

# Presidential Documents

Title 3—

Presidential Determination No. 92-24 of April 27, 1992

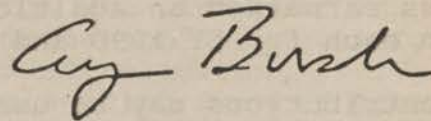
The President

## Determination and Certification To Permit U.S. Contributions to the International Fund for Ireland and Northern Ireland

### Memorandum for the Secretary of State

Pursuant to section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99-415), I hereby determine and certify that: (1) the Board of the International Fund established by the Anglo-Irish Agreement is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are authorized and directed to transmit this determination and certification to the Congress, together with the Memorandum of Explanation, and to publish it in the **Federal Register**.



THE WHITE HOUSE,  
Washington, April 27, 1992.



THE SECRETARY OF STATE  
WASHINGTON

March 12, 1992

MEMORANDUM FOR: THE PRESIDENT

FROM: James A. Baker, III *JAB III*

SUBJECT: Certification to Permit U.S. Contributions to  
the International Fund for Ireland

The Anglo-Irish Agreement Support Act of 1986, P.L. 99-415 ("the Act"), authorizes United States contributions to the International Fund for Ireland ("the Fund") established pursuant to the November 15, 1985, agreement between the United Kingdom and Ireland. The Act established the U.S. contribution as \$120 million to be disbursed during fiscal years 1986, 1987, and 1988. Congress earmarked an additional \$10 million for FY 1989, and \$20 million each for FY 1990 and FY 1991.

U.S. contributions may be used only to "support and promote economic and social reconstruction and development" in Ireland and Northern Ireland. Section 5(c) requires that each fiscal year, prior to the U.S. contribution, the President certify to the Congress that he is satisfied the following conditions have been met: (1) the Board of Directors of the Fund, as a whole, is broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland. Each certification must include a detailed explanation of the basis for the President's decision.

Satisfaction of Conditions for Certification

The present composition of the Board of Directors of the Fund, the arrangements for disbursement of its resources, and experience to date in approving projects satisfy the conditions set forth in Section 5(c).



**(1) Composition of the Board**

The method by which the Board is selected assures that it is broadly representative of the interests of the communities of Ireland and Northern Ireland, as required by Section 5(c)(1). The Board of Directors of the Fund consists of seven representatives; a chairman and three members each from Ireland and Northern Ireland. Pursuant to the Anglo-Irish Agreement, members are appointed jointly by the U.K. and Irish governments. In addition, the residences of the members are dispersed over a variety of geographic areas in Ireland and Northern Ireland.

**(2) Equitable Principles of Disbursements**

By its charter, the Fund is required to make disbursements "consistent with the economic and social policies of the respective governments." To that end, the guidelines the Fund has established for awards are specifically made subject to legislation governing Northern Ireland. The legislation prohibits employment discrimination on the grounds of religious belief or political opinion.

In addition, equal representation of Northern Ireland and Ireland officials and the cross-community participation within all of the management units of the Fund ensure resources are disbursed in accordance with the principle of "nondiscrimination and equality of opportunity in employment without regard to religious affiliation" (Section 5(c)(2)(A) of the Anglo-Irish Support Act). Criteria by which to implement this principle are clearly spelled out and are built into the well defined project appraisal and approval system, and the monitoring and evaluation systems. All grantees are required to sign a pledge, using the exact words employed by the U.S. Congress, that any money allocated be used in a nondiscriminatory manner.

The Fund's systems and criteria also ensure that awards "will address the needs of both communities in Northern Ireland" (Section 5(c)(2)(B) of the "Anglo-Irish Support Act"). The Fund's charter establishes employment generation and investment promotion in both communities as top funding priorities. The Fund solicits and approves proposals consistent with its employment generation and investment objectives, from a broad cross-section of private groups, investors, and individual citizens from both communities.

Finally, the geographic distribution of projects approved throughout Ireland and Northern Ireland demonstrates that the needs of both religious communities are being met.

A detailed statement of the basis on which the Fund disburses resources, and its effectiveness in reaching both communities is contained in the attached Memorandum of Explanation.



**MEMORANDUM OF EXPLANATION FOR CERTIFICATION  
U.S. CONTRIBUTION TO THE  
INTERNATIONAL FUND FOR IRELAND**

**I. INTRODUCTION**

This report has been prepared to comply with legislative requirements associated with the Anglo-Irish Agreement Support Act of 1986, Public Law 99-415 ("the Act").

