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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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## **Access-A-Ride Accident Claims**

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# **Metropolitan Transportation Authority - New York City Transit Paratransit Division**

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Report 2012-S-12

April 2014

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## Executive Summary

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### Purpose

To determine whether the number of accidents involving vehicles providing services to Metropolitan Transportation Authority's (MTA) Access-A-Ride program has increased and what actions the MTA and its contracted carriers have taken to reduce them. The audit covers the period January 1, 2008 through September 5, 2012.

### Background

Federal law requires the MTA to provide transportation services to individuals with disabilities. New York City Transit's (Transit) Paratransit Division supplies this service through a network of 14 carriers under contract who operate specialized vehicles leased from Transit, as well as through several "black car" livery services and taxi companies. Transit has branded this paratransit service as Access-A-Ride (AAR). Paratransit Division costs averaged \$430.4 million from calendar year 2008 to calendar year 2012.

Carriers and black car services are required to immediately notify the Paratransit Division of any accidents/incidents and provide a written report within 24 hours. Simultaneously, the carrier is required to send a copy of the reports to the MTA's third-party administrator for automobile liability insurance, Claims Service Bureau (CSB). CSB handles claims that result from the accidents. The 14 carriers are covered for personal injury and property damage through MTA's captive insurance company, First Mutual Transportation Assurance Company (FMTAC). Black car and taxi companies are required to maintain appropriate insurance coverage.

### Key Findings

- The number of reported accidents increased from calendar year 2008 through calendar 2010, but declined in calendar year 2011. However, carrier incidents of \$1,000 or less are not all reported, as required. Similarly, the black car service providers did not report accidents as required under their contract, and the Paratransit Division did not maintain information about these accidents. This raises concern about possible liability risk associated with the expanding use of black car services. For the most part, the Paratransit Division and the carriers comply with the motor carrier standards we tested.
- Carriers' drug and alcohol testing needs to be better documented, and carriers need to ensure employees entrusted with these responsibilities understand the standards and consequences of specific test results. We also found that carriers' first annual review of driver abstracts is not always timely. Such reviews are important to determine whether a driver should continue to operate a vehicle. Paratransit Division officials provided information after the draft audit report was issued that it has a practice of obtaining a driver's abstract within 90 days of the hire date which changes the date of the first annual review. However, this practice is not in writing or approved by the Department of Motor Vehicles.

### Key Recommendations

- Meet with black car service providers to remind them of their responsibility to report accidents to AAR in accordance with their contract and ensure they have a corrective action plan for

drivers involved in accidents.

- Ensure all carriers are in compliance with contract accident reporting requirements.
- Ensure that carriers' drug and alcohol coordinators maintain the appropriate records, as required by the contract and federal regulations, including records that document the randomness of the selection process.
- Ensure that carriers' drug and alcohol coordinators are fully aware of the standards and consequences of positive test results, including the standard that requires employees with test results registering between 0.02 and 0.039 b.a.c. be relieved of their duties for 24 hours

### **Other Related Audits/Reports of Interest**

[Metropolitan Transportation Authority - New York City Transit: Access-A-Ride Safety Issues \(Follow-Up\) \(2012-F-17\)](#)

[Metropolitan Transportation Authority - New York City Transit: Access-A-Ride Safety Issues \(2007-S-127\)](#)

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**State of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

April 24, 2014

Mr. Thomas F. Prendergast  
Chairman and Chief Executive Officer  
Metropolitan Transportation Authority  
347 Madison Avenue  
New York, NY 10017

Dear Mr. Prendergast:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Access-A-Ride Accident Claims* at MTA-New York City Transit. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*  
*Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

## Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. It is governed by a 23-member Board of Directors, whose members are appointed by the Governor with the advice and consent of the State Senate. The MTA has six constituent agencies, two of which operate fixed-route services within New York City. The MTA Bus Company provides fixed-route bus service, and New York City Transit (Transit) provides fixed-route bus and subway service. The MTA also has a wholly-owned subsidiary, First Mutual Transportation Assurance Company (FMTAC), which is a captive insurance company. (A captive insurance company can only insure related entities.)

