes.

To determine whether inspections were conducted timely in accordance with the CPL, the City and State weights and measures regulations, R.C.N.Y. Title 6 and DCA's internal guidelines, we performed various analyses and data sorts to determine whether inspection attempts were conducted in accordance with time intervals and requirements established by applicable regulations and DCA procedures.

To assess DCA's supervisory field inspections, we evaluated electronic spreadsheets detailing DCA's supervisory field inspections for an 18-month period beginning January 1, 2014, through June 30, 2015, which were maintained by DCA's Executive Director. DCA management uses the spreadsheets as a means of tracking inspector performance. We analyzed the spreadsheets to determine whether inspection supervisors and borough directors were conducting supervisory field inspections of at least one per quarter for each inspector, as required. The records provided the date of follow-ups conducted on each inspector along with the name of the person who performed the follow-up inspection. We compared the data on the spreadsheets to inspection follow-up reports completed by supervisory staff that detailed the reviews.

# APPENDIX I

Types of Industry that Consumer
Affairs Licenses

| | |
|---|---|
| Amusement Arcade<br>Amusement Device (Permanent<br>Amusement Device (Portable)<br>Amusement Device (Temporary<br>Auctioneer<br>Auction House (Premises)<br>Bingo Game Operator<br>Booting Company<br>Cabaret<br>Catering Establishment<br>Cigarette Retail Dealer<br>Cigarette Retail Dealer<br>Commercial Lessor (Bingo/Games of Chance)<br>Dealer in Products for the Disabled<br>Debt Collection Agency<br>Electronic & Home Appliance Service Dealer<br>Electronics Store<br>Employment Agency<br>Games of Chance<br>Gaming Café<br>Garage<br>Garage & Parking Lot<br>General Vendor<br>General Vendor Distributor<br>Home Improvement Contractor<br>Home Improvement Salesperson<br>Horse Drawn Cab Driver<br>Horse Drawn Cab Owner<br>Laundry<br>Laundry Jobber<br>Locksmith<br>Locksmith Apprentice<br>Motion Picture Projectionist<br>Newsstand | Pawnbroker<br>Parking Lot<br>Pedicab Business<br>Pedicab Driver<br>Pool or Billiard Room<br>Process Server Individual<br>Process Serving Agency<br>Scale Dealer/Repairer<br>Scrap Metal Processor<br>Secondhand Dealer Auto<br>Secondhand Dealer Firearms<br>Secondhand Dealer General<br>Sidewalk Café<br>Sidewalk Café (Enclosed)<br>Sightseeing Bus<br>Sightseeing Guide<br><br>**Special Sale**<br>Going Out of Business<br>Liquidation<br>Alteration/Remodeling/Renovation<br>Loss of Lease<br>Branch Store Discontinuance<br>Fire, Smoke, or Water Damage<br>Creditors' Committee Sale<br><br>**Stoop Line Stands**<br>Fruits, Vegetables, and Soft Drink<br>Cigars, Cigarettes, Tobacco<br>Confectionery and Ice Cream<br><br>Storage Warehouse<br>Temporary Street Fair Vendor Permit Tow Truck Company<br>Tow Truck Driver<br>Tow Truck Exemption |

## APPENDIX II

Frequency Distribution for Timeliness of 2014 High Priority Inspections Due to a Violation Issuance of Businesses Designated to Receive Annual Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| Within 275-day threshold | 418 | 24% |
| 1-30 days beyond | 52 | 3% |
| 31-60 days beyond | 83 | 5% |
| 61-90 days beyond | 80 | 5% |
| 91-150 days beyond | 193 | 11% |
| 151-210 days beyond | 157 | 9% |
| 211-270 days beyond | 140 | 8% |
| 271 days to 1 year beyond | 173 | 10% |
| 1-2 years beyond | 276 | 16% |
| Beyond 2 years | 2 | 0% |
| Still Pending as of 12/31/15 | 156 | 9% |
| **Total** | **1,730** | **100.0%** |

Frequency Distribution for Timeliness of 2015 High Priority Inspections Due to a Violation Issuance of Businesses Designated to Receive Annual Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| Within 275-day threshold | 394 | 31% |
| 1-30 days beyond | 54 | 4% |
| 31-60 days beyond | 31 | 2% |
| 61-90 days beyond | 38 | 3% |
| 91-150 days beyond | 72 | 6% |
| 151-210 days beyond | 49 | 4% |
| 211-270 days beyond | 41 | 3% |
| 271 days to 1 year beyond | 0 | 0% |
| 1-2 years beyond | 0 | 0% |
| Beyond 2 years | 0 | 0% |
| Still Pending as of 12/31/15 | 600 | 47% |
| **Total** | **1,279** | **100.00%** |