Section 5(c) of the Act requires that each fiscal year, prior to contributions to the International Fund for Ireland, the President certify to the Congress that he is satisfied the following conditions have been met:

- A.) The Board of Directors of the International Fund, as a whole, is broadly representative of the interests of the communities of Ireland and Northern Ireland;
- B.) Disbursements from the International Fund:
  - 1) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and
  - 2) will address the needs of both communities in Northern Ireland.

**II. BACKGROUND**

**A. Establishment and Operation of the Fund**

The International Fund for Ireland ("the Fund") was formally established as an independent entity on December 12, 1986, in keeping with the provisions of the Anglo-Irish Agreement of November 15, 1985. The overall objectives of the Fund are to promote economic and social advancement and to encourage contact, dialogue, and reconciliation between nationalists and unionists throughout Ireland and Northern Ireland. The Anglo-Irish Agreement states that the Fund shall accomplish these objectives by stimulating private investment and encouraging voluntary efforts with special emphasis on projects promoting communal reconciliation. The Agreement also stipulated the establishment of two investment companies under the Fund.

The Fund is an independent entity which is administered by a Board of Directors appointed jointly by the British and Irish governments. The Board is guided by a Joint Advisory Committee consisting of senior civil servants drawn equally from Northern Ireland and Ireland. The Advisory Committee's principal role is to advise the Board on the economic and social policies and priorities of the two governments and to maximize the impact of



assistance by avoiding duplication of activity. The Board is supported by a Secretariat composed of administrators from the two jurisdictions. The Secretariat is headed by two Joint Director Generals, one from each side. The Fund's operating expenses are paid by the British and Irish governments.

The Fund's activities are executed primarily through program teams in the following areas: Business Enterprise, Tourism, Urban Development, Agriculture and Fisheries, Science and Technology, and the Wider Horizons Program. These program teams are composed of an equal number of representatives from Northern Ireland and Ireland. The teams are administered by joint-chairmen who keep the Board of Directors apprised of their respective program teams' activities.

In an effort to focus on the more disadvantaged areas, the Fund directs more than half of the resources available in the program sectors to disadvantaged areas in Northern Ireland. The Fund also created three additional program schemes: Community Economic Regeneration, which focuses community driven regeneration of economic activity in urban areas; Community Relations, designed to promote reconciliation; and Disadvantaged Areas Special Projects.

In addition to the above activities, the Board has recently begun implementing the Community Regeneration and Improvement Special Programme (CRISP). The program is designated for disadvantaged areas in Northern Ireland and focuses the Fund's resources on smaller towns and villages by linking a series of projects from the various program areas together. This way, the Fund is able to guarantee maximum value for its money and present a more comprehensive and dynamic development scheme.

#### B. Fund Contributions

The Fund receives contributions directly from bilateral and multilateral donors. The U.S. contribution thus far totals \$130 million, including \$10 million in FY 1989. Under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Congress appropriated an additional \$20 million for FY 1990. A separate appropriation in FY 1991 provides yet another \$20 million. The European Community disbursed 15 million European Currency Units (US\$20 million) per year to the Fund for the years 1989, 1990 and 1991. New Zealand contributed NZ\$300,000 in FY 1990 and Canada has pledged Can\$10 million.

Each donor is entitled to appoint a representative to attend all Board meetings as a non-voting observer. Observers receive all Board papers and provide guidance to the Fund on behalf of their respective donor countries. The Honorable Eugene J. McCaffrey, Sr. was appointed U.S. Observer to the International Fund for Ireland in April 1990. Mary Barden Keegan serves as the alternate U.S. Observer.



### C. Program Implementation

As of October of 1990, the Fund has approved a total of 1,523 projects and allocated over \$266 million, including amounts leveraged through government agencies and the private sector, to its various program areas (compared to \$174 million the previous year). Some \$180 million has been committed to approved projects within the various programs. The Fund has disbursed approximately \$150 million to ongoing and completed projects, including \$26 million to the two investment companies.

Individual project applications continue to represent a majority of the projects for funding. However, the program teams are assisting various communities in identifying and preparing proposals through regular contact and consultation with a number of area Economic Development Consultants. The Consultants serve as a point of contact for local communities, provide valuable technical assistance and advice, and help to speed program implementation.