Federal law (the Americans with Disabilities Act of 1990 or the ADA) and related regulations require public entities which operate a fixed-route transit system, such as the MTA, to provide paratransit or other special services to individuals with disabilities comparable to services provided to persons without disabilities. Prior to ADA's enactment, New York City provided paratransit services directly. Pursuant to an agreement between New York City and the MTA, beginning in 1993, Transit assumed operating responsibility for all ADA-required paratransit services within the City. Transit's Department of Buses has a Paratransit Division, which administers the paratransit services.

Transit has branded its paratransit service "Access-A-Ride" (AAR). Transit contracts with 14 carriers to provide paratransit services using lift-equipped minibuses and passenger cars leased from Transit. Transit also contracts with 26 "black car" livery service companies (black car service), as well as taxis authorized per New York City Taxi and Limousine Commission rules.

Paratransit service represents a significant expense to Transit. Paratransit Division costs averaged \$430.4 million from calendar year 2008 to calendar year 2012. To receive services, eligible clients contact the Paratransit Division call center. Based on available services the trip is scheduled with a carrier or other service providers.

As the following table illustrates, AAR increased its overall service level by about 21 percent from calendar year 2008 through calendar year 2011. At the same time, the mix of how that service was provided changed. For example, traditional carriers experienced a 4.6 percent reduction in trips, while black car services increased by more than 400 percent.

Type of Provider	2008	2011	Increase(Decrease) in Number of Trips	Percentage Change
Carriers	5,010,333	4,778,871	(231,462)	(4.62)
Black Car	256,421	1,305,265	1,048,844	409.03
Taxi	108,021	188,770	80,749	74.75
Other*	62,864	287,385	224,521	357.15
<b>Total</b>	<b>5,437,639</b>	<b>6,560,291</b>	<b>1,122,652</b>	<b>20.65</b>

\*Authorization to travel issued to a client when a trip cannot be scheduled by the Call Center.

Insurance coverage is handled differently for each type of service provider. The contracts between Transit and the carriers require the carriers to wholly indemnify Transit from liability and loss. Liability insurance coverage for personal injury and property damage to others is arranged through the MTA's Department of Risk and Insurance Management (RIM) and MTA's captive insurance company, FMTAC. Transit annually charges its carriers approximately \$19,000 per vehicle. Other types of insurance, such as coverage for collision damage to the Paratransit vehicles, are not provided through this arrangement and can be purchased by the carriers on the open market. Since black car service companies and taxis provide service to both MTA clients and to the general public, they must carry their own insurance.

Each carrier's contract with Transit is substantially the same. The carrier contract defines an "accident" as an event with bodily injury and/or property damage exceeding \$1,000 and defines an "incident" as an occurrence with only property damage of \$1,000 or less. The contract requires the carriers to verbally notify Paratransit's Command Center of reportable accidents/incidents within one hour of the occurrence and to provide completed Daily Accident/Incident Reports (Reports) to Paratransit's Command Center within 24 hours of the occurrence. Simultaneously, the carrier is required to send a copy of the Reports to the Authority's third-party administrator for automobile liability insurance, Claims Service Bureau (CSB). In the case of black car service providers, the contract requires them to immediately notify the Paratransit Project Manager of any accidents. Further, the Vehicle and Traffic Law requires drivers or their representatives to report all accidents with injuries and/or property damage of \$1,001 or more to the Department of Motor Vehicles (DMV) within 10 days.

### *Black Car Service Accident*

AAR's Standards and Compliance unit monitors driver performance as well as carrier compliance with contract provisions requiring 80 hours of initial training and an annual 16-hour refresher training to be provided by the contractor. Standards and Compliance can require a driver attend a 5-hour refresher training, if warranted. Standards and Compliance also monitors the carriers for compliance with the contract requirements for drug and alcohol testing to meet Federal regulations (49 CFR 40) and New York State Vehicle and Traffic Law Article 19-A.

