



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CIVIL RIGHTS BUREAU

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Anthony Foxx
Secretary of Transportation
US Department of Transportation
1200 New Jersey Ave., SE
Washington, D.C. 20590

Dear Secretary Foxx:

On behalf of the Attorney General of the State of New York, I am writing to request that the U.S. Department of Transportation issue regulations providing a clear definition of vehicles required to be made accessible by the Americans with Disabilities Act (ADA). See 42 U.S.C. §§ 12181 et seq.; 49 C.F.R. Part 37. Attorney General Schneiderman is deeply committed to ensuring equal access to taxi services for people with disabilities in New York State. Strong enforcement and clear guidance are twin principles in ensuring full compliance with the requirements of the ADA.

In July of this year, our Office began an investigation considering whether several taxi agents operating Toyota Siennas and Ford Transit Connects in New York City have violated the ADA by operating inaccessible “vans.” 42 U.S.C. § 12184(b)(5); See 49 C.F.R. § 37.103(d). Based on our examination of documents produced by taxi agents, analysis of the text of the ADA and its implementing regulations, and review of the vehicle classifications under the Department of Transportation’s fuel economy regulations, we conclude that both Toyota Siennas and Ford Transit Connects should be categorized as “vans” under 42 U.S.C. § 12184(b)(5). See also 49 C.F.R. §37.103(d). Notwithstanding our position on this issue, we believe that additional guidance from the Department is necessary to ensure compliance with the law’s requirements. Accordingly, we urge your Department, in the strongest possible terms, to issue regulations consistent with this Office’s legal conclusions and theories.

Congress passed the Americans with Disabilities Act to provide “a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities.” Discrimination in critical areas, such as transportation, inhibits equality of opportunity, independent living and economic self-sufficiency for individuals with disabilities. 42 U.S.C. § 12101(b); 42 U.S.C. § 12101(a)(7). This is especially the case in urban centers like New York City, where over 13,000 yellow medallion taxis provide demand responsive transportation services, and only 233 of these taxis are accessible. The Taxi and Limousine Commission, a municipal agency tasked with regulating New York City’s taxis, recently auctioned another 200 medallions, all of which must be issued for accessible taxis. Even with those additional medallions, the 433 accessible yellow taxis fall short of

meeting the needs of the 60,000 New York City residents who use wheelchairs and electronic scooters. These figures underscore the need for clear guidance and assertive action from the Department on this issue.

A. The Definition of a “Van” Under the ADA

While the implementing regulations for the ADA exempt private providers of taxi services from making its “automobiles” accessible, it does not extend that exemption to the purchase of vehicles other than automobiles. See 49 C.F.R. § 37.29. Where a provider of taxi services purchases a vehicle other than an automobile the vehicle must be accessible, or the provider must ensure that it provides equivalent service to individuals with disabilities. The ADA distinguishes between three types of vehicles: “automobiles,” “vans with seating capacity of less than 8 passengers” and “over-the-road buses.” Unfortunately, it only provides a definition for “over-the-road buses”, and fails to provide factors to make clear the distinction between “automobiles” and “vans.” However, well-established canons of statutory construction, the common meaning and use of the word “van,” as well as other relevant definitions of vans drawn from other statutory and regulatory authorities provide useful inferences regarding the intended definition of van under the ADA.

We draw support for the common usage of the term “van” from several sources. According to the word’s definition in the Oxford English Dictionary, the word van is defined as “[a] covered boxlike motor vehicle, typically having a rear door and sliding doors on the side panels, used for transporting goods or people.” Similarly, the American Heritage Dictionary defines a van as “an enclosed boxlike motor vehicle having rear or side doors and side panels especially for transporting people.” DOT, the agency tasked with issuing regulations for implementing the ADA, adopted a similar definition of vans under its fuel economy regulations, stating that a van is:

a vehicle with a body that fully encloses the driver and a cargo carrying or work performing compartment. The distance from the leading edge of the windshield to the foremost body section of vans is typically shorter than that of pickup trucks and sport utility vehicles.