Frequency Distribution for Timeliness of 2013 High Priority Inspections Due to Violation Issuance of Businesses Designated to Receive Biennial Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| Within 550-day threshold | 2,006 | 23.9% |
| 1-30 days beyond | 269 | 3.2% |
| 31-60 days beyond | 308 | 3.7% |
| 61-90 days beyond | 282 | 3.4% |
| 91-150 days beyond | 676 | 8.0% |
| 151-210 days beyond | 1,034 | 12.3% |
| 211-270 days beyond | 952 | 11.3% |
| 271 days to 1 year beyond | 699 | 8.3% |
| 1-2 years beyond | 368 | 4.4% |
| Still Pending as of 12/31/15 | 1,813 | 21.6% |
| **Total** | 8,407 | 100.0% |

# APPENDIX III

Frequency Distribution for Timeliness of 2014 Inspections of Businesses Designated to Receive Annual Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| Within 365-day threshold | 1,500 | 34% |
| 1-30 days beyond | 213 | 5% |
| 31-60 days beyond | 222 | 5% |
| 61-90 days beyond | 186 | 4% |
| 91-150 days beyond | 350 | 8% |
| 151-210 days beyond | 309 | 7% |
| 211-270 days beyond | 299 | 7% |
| 271 days to 1 year beyond | 419 | 10% |
| 1-2 years beyond | 396 | 9% |
| Still Pending as of 12/31/15 | 496 | 11% |
| **Total** | **4,390** | **100.0%** |

Frequency Distribution for Timeliness of 2015 Inspections of Businesses Designated to Receive Annual Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| Within 365 days of 2014 inspection | 1,478 | 21% |
| 1-30 days beyond | 243 | 4% |
| 31-60 days beyond | 225 | 3% |
| 61-90 days beyond | 205 | 3% |
| 91-150 days beyond | 380 | 6% |
| 151-210 days beyond | 350 | 5% |
| 211-270 days beyond | 265 | 4% |
| 271 days to 1 year beyond | 361 | 5% |
| 1 to 2 years beyond | 396 | 6% |
| Inspection pending since 2014 | 2,504 | 36% |
| Inspection pending since 2013 | 496 | 7% |
| **Total** | **6,903** | **100%** |

Frequency Distribution for Timeliness of 2013 Inspections of Businesses Designated to Receive Biennial Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| Within 730-day threshold | 9,974 | 45% |
| 1 - 30 days beyond | 1,404 | 6% |
| 31 - 60 days beyond | 1,337 | 6% |
| 61 - 90 days beyond | 1,036 | 5% |
| 91 - 120 days beyond | 728 | 3% |
| 121 - 150 days beyond | 497 | 2% |
| 151 - 180 days beyond | 391 | 2% |
| 181 - 210 days beyond | 346 | 2% |
| 211 - 240 days beyond | 264 | 1% |
| 241 - 270 days beyond | 226 | 1% |
| 271 days to 1 year beyond | 221 | 1% |
| Greater than 1 year beyond | 0 | 0% |
| Pending as of 12/31/2015 | 5,809 | 26% |
| **Total** | **22,233** | **100%** |

# APPENDIX IV

Frequency Distribution for Timeliness of 2014 High Priority Inspections Due to Inspections Not Performed within the Threshold for Businesses Designated to Receive Annual Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| 1-30 days beyond | 213 | 7.4% |
| 31-60 days beyond | 222 | 7.7% |
| 61-90 days beyond | 186 | 6.4% |
| 91-150 days beyond | 350 | 12.1% |
| 151-210 days beyond | 309 | 10.7% |
| 211-270 days beyond | 299 | 10.3% |
| 271 days to 1 year beyond | 419 | 14.5% |
| 1-2 years beyond | 396 | 13.7% |
| Beyond 2 years | 0 | 0.0% |
| Still Pending as of 12/31/15 | 496 | 17.2% |
| **Total** | 2,890 | 100.0% |

Frequency Distribution for Timeliness of 2015 High Priority Inspections Due to Inspections Not Performed within the Threshold for Businesses Designated to Receive Annual Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| 1-30 days beyond | 243 | 4.5% |
| 31-60 days beyond | 225 | 4.1% |
| 61-90 days beyond | 205 | 3.8% |
| 91-150 days beyond | 380 | 7.0% |
| 151-210 days beyond | 350 | 6.5% |
| 211-270 days beyond | 265 | 4.9% |
| 271 days to 1 year beyond | 361 | 6.7% |
| 1-2 years beyond | 396 | 7.3% |
| Beyond 2 years | 0 | 0.0% |
| Inspection pending since 2014 | 2,504 | 46.2% |
| Inspection pending since 2013 | 496 | 9.1% |
| **Total** | 5,425 | 100.0% |