## Audit Findings and Recommendations

We found that between 2008 and 2012 the overall demand for AAR service increased, but the portion of the service provided by traditional carriers has decreased while reliance on the black car services and taxis has increased. The number of reported accidents also initially increased, but has more recently decreased over time. In regards to the actions the Paratransit Division and carriers have taken, we found that for the most part, AAR and the carriers are complying with federal motor carrier standards for such things as Commercial Driver's licensing, drug and alcohol testing, and tracking and categorizing their accidents. We also found that the 50 drivers sampled received 80 hours of initial training and that 49 of the 50 attended refresher training. These efforts are meant to ensure quality service and minimize the MTA's auto liability risks. However, we are concerned that there is an unquantified liability risk associated with black car services and taxis that appears to be expanding and is not being tracked.

### Accident Reporting

MTA reported the following number of accidents and incidents, as well as the value of claims paid from January 2008 through February 2012.

Year	Accidents	Incidents	Claims Paid	Largest Claim
2008	880	2,075	\$ 30,319,370	\$1,064,947
2009	1,076	2,307	26,133,616	\$946,902
2010	1,297	2,411	23,232,682	\$1,019,270
2011	1,037	1,625	10,659,465	\$378,000
2012 (2 months)	144	204	740,599	\$250,501
<b>Total</b>	<b>4,434</b>	<b>8,622</b>	<b>\$91,085,732</b>	

Note: Claims are not always paid in the same period as when the accident occurred.

Our testing determined that carrier "incidents" below the \$1,000 threshold of damage which may be repaired solely at the carrier's expense, are not reported, as required.

#### *Black Car Service - Accidents Are Not Tracked*

During the audit period, Transit contracted with 26 black car service providers to augment its paratransit operations. The black car contracts require the vendor to notify the AAR Project Manager by telephone, of any accidents or incidents that occur while transporting AAR clients. The contract requires the contractor provide a written report within 24 hours of the accident/incident and specifies what information is to be provided (date, driver's name and time)

Paratransit does not receive, track or keep any records of accidents/incidents involving black car service reported to them, nor are we aware of any effort to encourage the black car services to report as required under the contract. Paratransit officials advised us the black car contractor had to address this with its insurance company. Paratransit also does not take any action against providers or drivers who are involved in accidents. MTA RIM officials stated that if a claim should



come in that involves a black car service, the practice is to deny the claim because these providers are not covered under the FMTAC insurance policy. CSB tells the claimant to file with the car service provider and that MTA's insurance does not cover the claim.

We mailed questionnaires about accidents to each of the 26 black car service providers and received responses from 22, who indicated that they had been involved in 26 accidents during our audit period while transporting AAR clients. By not enforcing the contract provisions regarding accident reporting, AAR is not in a position to monitor the accident records of its black car service providers or their drivers, nor to take any corrective action such as requiring additional driver training.

At our closing conference on October 3, 2013, AAR officials stated that issues regarding accidents with black car service are supposed to be referred to Transit's Tort Division for representation and resolution. MTA officials believe the contract with the black car providers, including the requirement that they carry their own insurance, generally provides the MTA with protection from liability claims and minimizes MTA's insurance risks. However, AAR has no data that would help put this risk into context.

### *Compliance with 24-Hour Reporting Requirements*

AAR and RIM rely on their insurance claims administrator, the Claims Service Bureau (CSB), to provide claims management services for the Access-A-Ride program. These services include investigating, adjusting, defending, and/or settling claims.

Our review of 87 accident/incident files at CSB disclosed that in 22 cases (25 percent) CSB did not receive the required Accident/Incident Reports from the carrier within 24 hours, as required by contract. Three of the files had no payments associated with the event, but the other 19 had claimant payouts ranging from \$295 to \$127,076. For six events, the carrier waited between two weeks and one month before notifying CSB. In another case, a carrier failed to notify CSB for more than three years after the event occurred. The other 15 were reported late, but within two weeks of the event.