### D. Job Creation and Additional Investment

Two elements identified as priorities of the U.S. Government in its contribution to the Fund are job creation and the leveraging of additional investment into the economy. Both elements have been adopted by the Fund in the implementation of its program.

The Fund agrees that job creation is an essential factor in determining the allocation of Fund resources and clearly places an emphasis on the job creation potential of each project considered for funding. It is estimated that the Fund created 11,823 new jobs and more than 4,703 temporary jobs in the construction industry. While calculations of indirect employment are less exact, the Fund estimates that more than 4,600 temporary jobs have been created.

The Fund has also been successful in leveraging new investment. Of the \$180 million of Fund resources committed to approved projects, another \$180 million and \$134 million of private and government resources, respectively, have been invested. Thus every dollar that the Fund has committed has resulted in an additional \$1.74 committed from other sources.

For additional information on the historical background of the Fund and the development of its policies and programs, please refer to the International Fund for Ireland 1990 Annual Report.

## III. PRESIDENTIAL CERTIFICATION ELEMENTS

Each fiscal year, prior to the United States making a contribution to the Fund, the President must certify that he is satisfied that the Fund has complied with the legislative requirements in the Act. The following discusses these elements.



#### A. Board Representation

The Board of Directors consists of seven members; three nominated by the British government, three nominated by the Irish government, and the Chairman. Board members are approved by both sides through consultations between the two governments. The Board, by design and agreement, is representative of the communities in both Northern Ireland and Ireland. It should be noted, however, that there are presently no women serving on the Board.

The Board meets once every two months, primarily to review policy and procedural issues and to approve or reject proposals forwarded by the program teams for consideration. In addition, each Board member is responsible for coordinating with specific program teams and is consulted on a regular basis.

The Board members are as follows:

Mr. John B. McGuckian, Chairman  
Mr. Denis Calvert  
Mr. John Craig  
Mr. Paddy Duffy  
Mr. Pat Kenny  
Mr. Neil McCann  
Mr. Willie McCarter

The Chairman is from Ballymena in County Antrim, Northern Ireland. Mr. McGuckian holds positions on various other public boards, including Chairman of the Board of the Northern Ireland Allied Irish Bank, Chairman of Ulster Television, and Pro-Chancellor of Queens University in Belfast. Mr. McGuckian is also a member of committees overseeing such organizations as Cooperation North and Northern Ireland Voluntary Trust.

As in the past, the present Board is noted for its professionalism and integrity in setting policy and approving projects. The Board has taken a proactive role in promoting the Fund throughout Northern Ireland and Ireland as well as internationally. In addition, the Board has recently made significant inroads to attract proposals from historically hardline organizations from both traditions, most notably the Apprentice Boys of Londonderry, in an effort to break down social and political barriers and promote reconciliation.

#### B. Disbursements From the International Fund

The Fund's structure and policy framework ensure that resources are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and that these resources address the needs of both communities in Northern Ireland and the six border counties of the Republic of Ireland.



The board has developed its policies for disbursement of resources taking into account the terms of the Agreement under which it was established, the wishes of the donor countries, and the need to supplement the economic and social policies of the two governments. The Board structure and policy framework is manifest in the internal checks and balances in the Fund's appraisal, approval, and management systems. Also, the wide geographical distribution of approved projects enhances the Fund's efforts to meet the needs of both communities. There have been notable achievements by the Fund in the areas of job creation, leveraging of private investment, and reconciliation. In addition, the Fund has made concerted efforts to target the most disadvantaged areas through CRISP and other special programs as well as the through the work of the Development Consultants.

1. Distribution of disbursements in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation.

Structure of the Fund. Ireland and Northern Ireland are equally represented by members of the Fund's Board of Directors, Advisory Committee, Secretariat, and Program Teams. These individuals are highly respected for their professional competence, integrity, and commitment to the Fund's objectives. The Advisory Committee, as mentioned above, is composed of senior officials of both the British and Irish governments and provides guidance and support for the Board. The Secretariat staff maintains the day-to-day operations of the Fund and have been carefully selected for their administrative skills and judgement. The Program Teams are staffed with technical and administrative professionals who are committed to the Fund's operating principles of nondiscrimination. Review of the IFI portfolio of projects and visits to selected sites by Agency for International Development (A.I.D.) personnel has confirmed that the Fund has assembled a competent and professional staff who have cultivated and exercised sound project approval and management procedures.