Frequency Distribution for Timeliness of 2013 High Priority Inspections Due to Inspections Not Performed within the Threshold for Businesses Designated to Receive Annual Inspections

| Timeframe | # of businesses | % |
|---|---|---|
| 1-30 days beyond | 1,404 | 11.5% |
| 31-60 days beyond | 1,337 | 10.9% |
| 61-90 days beyond | 1,036 | 8.5% |
| 91-150 days beyond | 1,225 | 10.0% |
| 151-210 days beyond | 737 | 6.0% |
| 211-270 days beyond | 490 | 4.0% |
| 271 days to 1 year beyond | 221 | 1.8% |
| 1-2 years beyond | 0 | 0.0% |
| Still Pending as of 12/31/15 | 5, 809 | 47.4% |
| **Total** | 12,259 | 100.0% |

NYC
Consumer Affairs

**Lorelei Salas**
Commissioner

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**New York, NY 10004**

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June 23, 2016

Ms. Marjorie Landa
Deputy Comptroller, Audit Bureau
Municipal Building
1 Center Street, Room 1100 North
New York, New York 10007

**RE: Audit Report on the New York City Department of Consumer Affairs' Compliance Inspections (MJ15-105A)**

Dear Deputy Comptroller Landa,

The Department of Consumer Affairs (DCA) appreciates the opportunity to respond to the City Comptroller's draft audit regarding compliance inspection at the agency. Our comments with respect to the audit findings and recommendations are detailed below.

**Background**

The Enforcement Division's role at DCA embodies the agency's mandate of educating both consumers and businesses and ensuring compliance with all relevant City of New York Administrative Code and New York State Weights and Measures regulations, and public health laws. With a total of 35 dedicated inspectors, the division is tasked with regulatory compliance of 55 different types of businesses which the department licenses, as well as non-licensed businesses that must comply with consumer protection laws and weights and measures laws.

DCA appreciates the consideration of our comments at the exit conference regarding the broad scope of enforcement responsibilities, covering qualifying inspections, compliance inspections and special initiatives. Indeed in calendar year 2015, our entire Enforcement Division conducted over 73,000 inspections!

We also appreciate the finding that DCA's protocols for scheduling businesses for inspection have helped ensure that DCA's inspections are fairly distributed throughout each of the 59 community districts. In mid-2014, DCA implemented a pilot enforcement mapping initiative to correct pre-existing imbalances in inspection coverage that were identified in a report by the Public Advocate's office. Prior to the implementation of that initiative, some NYC businesses and neighborhoods were subject to frequent repeat inspections while others were inspected less frequently.

NYC Consumer Affairs

While the City Comptroller's audit report acknowledges DCA's concerns about the audit methodology, it does not directly address those concerns with respect to the relevance and applicability of the methodology. Specifically, the report fails to credit DCA's prioritization of businesses that had not been inspected since 2012 or earlier over businesses that had been inspected more recently. An examination that adequately considered this context would find that DCA's enforcement efforts in 2014 and 2015 largely targeted businesses and neighborhoods that had not been inspected in several years. Because the City Comptroller's analysis is focused only on businesses that were inspected in 2013, 2014, and 2015, it fails to recognize that DCA's routing decisions in 2014 and 2015 were appropriately focused on locations that were relatively higher priorities. Once the mapping tool was implemented, DCA correctly prioritized businesses that had not been inspected in years. As a result, 62 percent of locations inspected by DCA in 2014 were not inspected in 2013, and 30 percent of the locations inspected in 2015 were not inspected in either 2013 or 2014.[1] DCA believes the City Comptroller's report misconstrues DCA's enforcement efforts in 2014 and 2015.

Further, DCA contends that key aspects of the analysis reflected in this report are inaccurate and mischaracterize DCA's internal control mechanisms, including the following examples:

- Despite consistent attempts by DCA to correct misunderstandings throughout the audit, from the survey phase to the exit conference, the audit report mischaracterizes our inspection cadences. The inspection cadences are intended to inform the mapping tool for purposes of resource optimization, rather than setting a threshold for inspection as described (e.g., within 9 months or 18 months for high priority locations).

- The mapping tool is actually achieving its objective of directing inspectors to inspect annual categories, on average, more often than biennial categories, which is reflected in Appendix II on page 18 of the audit report. Locations on the one-year, high priority cadence that were inspected in 2013 have been inspected by the end of 2015 with a 91% rate compared to 78% of locations on a two-year high priority cadence. That helps to demonstrate that the tool is successfully guiding inspectors to inspect high priority categories more often than low priority categories.