When the carriers do not inform CSB officials within the required 24-hour period, it hinders CSB's ability to defend and/or settle a claim. Our review shows there are various reasons why this is a frequent occurrence. In some cases, carriers did not simultaneously fax the Accident/Incident Reports to CSB when they notified AAR of the event. In other cases, carriers were not even aware that an event had occurred until a claim was made, which can be up to 13 months from the date of the event.

## Recommendations

1. Meet with black car service providers to remind them of their responsibility to report accidents to the Paratransit Division in accordance with their contract and ensure they have a corrective action plan for drivers involved in accidents.

(MTA replied to our draft audit report that it will continue to remind black car service providers of their responsibility to report accidents to Access-A-Ride in accordance with their contracts and ensure they have a corrective action plan for drivers involved in accidents.)

**Auditor's Comments:** We question the response which implies that the MTA has previously provided clear instructions about reporting incident and accident-related information to Access-A-Ride. Access-A-Ride did not provide any documents to support it had met with the black car providers to discuss this matter.

2. Maintain records of black car service accidents reported to the Paratransit Division and advise CSB to notify Paratransit of black car service accidents it receives.
3. Ensure all carriers are in compliance with contract accident-reporting requirements.
4. Reconcile CSB and Paratransit listings of reported accidents/incidents on a weekly basis.

## Driver's License Abstracts

State law requires that drivers report accidents to the Department of Motor Vehicles (DMV) within ten days of the event when a person is injured and/or when the property damage exceeds \$1,001. DMV routinely makes an abstract of information from a commercial driver's official record, including accident date, available to carriers as a means of promoting safety. Article 19-A of the New York State Vehicle and Traffic Law requires that carriers review these abstracts jointly with each driver, both before that person is initially placed in service and annually thereafter.

To identify unreported accidents, we reviewed the license abstracts and carrier records for 50 drivers; we sampled ten from each of the five carriers we visited. This test identified six drivers who had a total of eight accidents that had been reported to Transit, but which were apparently not reported to DMV since they were not included on the driver's abstracts. One of these drivers had three unreported accidents.

Two of these eight accidents included personal injuries as evidenced by the fact that individuals were transported to a hospital by EMS, and therefore clearly should have been reported to DMV. The information in the carriers' files was insufficient to determine whether the extent of property damage in the other six events exceeded \$1,000, the threshold above which an event must be reported as an accident to AAR and CSB. DMV's threshold is over \$1,001 per form MV-104.

We acknowledge that, in some cases, drivers may not be sure whether a property damage event should be classified as an accident or an incident, and may not have the expertise to assess the

costs of property damage. However, carriers routinely dispatch a Road Supervisor to visit each accident scene, in part to determine whether injuries occurred and to assess the level of property damage. These individuals should possess the skills necessary to determine whether an event exceeds the \$1,000 threshold.

If a driving record is incomplete, it could lead to an incorrect decision about whether a driver should continue to operate a vehicle. This is why the carriers must review abstract records with their drivers on an annual basis. In the most extreme cases, when carriers do not adhere to this requirement, there is a risk that drivers with poor driving records, or who have suspended or revoked licenses, may transport AAR clients. We therefore checked to see evidence that the five carriers we visited had reviewed the abstracts with the 50 drivers as required. We found the first annual abstract review for 12 of the 50 drivers (24 percent) from four to 46 days late. However, records showed that the subsequent annual abstracts were reviewed timely. Ten of the 12 drivers we identified were from the same carrier.

(In response to the draft audit report, Paratransit Division officials advised us it has a practice of requiring carriers to perform a driver record review including obtaining a second driver's abstract within 90 days of the hire date. AAR officials stated they require this review within 90 days of hire because they want to create an annual review cycle after the driver's hiring date. As a result, the Paratransit Division reported that 11 of the 12 first annual abstract reviews were done on time.)

**Auditor's Comments:** The practice of an additional driver abstract review is new information and it is not in writing. We accompanied Paratransit Division officials to two carriers to review the records to support the abstract review done after hiring to establish a new annual review date. However, the Paratransit Division should formalize the practice in writing and obtain DMV approval for this practice.