Policy Framework. All Fund publications and solicitations for proposals clearly spell out the Fund's commitment to equality of opportunity and nondiscrimination. All successful applicants are required by the Board to agree to the following prior to receiving an award:

"Acceptance of a grant or loan under this scheme will be deemed to signify the applicant's acceptance of the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation and that the applicant will be expected to use the money in accordance with this principle."

The letter of offer clearly states that any violation of this agreement will require immediate repayment of resources. To date, the Fund has not had to request repayment.



Equality of opportunity requirements are also enforced in Northern Ireland under the Fair Employment (Northern Ireland) Act of 1989. This Act makes employment discrimination on the grounds of religious belief or public opinion illegal. The Act is designed to eradicate job discrimination and ensure the active practice of fair employment opportunity throughout Northern Ireland.

Project Appraisal and Approval. The Fund has instituted a clear and systematic appraisal and approval system. Each Program Team has signed agreements with the Fund Secretariat which spell out the criteria upon which all applications are made. As mentioned above, the Program Teams consist of officials from various government agencies, both North and South, which, in close cooperation with the Secretariat, help to bring the programs to fruition. The Team members, chosen for their expertise in their particular sector, review each project based on its merit using standard economic and financial analysis tools, as well as criteria relevant to their technical field.

Projects must also be consistent with the economic and social policies and priorities of the British and Irish governments. Each government reserves the right to veto support for activities proposed which violate their stated policies. No resources are to be used, for example, to improve the standing of or to further the goals of any paramilitary organization, either directly or indirectly. The Fund, the British government, and the Irish government are, however, committed to supporting activities which contribute to viable, self-sustaining growth, prosperity, and stability. In addition, it is hoped that the projects will have a positive impact on increasing respect for human rights and fundamental freedoms for citizens of both traditions from Northern Ireland and the Republic.

Thus, within the Fund's policy guidelines and the established criteria for the evaluation and approval process, projects are accepted for funding, rejected, or forwarded to an appropriate government agency for possible support from existing government programs. Applications are processed in a timely and efficient manner, consistent with a proper and prudent review of projects. In addition, of course, a considerable responsibility rests with the individual promoters of projects who must take the lead in completing their share of the financial package and implementing the project to a stage where payment can be made.

Each decision to approve, disapprove, or forward a project to a government agency requires the recommendation of the relevant program team, the endorsement of the two Board members supervising the team, and the approval of the Fund Secretariat. Any projects which are controversial, raise policy issues, or exceed the program team's delegation of authority, are forwarded to the Board for consideration.



Equality of opportunity and nondiscrimination is the guiding principle under which the Fund operates. Projects are reviewed on merit alone, without regard to political or religious affiliations of the applicants. The cross-community composition of the Fund Board, the Secretariat, and the program teams ensures this principle.

2. Addressing the needs of both communities in Northern Ireland.

In order to comply with British law, the principles under which the Fund was established, and the U.S. Government priorities under which our contribution was made, religious affiliation is not a factor in the approval process. Fund officials are not aware of an applicants religion. It is generally known, however, which religious majority is predominant within a specific geographical area.

During the program review visit by A.I.D. in December of 1990, management officials, community leaders, grantees, and program implementors were asked to comment on the extent to which the needs of both communities were being met. All respondents believed that every effort was being made to strengthen the cross-community nature of the programs. Many spoke of how, through Fund activities, they were able to experience for the first time a working or recreational experience with people of the opposite tradition. Such liaisons have produced cross-community boards of directors (under such organizations as the enterprise centers), cross-community enterprise matchmaking, cross-border joint ventures (such as the Derry-Galway-Boston Trade Fair), and genuine friendships. The civil servants of both governments in laboring together on the Fund have also developed excellent working, as well as, personal relationships with their counterparts. Such interaction at all levels of government contributes to reconciliation through dialogue and cooperation. The nature and extent of joint participation and government coordination underscores the desire of both traditions to strive for economic prosperity and political stability for everyone.

