

## Department of Justice

## § 36.604

(2) Before January 26, 1993, against businesses with 10 or fewer employees and gross receipts of \$500,000 or less.

(c) *Transportation services provided by public accommodations.* Newly purchased or leased vehicles required to be accessible by § 36.310 must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the solicitation for the vehicle is made after August 25, 1990.

§§ 36.509–36.599 [Reserved]

### Subpart F—Certification of State Laws or Local Building Codes

#### § 36.601 Definitions.

*Assistant Attorney General* means the Assistant Attorney General for Civil Rights or his or her designee.

*Certification of equivalency* means a final certification that a code meets or exceeds the minimum requirements of title III of the Act for accessibility and usability of facilities covered by that title.

*Code* means a State law or local building code or similar ordinance, or part thereof, that establishes accessibility requirements.

*Model code* means a nationally recognized document developed by a private entity for use by State or local jurisdictions in developing codes as defined in this section. A model code is intended for incorporation by reference or adoption in whole or in part, with or without amendment, by State or local jurisdictions.

*Preliminary determination of equivalency* means a preliminary determination that a code appears to meet or exceed the minimum requirements of title III of the Act for accessibility and usability of facilities covered by that title.

*Submitting official* means the State or local official who—

(1) Has principal responsibility for administration of a code, or is authorized to submit a code on behalf of a jurisdiction; and

(2) Files a request for certification under this subpart.

#### § 36.602 General rule.

On the application of a State or local government, the Assistant Attorney General may certify that a code meets or exceeds the minimum requirements of the Act for the accessibility and usability of places of public accommodation and commercial facilities under this part by issuing a certification of equivalency. At any enforcement proceeding under title III of the Act, such certification shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of title III.

#### § 36.603 Preliminary determination.

Upon receipt and review of all information relevant to a request filed by a submitting official for certification of a code, and after consultation with the Architectural and Transportation Barriers Compliance Board, the Assistant Attorney General shall make a preliminary determination of equivalency or a preliminary determination to deny certification.

[AG Order No. 3181–2010, 75 FR 56257, Sept. 15, 2010]

#### § 36.604 Procedure following preliminary determination of equivalency.

(a) If the Assistant Attorney General makes a preliminary determination of equivalency under § 36.603, he or she shall inform the submitting official, in writing, of that preliminary determination. The Assistant Attorney General also shall—

(1) Publish a notice in the FEDERAL REGISTER that advises the public of the preliminary determination of equivalency with respect to the particular code, and invite interested persons and organizations, including individuals with disabilities, during a period of at least 60 days following publication of the notice, to file written comments relevant to whether a final certification of equivalency should be issued;

(2) After considering the information received in response to the notice described in paragraph (a) of this section, and after publishing a separate notice in the FEDERAL REGISTER, hold an informal hearing, in the State or local jurisdiction charged with administration and enforcement of the code, at

which interested individuals, including individuals with disabilities, are provided an opportunity to express their views with respect to the preliminary determination of equivalency; and

(b) The Assistant Attorney General, after consultation with the Architectural and Transportation Barriers Compliance Board and consideration of the materials and information submitted pursuant to this section, as well as information provided previously by the submitting official, shall issue either a certification of equivalency or a final determination to deny the request for certification. The Assistant Attorney General shall publish notice of the certification of equivalency or denial of certification in the FEDERAL REGISTER.

[Order No. 1513–91, 56 FR 35592, July 26, 1991, redesignated and amended by AG Order No. 3181–2010, 75 FR 56257, Sept. 15, 2010]

**§ 36.605 Procedure following preliminary denial of certification.**

(a) If the Assistant Attorney General makes a preliminary determination to deny certification of a code under § 36.603, he or she shall notify the submitting official of the determination. The notification may include specification of the manner in which the code could be amended in order to qualify for certification.

(b) The Assistant Attorney General shall allow the submitting official not less than 15 days to submit data, views, and arguments in opposition to the preliminary determination to deny certification. If the submitting official does not submit materials, the Assistant Attorney General shall not be required to take any further action. If the submitting official submits materials, the Assistant Attorney General shall evaluate those materials and any other relevant information. After evaluation of any newly submitted materials, the Assistant Attorney General shall make either a final denial of certification or a preliminary determination of equivalency.

[Order No. 1513–91, 56 FR 35592, July 26, 1991, redesignated and amended by AG Order No. 3181–2010, 75 FR 56258, Sept. 15, 2010]

**§ 36.606 Effect of certification.**

(a)(1) A certification shall be considered a certification of equivalency only with respect to those features or elements that are both covered by the certified code and addressed by the standards against which equivalency is measured.

(2) For example, if certain equipment is not covered by the code, the determination of equivalency cannot be used as evidence with respect to the question of whether equipment in a building built according to the code satisfies the Act's requirements with respect to such equipment. By the same token, certification would not be relevant to construction of a facility for children, if the regulations against which equivalency is measured do not address children's facilities.

(b) A certification of equivalency is effective only with respect to the particular edition of the code for which certification is granted. Any amendments or other changes to the code after the date of the certified edition are not considered part of the certification.

(c) A submitting official may reapply for certification of amendments or other changes to a code that has already received certification.

(d) When the standards of the Act against which a code is deemed equivalent are revised or amended substantially, a certification of equivalency issued under the preexisting standards is no longer effective, as of the date the revised standards take effect. However, construction in compliance with a certified code during the period when a certification of equivalency was effective shall be considered rebuttable evidence of compliance with the Standards then in effect as to those elements of buildings and facilities that comply with the certified code. A submitting official may reapply for certification pursuant to the Act's revised standards, and, to the extent possible, priority will be afforded the request in the review process.

[Order No. 1513–91, 56 FR 35592, July 26, 1991, redesignated and amended by AG Order No. 3181–2010, 75 FR 56258, Sept. 15, 2010]