



TRANSMITTAL

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Federal Contract
Compliance Programs
Washington, D.C. 20210

Number: 185 Date: March 12, 1993 OFCCP Order No. FCCM Notice/CH 1

1. **SUBJECT:** Rehabilitation Act Amendments of 1992.

2. **PURPOSE:** To incorporate into the Appendix to Manual Chapter 1 all the changes made by the Rehabilitation Act Amendments of 1992 to Section 503 (and related definitions) of the Rehabilitation Act of 1973, as amended.

3. **BACKGROUND:** Manual Chapter 1, as issued by transmittal #173, dated December 16, 1992, includes an Appendix which provides the text of Section 503, and related definitions in Section 706. That text incorporates some, but not all, of the changes made by the Rehabilitation Act Amendments of 1992 (P.L. 102-569; October 29, 1992). The attached revised text incorporates all such changes.

4. **FILING INSTRUCTIONS:** From the Appendix (1E) to Manual Chapter 1, remove and discard the three page text of Section 503 and related definitions, and replace it with the attached revised version of those pages. A right marginal lines indicates the portions changed.

5. **DISTRIBUTION:** A, B, C.

6. **OBSOLETE DATA:**
 - A. The text of Section 503 (and related definitions) in the Appendix to Manual Chapter 1 as published December 16, 1992.
 - B. This Notice expires when implemented and may be discarded or retained for reference at your option.

(signed) Leonard J. Biermann
Acting Director

March 12, 1993
Date

**TEXT OF
SECTION 503 OF THE REHABILITATION ACT OF 1973,
As Amended (through 2/93)**

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Section 503. (a) Any contract in excess of \$10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities as defined in section 7(8) [29 U.S.C. §706(8)]. The provisions of this section shall apply to any subcontract in excess of \$10,000 entered into by a prime contractor for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within 90 days after the date of enactment of this section [enacted September 26, 1973].

(b) If any individual with a disability believes any contractor has failed or refused to comply with the provisions of a contract with the United States, relating to employment of individuals with disabilities, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) (1) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination. (87 Stat. 393, 29 U.S.C. §793, as amended November 6, 1978, P.L. 95-602, 92 Stat. 2987; October 21, 1986, P.L. 99-506, 100 Stat. 1810 and 1844; P.L. 100-630, 101 Stat. 3312, November 7, 1988.)

(2) (A) The Secretary of Labor may waive the requirements by regulations promulgated under subsection (a) with respect to any of a prime contractor's or subcontractor's facilities that are found to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, if the Secretary of Labor also finds that such a waiver will not interfere with or impede the effectuation of this Act.

(B) Such waivers shall be considered only upon the request of the contractor or subcontractor. The Secretary of Labor shall promulgate regulations that set forth the standards used for granting such a waiver.

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(continued)

(d) The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

(e) The Secretary shall develop procedures to ensure that administrative complaints filed under this section and under the Americans with Disabilities Act of 1990 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this section and the Americans with Disabilities Act of 1990.

Pertinent Definitions

Section 7 For purposes of this chapter: * * * * *

(8) (B) Subject to subparagraphs (C), (D), (E), and (F) the term 'individual with a disability' means, for purposes of sections 2, 14, and 15, and titles IV and V of this chapter, any person who

- (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities,
- (ii) has a record of such an impairment, or
- (iii) is regarded as having such an impairment.

- (C) (i) For purposes of Title V, the term 'individual with a disability' does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.
- (ii) Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who -
- (I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
 - (II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
 - (III) is erroneously regarded as engaging in such use, but is not engaged in such use;
- except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

Pertinent Definitions

(continued)

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[(C)(iii) and (iv) not related]

(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with a disability' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(D) For the purpose of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection is unable to perform the duties of the job.

(E) For the purpose of Sections 501, 503, and 504--

- (i) For purposes of the application of subparagraph (B) to such sections, the term 'impairment' does not include homosexuality or bisexuality.
- (ii) Therefore, the term 'individual with a disability' does not include an individual on the basis of homosexuality or bisexuality.

(F) For the purposes of sections 501, 503, and 504, the term 'individual with a disability' does not include an individual on the basis of--

- (i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (ii) compulsive gambling, kleptomania, or pyromania; or
- (iii) psychoactive substance use disorders resulting from current illegal use of drugs.

* * * * *

(22) (A) The term 'drug' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 USC §801 et. seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.