As discussed above, the Fund has made a concerted effort to direct assistance to the more economically disadvantaged areas. Special programs, such as CRISP, have been developed toward this end. The work of the Development Consultants is unsurpassed in assisting the disadvantaged communities to develop ideas and proposals to help themselves through the Fund. The Consultants participate in establishing local groups, ensure cross-community participation whenever possible, and assist groups in creating viable projects. In many cases, however, the IFI merely serves as a catalyst for community initiatives that have been developing independently of the Fund. The Consultants are also instrumental in contributing to a greater overall understanding and positive perception of the Fund among the people of both communities.



#### IV. CONCLUSION

A review of Fund activities and a visit to Ireland and Northern Ireland by an A.I.D. officer confirms that the Board of Directors has maintained policies and procedures designed to guarantee that both traditions benefit from Fund activities. The Board's operating principles ensure that project decisions are made on the basis of merit. In addition, it has been concluded that Fund resources are being distributed in a manner consistent with its mandate as stated above. All grantees are made aware of the principles of equality of opportunity and nondiscrimination in employment, stipulated by acceptance of any grant monies.

This report concludes that:

The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities in Ireland and Northern Ireland.

Disbursements from the Fund are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland.



## Appendix I

**PROJECTS APPROVED, PROGRAM ALLOCATIONS,  
COMMITMENTS, AND DISBURSEMENTS  
(\$ Million)**

<u>Projects</u>	<u>Projects Approved</u>	<u>IFI Program Budget</u>	<u>Committed</u>	<u>Disbursed</u>
Agriculture and Fisheries	454	\$13,600	\$ 6,520	\$ 5,050
Wider Horizons	129	\$15,930	\$10,260	\$10,360
Business Enterprise	213	\$44,990	\$33,950	\$23,660
Tourism	242	\$59,340	\$40,980	\$16,620
Urban Development	391	\$34,290	\$24,450	\$10,180
Community Relations	13	\$ 4,240	\$ 1,800	\$ 1,300
Disadvantaged Areas Initiative	21	\$37,030	\$16,860	\$ 2,190
Special Projects	6	\$ 1,600	\$ 1,600	\$ 340
Flagship Projects	2	\$ 8,660	\$ 8,660	\$ 2,240
Science and Technology	30	\$20,330	\$ 8,880	\$ 7,020
<b>Sub-Total</b>	<b>1,501</b>	<b>\$240,010</b>	<b>\$153,960</b>	<b>\$78,960</b>
Investment Companies	22	\$26,180	\$26,180	\$26,180
<b>TOTAL</b>	<b>1,523</b>	<b>\$266,190</b>	<b>\$180,140</b>	<b>\$105,140</b>



## Appendix II

## ESTIMATED EMPLOYMENT GENERATED

<u>Projects</u>	<u>Direct</u>	<u>Indirect</u>	<u>Construction (Man Years)</u>	<u>Total</u>
Agriculture and Fisheries	380	119	30	529
Wider Horizons	-	-	-	-
Business Enterprise	4,556	1,487	806	6,849
Tourism	1,565	1,264	1,295	4,124
Urban Development	2,382	894	986	4,262
Community Relations	8	2	-	100
Disadvantaged Areas	1,570	470	529	2,569
Special Projects	334	100	69	503
Flagship Projects	290	87	921	1,298
Science and Technology	109	27	37	173
Sub-Total	11,194	4,450	4,673	20,317
Investment Companies	629	175	30	834
TOTAL	11,823	4,625	4,703	21,151



## Appendix III

**AMOUNT LEVERAGED ON APPROVED PROJECTS  
COMMITMENTS, AND DISBURSEMENTS  
(\$ Million)**

<u>Projects</u>	<u>Private Sector</u>	<u>Government</u>	<u>IFI</u>	<u>Total</u>
Agriculture and Fisheries	\$ 8,430	* \$ 2,590	\$ 6,520	\$ 17,540
Wider Horizons	\$ 2,060	\$ 5,490	\$ 10,260	\$ 17,810
Business Enterprise	\$ 20,150	\$ 40,020	\$ 33,950	\$ 94,120
Tourism	\$ 78,630	\$ 2,040	\$ 40,980	\$121,650
Urban Development	\$ 49,440	\$ 6,780	\$ 24,450	\$ 80,670
Community Relations	\$ 3,440	\$ 1,760	\$ 1,800	\$ 7,000
Disadvantaged Areas	\$ 2,780	\$ 21,910	\$ 16,860	\$ 41,550
Special Projects	\$ 4,980	\$ 2,040	\$ 1,600	\$ 8,620
Flagship Projects	\$ 6,020	\$ 41,035	\$ 8,660	\$ 56,030
Science and Technology	\$ 3,970	\$ 9,950	\$ 8,880	\$ 22,800
<b>Sub-Total</b>	<b>\$179,900</b>	<b>\$133,615</b>	<b>\$153,960</b>	<b>\$467,790</b>
Investment Companies	-	-	\$ 26,180	\$ 26,180
<b>TOTAL</b>	<b>\$179,900</b>	<b>\$133,615</b>	<b>\$180,140</b>	<b>\$493,970</b>