## Recommendations

5. Require carrier Road Supervisors to complete the property damage assessment and record the results in the carrier's records, including evidence that the accident has been reported to DMV where required.
6. Issue accident reporting and damage estimating guidance to carriers and to other service providers to promote consistency and uniformity of approach.
7. Investigate why the records of one carrier indicate untimely review of license abstracts, and require corrective action.

## Carrier Safety Programs

### *Drug and Alcohol Testing*

In order to help prevent accidents and injuries resulting from the misuse of alcohol or use of

controlled substances by drivers of commercial motor vehicles, Federal regulations (49 CFR Part 40) require carriers to undertake unannounced drug and alcohol testing based on a random selection of drivers. The selection must be made by a scientifically valid method, and all drivers covered by this rule must have an equal chance of being tested. Records related to the drug and alcohol sample collection process must be maintained for five years. Transit's contract with the carriers calls for records to be maintained for three years from the expiration of the contract.

The regulation provides that no safety sensitive employee (including drivers) should report for duty or remain on duty when under the influence of a controlled substance or when their ability is adversely affected by alcohol (with a blood alcohol concentration [b.a.c.] of 0.04 or greater). Drivers who are tested and found in violation of this regulation must be referred to a substance abuse professional for evaluation. While not considered a violation, a driver selected for testing and found to have a b.a.c. between 0.02 and 0.039 must be removed from performing safety sensitive duties for 24 hours.

Of the five carriers we visited, two could not provide documentation showing the number and names of employees randomly selected for testing. As a result, these carriers were unable to prove that the employees were selected randomly or if the employees selected for testing were actually tested. One of these carriers had partial results for four of the six months we checked, but could not explain why other records were missing.

If an employer decides to return a driver to service after being found in violation of the alcohol standard (0.04 b.a.c.) the employer must ensure that the driver: has been evaluated by a substance abuse professional, has complied with any recommended treatment, has taken a return-to-duty alcohol test with a result less than 0.02 b.a.c., and is subject to unannounced follow-up alcohol tests. There is an increased risk that drivers who are impaired may be operating vehicles if the carriers either do not understand these requirements or do not enforce the restrictions appropriately. The Drug and Alcohol Coordinator at one carrier we visited seemed unfamiliar with the requirements. Later, in a subsequent meeting the Coordinator correctly stated that employees who register between 0.02 and 0.039 b.a.c., are relieved of their duties for 24 hours. However he also told us these employees are not referred to a substance abuse professional or retested upon return to duty.

### *Pre- and Post-Trip Vehicle Safety Inspections*

State regulations (DOT Part 721) and the contract between Transit and the carriers require each driver to conduct a pre-trip and a post-trip vehicle inspection to ensure that vehicles do not leave the depot with safety issues. Drivers have a pre-trip inspection report to complete to ensure they check key safety aspects of the vehicle prior to driving on public roads. The driver must sign the report. At the end of the route or shift, a driver is required to perform a post-trip inspection to alert maintenance personnel of any problems that may have developed during the day. An effective post-trip inspection allows the next driver to know as much as possible about the vehicle. The driver must sign the pre-trip and post-trip inspection reports. Carriers are also required to have their quality control personnel (supervisory) ensure that drivers are completing the pre- and post-trip inspections. It is AAR's practice that quality control personnel also sign the

pre- and post-trip inspection reports.

At the five carriers we visited, we observed 25 pre-trip inspections. In nine instances, (two at one carrier and seven at another), neither the driver nor the quality control official signed the pre-trip inspection reports. We also reviewed 26 post-trip inspection reports and, at one carrier, found all six of the drivers in our review conducted their post-trip inspections while on route back to the facility, and without any supervisory oversight. This carrier explained that the facility is on a major street, and there is no room at the entrance for a driver to inspect the bus. Nevertheless, the carrier needs to establish a location where inspections can be performed under supervisory review. We also found one carrier has a practice of signing off on the post-trip inspection form before the vehicle leaves the facility.

