

§ 36.505

(3) May, to vindicate the public interest, assess a civil penalty against the entity in an amount

(i) Not exceeding \$50,000 for a first violation occurring before September 29, 1999, and not exceeding \$55,000 for a first violation occurring on or after September 29, 1999; and

(ii) Not exceeding \$100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding \$110,000 for any subsequent violation occurring on or after September 29, 1999.

(b) *Single violation.* For purposes of paragraph (a) (3) of this section, in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(c) *Punitive damages.* For purposes of paragraph (a)(2) of this section, the terms “monetary damages” and “such other relief” do not include punitive damages.

(d) *Judicial consideration.* In a civil action under § 36.503, the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this part by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

[Order No. 1513-91, 56 FR 35592, July 26, 1991, as amended by Order No. 2249-99, 64 FR 47103, Aug. 30, 1999]

§ 36.505 Attorneys fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

28 CFR Ch. I (7-1-10 Edition)

§ 36.506 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 36.507 Effect of unavailability of technical assistance.

A public accommodation or other private entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 36.508 Effective date.

(a) *General.* Except as otherwise provided in this section and in this part, this part shall become effective on January 26, 1992.

(b) *Civil actions.* Except for any civil action brought for a violation of section 303 of the Act, no civil action shall be brought for any act or omission described in section 302 of the Act that occurs—

(1) Before July 26, 1992, against businesses with 25 or fewer employees and gross receipts of \$1,000,000 or less.

(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.