\* An amount of \$1.9 million has been included to take into account the current running costs of the Marine Research vessel funded by the Northern Ireland Department of Agriculture.



## Appendix IV

GEOGRAPHICAL DISTRIBUTION  
OF IFI APPROVED PROJECTS

District Council	(North)	County	(South)
Ballymena	20	Cavan	98
Ards	24		
Belfast	58	Donegal	91
Castlereagh	3		
Lisburn	13	Louth	58
Down	42		
North Down	21	Managhan	83
Antrim	17		
Carrickfergus	25	Sligo	76
Larne	15		
Newtonabbey	11	Sub-Total	480
Coleraine	35		
Balleymoney	17	Joint Regional	
Moyle	14	Programs	62
		Sub-Total	62
Cookstown	15		
Banbridge	16		
Craigavon	46	TOTAL	1,523
Armagh	47		
Dungannon	56		
Fermanagh	95		
Londonderry	27		
Limavady	18		
Magherafelt	28		
Newry & Mourne	66		
Omagh	50		
Strabane	37		
Unallocated	* 165		
Sub-Total	981		

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# Rules and Regulations

Federal Register

Vol. 57, No. 91

Monday, May 11, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 432 and 752

RIN 3206-AE96

#### Performance Based Reduction in Grade and Removal Actions; Adverse Actions

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with comments invited for consideration in final rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations under parts 432 and 752 to implement the Civil Service Due Process Amendments (the Act), Public Law 101-376, effective August 17, 1990, granting procedural and appeal rights to certain nonpreference eligible employees in the excepted service. The interim regulations clarify which employees the Act covers and which it does not. They also reflect the later enactment of a separate personnel system for employees of the Administrative Office of the United States Courts.

**DATES:** Effective date: May 11, 1992. Comments must be received on or before July 7, 1992.

**ADDRESSES:** Written comments may be sent or delivered to Marjorie A. Marks, Chief, Employee Relations Division, Office of Employee and Labor Relations, Office of Personnel Management, room 7412, 1900 E Street NW., Washington, DC 20415. The facsimile number is (202) 606-2613 or FTS 266-2613.

**FOR FURTHER INFORMATION CONTACT:** Sharon C. Snellings, on part 432; Cynthia L. Field, on part 752. They may be reached on (202) 606-2920 or FTS 266-2920.

**SUPPLEMENTARY INFORMATION:** The interim regulations amend the coverage statements in parts 432 (Performance Based Reduction in Grade and Removal Actions) and 752 (Adverse Actions) to reflect the procedural and appellate rights which the statute now provides for nonpreference eligible employees in the excepted service who meet certain conditions. These procedural and appellate rights differ in some respects from those provided to employees in the competitive service.

#### 1. Part 752—Nonpreference Eligible Excepted Service Employee Coverage

To the two categories of employees already covered under adverse action protections (competitive service employees and preference eligible employees in the excepted service), the Act adds a third category: certain nonpreference eligible employees in the excepted service. Nonpreference eligible employees who have completed 2 years of current continuous service (in other than a temporary appointment limited to 2 years or less) in the same or similar positions in an executive agency have procedural and appeal rights under the Act. An executive agency is defined in 5 U.S.C. 105 as an executive department, a Government corporation, and an independent establishment.

As noted above, the Act extends coverage to nonpreference eligible excepted service employees who have completed 2 years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to 2 years or less. Such employees are covered at the end of 2 years of qualifying service, whether or not their agencies require a "trial" period of any length.

For the purposes of determining the completion of the 2 years of service, employment in the competitive service, the excepted service, the Senior Executive Service, or in more than 1 agency during the period is counted as long as the service was current, continuous, in the same or similar positions in an executive agency, and not in a temporary appointment limited to 2 years or less.