## Recommendations

8. Ensure that carriers' drug and alcohol coordinators maintain the appropriate records, as required by the contract and federal regulations, including records that document the randomness of the selection process.
9. Ensure that carriers' drug and alcohol coordinators are fully aware of the standards and consequences of positive test results, including the standard that requires employees with test results registering between 0.02 and 0.039 b.a.c. be relieved of their duties for 24 hours.
10. Require carrier quality control officials to ensure that drivers are conducting their pre- and post-trip inspections and that drivers sign the reports as required by NYSDOT regulations. Where required by contract or practice, quality control officials should indicate their review by signing the report.
11. Require Paratransit officials to test compliance by spot checking the pre-trip and post-trip inspection practices of their carriers.

## Audit Scope and Methodology

We audited selected aspects of Transit's Access-A-Ride program relating to accident claims for the period January 1, 2008 through September 5, 2012. Our audit examined whether the number of Access-A-Ride accidents had increased and what actions the Paratransit Division and its carriers were taking to reduce them.

To accomplish our objectives, we reviewed contracts and applicable regulations, and examined selected records maintained by Transit and five of the 14 carriers. We interviewed officials and staff at both Transit's Access-A-Ride program and the five carriers. We judgmentally selected the five carriers on the basis of accident frequency. We examined records at each carrier related to pre-trip and post-trip inspections, training, accident reporting, driver's abstracts, and the random drug and alcohol testing program. In addition, we reviewed driver's abstracts and training records for a sample of 50 drivers at the five carriers.

We selected a stratified sample of claims from the database maintained by CSB, MTA's third-party claims administrator. The sample was selected based on frequency and dollar value. This sample was supplemented by a judgmental sample of accidents selected from records maintained by the five carriers we visited. We reviewed a total of 87 accident/incident files from the 7,306 claims for the January 2008 through February 2012 period to ascertain whether the files indicated compliance with CSB policies for timely notification. The 87 claims totaled \$7.5 million. We also examined the entire file for repeat claimants (multiple accidents) to determine the legitimacy of these occurrences. We also requested the 26 black car service providers complete a questionnaire on their accident history.

We conducted our 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.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## Authority

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This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

## Reporting Requirements

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We provided a draft copy of this report to MTA New York City Transit – Paratransit Division officials for their review and comments. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report. Our rejoinders to certain MTA comments are included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Metropolitan Transportation Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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## Contributors to This Report

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## Division of State Government Accountability

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### Vision

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To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

# Agency Comments

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Thomas F. Prendergast  
Chairman and Chief Executive Officer



## Metropolitan Transportation Authority

State of New York

March 31, 2014

Ms. Carmen Maldonado  
Audit Director  
The Office of the State Comptroller  
Division of State Government Accountability  
125 William Street - 21<sup>st</sup> Floor  
New York, NY 10038

### Re: Draft Report #2012-S-12 (Access-A-Ride Accident Claims)

Dear Ms. Maldonado:

This is in reply to your letter requesting a response to the above-referenced draft report.

I have attached for your information the comments of Carmen Bianco, President, NYC Transit, and Darryl C. Irick, President, MTA Bus Company, and Senior Vice President, Department of Buses, which address this report.

Sincerely,

Thomas F. Prendergast  
Chairman and Chief Executive Officer

Attachment

The agencies of the MTA  
MTA New York City Transit  
MTA Long Island Rail Road

MTA Metro-North Railroad  
MTA Bridges and Tunnels

MTA Capital Construction  
MTA Bus Company



# Memorandum



**Metropolitan Transportation Authority**

**Date** March 21, 2014

**To** Thomas F. Prendergast, Chairman and Chief Executive Officer, MTA

**From** Carmen Bianco, President, NYC Transit *and*  
Darryl C. Irick, Senior Vice President, NYC Transit, Department of Buses  
President, MTA Bus Company *(Signature)*