49 C.F.R. § 523.2.

The definitions provided above illustrate that vans can be identified by observing whether they contain the following several features. First, vans are typically vehicles “with a body that fully encloses the driver and cargo carrying or work performing compartments.” 49 C.F.R. 523.2. This requirement is common, not only to the relevant DOT definition, but also to the dictionary definitions cited above, which describe vans as being “a covered boxlike motor vehicle” and “an enclosed boxlike motor vehicle.” Second, a van is a vehicle where “the distance from the leading edge of the windshield to the foremost body section...is typically shorter than that of pickup trucks and sport utility vehicles.” 49 C.F.R. 523.2. Third, as appears in the dictionary definitions, vans are vehicles that often have rear doors and sliding side doors.

These features appear in both the Toyota Sienna and the Ford Transit Connect. First, both vehicles have “boxlike” bodies that “fully enclose the driver and cargo carrying compartments.” Second, while we were unable to determine the typical length of the leading edge of the windshield to the foremost body section of pickup trucks and sport utility vehicles, we did find that the length of the front overhang on all but one Ford model sport utility vehicle exceeds the front overhang length of the Ford Transit Connect. Accordingly, examining this feature among the Ford family of vehicles, the length of the front protruding section of the Ford Transit Connect distinguishes it from Ford’s sport utility vehicles. Third, both the Toyota Sienna and the Ford

Transit Connect have a rear door or doors, and sliding side doors. As a result, we conclude that taxi agents managing either vehicle must ensure that the vehicles are accessible, or provide equivalent service pursuant to 42 U.S.C. § 12184(b)(5); 49 C.F.R. §37.103(d).

B. Further Evidence Supporting the Definition of Vans Under the ADA

During our investigation, we reviewed information concerning the distinction between the standard models of the Toyota Sienna and Ford Transit Connect and the taxi models sold for use by medallion owners. We found that, notwithstanding the special features of the taxi models, both models should be treated as vans under the ADA. For instance, unlike the standard model of the Ford Transit Connect, the special taxi model contains a partition that separates the front driver compartment from rear passengers. We found that the installation of an internal partition did not prevent the body of the vehicle from “fully enclosing” its different compartments. We note that concluding otherwise would allow any private entity to easily dodge its obligations under the ADA by installing a partition inside the vehicle.

Similarly, while standard model Siennas and Transit Connects have removable seating which can be used for transporting passengers as well as goods, taxi models often have permanent non-removable seats. We determined that this difference was immaterial to whether either vehicle is a van. Requiring vans to have removable seats would permit private entities to easily avoid their ADA obligations by making superficial changes to a vehicle, such as installing non-removable seats. Moreover, the ADA provision at issue specifically applies to the vehicles of entities in the business of transporting people not goods. 49 C.F.R. § 37.103. Requiring vans to have the capacity to transport goods through the removal of seats is wholly irrelevant to the purpose of the ADA provision.

These issues are particularly relevant given existing concerns about the Alternative Dispatch System in New York City. That system allows passengers with disabilities seeking service to call a toll-free number and have an accessible yellow taxi routed to their location in Manhattan for pick-up. Every medallion owner must pay an annual fee, currently \$54.00, which goes to pay the costs of the dispatch service and subsidize the owners of accessible taxis. The city has reported that, on average, the response time for the dispatch service is fourteen minutes. Our office is not persuaded that the dispatch service currently meets the needs of individuals with disabilities. It also fails to provide equivalent service as required by the ADA, as individuals with disabilities must have phone or internet access to reserve a taxi, rather than simply hailing a taxi from the side of a street. Given the deficiencies of the current dispatch system, the accessibility of van taxis takes on added importance in increasing the overall accessibility of the New York City taxi system.

Conclusion

We urge DOT to issue new regulations clearly defining “vans,” and distinguishing them from “automobiles” under the ADA. Currently, New York City has hundreds of inaccessible vehicles that should be considered “vans” operating as taxis on its streets. We believe that your Department’s input will benefit passengers, drivers and owners as well as state and local agencies as it will provide much needed clarity for determining which vehicles, in addition to the Sienna and the Transit Connect need to be made accessible. Our office urges DOT to issue necessary guidance to help resolve the stark inequality in equal access to taxi services for individuals with disabilities in our state and across our nation.

Sincerely,



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