#### 2. Part 752—Excepted Service Employee Exclusions

##### a. Nonpreference Eligible Employees in Excepted Service Appointments Pending Conversion to the Competitive Service

These special types of appointments are made with the intent of converting the employee to an appointment in the competitive service and provide noncompetitive conversion eligibility if the employee has satisfied eligibility requirements. Those requirements include a demonstration of satisfactory performance or training, and constitute the "probationary or trial period" referred to in 5 U.S.C. 7511(a)(1)(C)(i). Employees under these appointments have no procedural or appeal rights, but gain such rights upon conversion to the competitive service. These special appointments include those made under the Presidential Management Intern Program, the Student Work-Study Program ("co-ops"), Veterans Readjustment Appointments (VRA), certain Schedule A appointments of the severely disabled, and others. (Note that OPM's guidance on the appointments of severely physically or mentally disabled employees points out that conversion is not mandatory, but states that "there should be substantial justification for not recommending conversion of an employee who meets the minimum service requirement and who has demonstrated successful job performance." See Federal Personnel Manual, chapter 306, subchapters 4 and 7.)

Agencies should note that there are certain excepted service appointments which allow for conversion to the competitive service, but where the intent of the excepted appointment is not to convert an employee noncompetitively. For example, agencies may hire readers, interpreters, or personal assistants under Schedule A (5 CFR 213.3102(l)), and may convert the employee noncompetitively, under 5 CFR 315.711, to a competitive service appointment. However, the purpose of this and any other such appointments is not eventual conversion to the competitive service. Thus, once a nonpreference eligible



employee has served 2 years under this type of appointment, he or she has appeal rights.

*b. Persons Who Serve at the Pleasure of the President, Employees in Confidential Positions, or Presidential Appointees*

These include employees whose appointments are made by and with the advice and consent of the Senate. They also include employees whose positions are determined to be of a confidential, policy-determining, policy-making, or policy-advocating character. The positions may be determined to be in these categories by the President for positions the President has excluded from the competitive service or positions excluded by statute, by the head of the agency for statutorily excepted positions, or by OPM for positions it has excluded from the competitive service by regulation, i.e., Schedule C appointments.

*c. Retirees Receiving Annuities From the Civil Service Retirement and Disability Fund or the Foreign Service Retirement and Disability Fund*

Reemployed annuitants under both the Civil Service Retirement System (CSRS) and Federal Employees Retirement Systems (FERS) who receive annuities from the Civil Service Retirement and Disability Fund and members of the Foreign Service receiving annuities under the Foreign Service Retirement and Disability Fund are excluded from coverage.

*d. National Guard Technicians*

The Amendments provide that persons described in 5 U.S.C. 8337(h)(1) are excluded entirely from chapter 75, U.S. Code. These are technicians employed under 32 U.S.C. 709(a). They are hired and removed under their own procedures.

*e. Foreign Service Members*

Since the Foreign Service Act of 1980 provides procedural protections for these members through the mechanism of the Foreign Service Grievance Board, the Due Process Amendments exclude them from coverage of chapter 75.

*f. Employees of the Central Intelligence Agency (CIA), the General Accounting Office (GAO), and the Veterans Health Services and Research Administration (VHSRA)*

The Act shows these positions as excluded.

*g. Nonpreference eligible Employees of the Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or any Intelligence Activity of a Military Department Covered under Section 1590 of Title 10*

These employees continue to be excluded from procedural and appellate rights under 5 U.S.C. chapter 75.

*h. Aliens and Noncitizens of the United States Who Occupy Positions Outside the United States*

These positions are described in 5 U.S.C. 5102(c)(11). The Act makes clear their exclusion from the protections of chapters 43 and 75.

*i. Other Employees Excluded From Appointing and Adverse Action Provisions of Title 5 by Virtue of Their Agencies' Statutory Provisions*

As previously noted, the Act specifically lists certain agencies and groups of employees as excepted entirely from coverage under chapters 43 and 75. These agencies or groups of positions (e.g., the Foreign Service, CIA, and GAO) have always been excluded by their own separate statutes. In addition to agencies and positions specified as excluded by their own statutes, OPM is aware of other groups of positions which, under their respective statutes, are also excluded from various parts of title 5. Consequently, if a position was previously excluded by an agency's own statutory authority from chapters 43 and 75, it continues to be excluded.