**Re** NYS Comptroller Report 2012-S-12 Access-A-Ride Accident Claims

We have reviewed the NYS Comptroller Draft Report concerning Access-A-Ride accident claims. The primary objective in providing Access-A-Ride service is customer safety. The Draft Report identified a number of areas of opportunity, for which we will target resources to evaluate and institute appropriate corrective actions. The following are our comments related to the Draft Report and our specific comments to the report's recommendations:

In an effort to reduce costs while maintaining the safety and quality of service, Transit has gradually shifted toward the black car service model. The black car service model is very different than the carrier model, in that black car service provides non-dedicated transportation, using their own vehicles, or more often, vehicles provided by second tier independent vehicle owner-operators. Black car service providers are subject to a comprehensive regulatory scheme that includes stringent licensing, safety, insurance and reporting requirements which are enforced by New York City Taxi and Limousine Commission (TLC). The black car service contracts reflect that black car services operate in a highly regulated industry under TLC jurisdiction. Accident and claim reporting for black car service providers clearly can be improved, but due to the unique composition of black car service providers, Paratransit can not ensure that accidents and claims are reported.

Information other than accident reports is available to evaluate the degree of risk associated with these black car service contracts. Transit's black car service contracts place all risk of liability in relation to the services provided on the contractor and the contractual insurance requirements mirror TLC's. MTA RIM advises that Transit cannot be named as an additional insured on black car service contractors' vehicles because Transit has no insurable interest as neither owner nor operator, a status that supports Transit's position that it has no liability for the services provided under these contracts.

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Transit's position that it has no liability for the services provided under these contracts. Claims history to date is also relevant. There has not been a single judgment of liability against Transit in relation to the black car service contracts.

Improvements in dedicated carriers' reporting of accidents is expected due to the recent creation of a web-based accident reporting system which is assessable to Paratransit, CBS and our carriers. However, it is still incumbent upon the carriers to report accidents. Paratransit will continue to remind carriers to report all accidents in a timely manner. It is important to note that all claims are not reported at the time of the alleged accident. We have found that customers have filed claims days, weeks or months later than the date of the incident.

Before a driver can provide Access-A-Ride service, under a dedicated carrier contract, carriers are required to provide Paratransit a hiring package which includes a copy of the driver's abstract and other documents required by DMV. The Paratransit Standards and Compliance Unit performs a review of the hiring package to ensure it satisfies all contractual requirements. After Standards and Compliance ensures the hiring package is satisfactory, the driver is entered into the ADEPT system which allows them to provide Access-A-Ride service. The audit report initially raised concerns that 12 newly hired carrier drivers' DMV abstracts were not reviewed until between 4 and 46 days after they started work. A joint review was performed by the audit team and Paratransit and determined that 11 of the 12 abstracts referenced in the report were reviewed in compliance with 19A regulations. The one outstanding abstract was reviewed four days late by the carrier. Paratransit issued the carrier a defect notice which resulted in a performance deficiency credit.

We are concerned with the inadequate records for carriers' drug and alcohol testing programs as well as the apparent unfamiliarity of a carrier's Drug and Alcohol Coordinator. Paratransit will evaluate the drug and alcohol testing programs at these carriers, and will initiate appropriate corrective actions.

**Recommendation 1:** "Meet with black car service providers to remind them of their responsibility to report accidents to Access-A-Ride in accordance with their contract and ensure they have a corrective action plan for drivers involved in accidents."

**Response:** Paratransit management will continue to remind black car service providers of their contractual responsibility to provide timely reports of all accidents. As previously noted, black car services are subject to a comprehensive regulatory scheme that includes stringent licensing, safety, insurance and reporting requirements which are enforced by New York City Taxi and Limousine Commission (TLC). The black car service contracts reflect that black car services operate in a highly regulated industry under TLC jurisdiction. This contract provision was established to ensure corrective actions are initiated for drivers involved in accidents, and for Paratransit and the NYC Transit Law Department to be aware of any potential claims and accident rates.

* Comment 1
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\* See State Comptroller's Comments, page 20.