- Cigarette Retail Dealers (CRD) which are principally inspected by the Tobacco Enforcement Unit are DCA's largest premise license category. The tobacco units conducted nearly 15,000 inspections in calendar year 2015. The audit scope did not cover the Tobacco Enforcement Unit. As a result, the audit report is under-representing the volume of inspections performed, and the number of licensees inspected within two years.

Due to DCA's existing internal controls and recent process improvements, the agency has been making significant progress towards achieving the majority of recommendations in the report.

## Responses to Recommendations

1. **DCA should reallocate its resources as needed to ensure that licensed businesses are inspected at least once every two years as mandated by Title 6 § 1-16 of the RCNY.**

2. **DCA should reallocate its resources as needed to ensure that commercial scale devices are inspected and tested for accuracy at least once a year as mandated by the City and State weights and measures regulations.**

[1] DCA provided the City Comptroller's team with the Analysis to support these percentages on June 1, 2016.

Consumer Affairs

3. **If a reallocation of resources is not feasible or sufficient, DCA should consider seeking additional funding from the City's Office of Management and Budget to enable it to hire additional inspectors to help meet its inspection workloads.**

We consistently seek ways to optimize resources and will continue to do so, including possible resource enhancements.

As previously explained, with respect to inspecting licensed businesses, over the past two years DCA has prioritized inspecting businesses that had not been inspected in significantly longer than one to two years. Further, there have been a number of additional enforcement initiatives over the past few years that required inspector resources. Moreover, as noted above, the audit report is under-representing the volume of inspections performed. If CRD inspections were included, for example, our analysis reveals that well over 90% of licensed locations were inspected by the end of 2015. In any event, based on our analysis, we believe approximately six more full-time staff would be needed to inspect licensed businesses at least once every two years.

With respect to commercial scale devices, DCA is already taking steps to improve inspection coverage through an upgrade to its mapping system. The pilot mapping system did not consider scale devices when determining a location's inspection priority; the upgraded system will now prioritize locations that previously received a scale inspection on a one year, high priority inspection cadence. Although our analysis shows that scale compliance rates are extremely high– nearly 99% of scales are found in compliance– we believe approximately nine more full-time staff would be needed to inspect and test for accuracy of commercial scale devices on an annual basis.

4. **DCA should ensure that inspections deemed high priority due to violations on prior inspections are conducted in a timely manner to help ensure that conditions leading to those violations have been adequately addressed.**

5. **DCA should ensure that inspections deemed high priority because they have not been conducted within the agency's internal time targets take place as soon as is feasible.**

DCA finds fault in the audit's characterization of DCA's internal controls, however, the agency generally agrees with the recommendations.

As noted, DCA only recently introduced its mapping tool in mid-2014. Upon introduction, the tool highlighted locations and neighborhoods that had gone several years without inspection, causing DCA's enforcement efforts to shift to those locations. According to the data provided to the City Comptroller's office, 62 percent of locations inspected in 2014 were not inspected in 2013, and 30 percent of all locations inspected in 2015 were not inspected in either 2013 or 2014.

Unfortunately, the City Comptroller's analysis does not reflect that progress because of its limited scope. Specifically, the City Comptroller's analysis is limited to businesses that were inspected in 2013 or later and excludes routing decisions that were appropriately focused on locations with relatively higher priorities that were not inspected from prior years.

Consumer Affairs

DCA has made significant progress targeting these high priority locations over the past two years through the implementation of its mapping tool. Existing internal control structures will help the agency continue on this track.

6. **DCA should explore options in its Accela database that would permit each business it must inspect to receive a unique identifier that would facilitate tracking.**

DCA acknowledges limitations in its Accela database, especially regarding the correct and consistent entry of a business's name into the system over time. The assertion in this finding, that the business name and address are not required fields, is inaccurate. Rather, these fields are required but the business name is not standardized, which can cause confusion. Therefore, DCA has commenced a formal review of this issue and will continue to explore options to establish a unique identifier in the database as recommended.

7. **DCA should ensure that supervisory staff conduct the required minimum number of follow-up reviews for all inspectors in its Enforcement Unit.**

As previously communicated by DCA to the audit team, DCA contends that the audit finding does not accurately and completely describe the follow-up reviews of inspector staff. The Enforcement Division is currently exceeding the goal of the minimum number of periodic reviews in the aggregate (112 percent for inspectors and 139 percent for borough directors). The follow-up review is well-designed as an internal control and operating effectively. DCA will continue to pursue opportunities for improvement in this regard, as we are indeed committed to this goal.

Thank you for your consideration of our responses.

Sincerely,

Lorelei Salas
Commissioner

cc: George Davis, Mayor's Office of Operations
Alba Pico, Consumer Affairs