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**Recommendation 2:** "Maintain records of black car accidents reported to Access-A-Ride; advise CSB to notify Access-A-Ride of black car service accidents it receives."

**Response:** Paratransit will continue to maintain records of all reported black car service accidents. Paratransit will also continue to advise MTA RIM to ensure that Paratransit is notified of any alleged black car service accidents that they receive.

**Recommendation 3:** "Ensure all carriers are in compliance with contract accident reporting requirements."

**Response:** It is Paratransit's desire for carriers to comply fully with contract accident reporting requirements. Accordingly, Paratransit will continue to remind carriers to report all accidents in a timely manner. Improvements in dedicated carriers' reporting of accidents is expected due to the recent creation of a web-based accident reporting system which is assessable to Paratransit, CBS and our carriers. However, it is still incumbent upon the carriers to report accidents. It is important to note that all claims are not reported at the time of the alleged accident. We have found that customers have filed claims days, weeks or months later than the date of the incident.

**Recommendation 4:** "Reconcile CSB and Access-A-Ride listings of reported accidents/incidents on a weekly basis."

**Response:** Please refer to our response to Recommendation 3.

**Recommendation 5:** "Require carrier Road Supervisors to complete the property damage assessment and record the results in the carrier's records, including evidence that the accident has been reported to DMV where required."

**Response:** Carrier Road Supervisors are required to assess and document property damage. Carriers are also required to notify DMV of all accidents involving more than \$1,000 in property damage or resulting in an injury.

**Recommendation 6:** "Issue accident reporting and damage estimating guidance to carriers and to other service providers to promote consistency and uniformity of approach."

**Response:** Carriers are required to ensure that their employees are properly trained in all aspects of providing service. Paratransit will continue to evaluate the adequacy of carrier Road Supervisor training relating to accident investigation. Based on Paratransit's evaluation, carriers will be advised to make appropriate changes to their accident investigation training.

**Recommendation 7:** "Investigate why the records of one carrier indicate untimely review of license abstracts and require corrective actions."

**Response:** As previously noted, a joint review was performed by the audit team and Paratransit and determined that 11 of the 12 abstracts referenced in the report were reviewed in a timely manner in compliance with 19A regulations.

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**Recommendation 8:** "Ensure that carrier drug and alcohol coordinators maintain the appropriate records, as required by the contract and federal regulations, including records that document the randomness of the selection process."

**Response:** Paratransit will continue to remind the carriers to ensure drug and alcohol testing is properly performed and documented. Paratransit will also continue to review drug and alcohol testing programs to ensure they are properly administered.

**Recommendation 9:** "Ensure that the carrier's drug and alcohol coordinators are fully aware of the standards and consequences of positive test results, including the standards that requires employees with test results registering between 0.02 and 0.039 b.a.c. be relieved of their duties for 24 hours."

**Response:** Please refer to our response to Recommendation 8.

**Recommendation 10:** "Carrier quality control officials must ensure that drivers are conducting their pre- and post-trip inspections and that drivers sign the forms as required by NYSDOT regulations. Where required by contract or practice, quality control official should indicate their review by signing the form."

**Response:** The Paratransit Standards and Compliance Unit performs monthly reviews of carrier Operator Vehicle Condition Reports. Notwithstanding, Paratransit will continue to remind carriers to properly perform pre and post trip inspections, and to ensure that all reports are properly signed.

**Recommendation 11:** "Access-A-Ride officials should test compliance by spot checking the pre-trip and post-trip inspections practices of their carriers."

**Response:** Please refer to our response to Recommendation 10.

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## State Comptroller's Comments

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1. MTA replied to several recommendations that it will “remind” or “continue to remind” the carriers of their responsibility to comply with certain contractual requirements. However, MTA Paratransit Division needs to be proactive and actually review carrier records to verify that they are reporting accidents and incidents, maintaining records for drug and alcohol testing as required by contract and federal regulation, conducting pre- and post-trip inspections, and that drivers sign the forms, as required.
2. The report was revised to reflect the new information provided in response to the draft report