**3. Part 432—Coverage of Excepted Service Nonpreference Eligible Employees**

The Act revises 5 U.S.C. 4303(e) to provide that nonpreference eligible employees in the excepted service with the requisite 2 years of service who are covered by subchapter II of 5 U.S.C. chapter 75 have the right to appeal to the Merit Systems Protection Board (MSPB) under 5 U.S.C. 7701. Thus, after 2 years of service, these employees now have the right to appeal a removal or reduction in grade taken under 5 U.S.C. chapter 43 to MSPB. They continue to be entitled to the procedural protections of 5 U.S.C. chapter 43 after 1 year.

OPM is deleting the reference to Noncareer Executive Assignment positions in part 432 because Executive Order 12748 of February 1, 1991, abolished the Executive Assignment System. These positions were at grades

GS-16, 17, and 18, and incumbents of these positions were converted to Schedule C appointments under 5 CFR 319.103(c)(2)(ii).

**4. Miscellaneous**

OPM is amending subpart C of part 752, which contains the statutory requirements for all adverse actions other than suspensions of 14 days or less, to incorporate the current statutory language.

OPM is amending part 432 and subparts B and D of part 752 to show the new exclusion from title 5 of employees of the Administrative Office of Courts by the Administrative Office of the United States Courts Personnel Act of 1990, which established a separate personnel system for these employees.

Pursuant to section 553(d)(2) of title 5, United States Code, I find that good cause exists for issuing these regulations as interim and effective immediately, in order to implement provisions of the Due Process Amendments, the Administrative Office of the United States Courts Personnel Act, and Executive Order 12748, which are already in effect. No other changes to existing regulations have been made.

**E.O. 12291, Federal Regulation**

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

**List of Subjects in 5 CFR Parts 432 and 752**

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,  
Director.

Accordingly, OPM is amending part 432 and part 752 of title 5 of the Code of Federal Regulations to read as follows:

**PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS**

1. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4302a, 4303, and 4305.

2. In § 432.102, paragraph (c)(3) is revised; paragraph (c)(4) is removed; paragraph (c)(5) is redesignated as paragraph (c)(4); and paragraph (f)(12) is revised to read as follows:



**§ 432.102 Coverage.**

(c) \* \* \*

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation; and

(f) \* \* \*

(12) A technician in the National Guard described in 5 U.S.C. 8337(h)(1), employed under section 709(b) of title 32;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and

3. In § 432.108, paragraphs (a)(2) and (a)(3) are revised; and paragraph (a)(4) is added. Paragraphs (b)(1)(ii) and (b)(1)(iii) are revised; and paragraph (b)(1)(iv) is added, to read as follows:

**§ 432.108 Appeal and grievance rights.**

(a) \* \* \*

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(4) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of this chapter.

(b) \* \* \*

(1) \* \* \*

(ii) In the competitive service, serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(iv) A nonpreference eligible in the excepted service who is covered by subparts C and D of Part 752 of the chapter.

**PART 752—ADVERSE ACTIONS**

4. The authority citation for part 752 continues to read in part as follows:

Authority: 5 U.S.C. 7504 and 7514. \* \* \*

5. In § 752.201, subpart B of part 752, paragraph (b)(6) is revised and paragraph (b)(7) is removed, to read as follows:

**§ 752.201 Coverage.**

(b) \* \* \*

(6) An employee of the Government Printing Office.

6. In § 752.301, paragraphs (a)(1), (b), and (c) of statutory § 7511 are revised to read as follows:

**§ 752.301 Principal statutory requirements.****§ 7511. Definitions; Application**

(a) For the purpose of this subchapter—  
(1) "employee" means—

(A) An individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or  
(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

(i) in an executive agency; or  
(ii) in the United States Postal Service or Postal Rate Commission; and

(C) an individual in the excepted service other than a preference eligible—

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or  
(ii) who has completed 2 years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to 2 years or less;

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the President for a position that the President has excepted from the competitive service;

(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(C) the President or the head of an agency for a position excepted from the competitive service by statute;

(3) whose appointment is made by the President;

(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

(7) whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;

(8) whose position is within the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1500 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability; or

(9) who is described in section 5102(c)(11) of this title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulations of the Office which is not otherwise covered by this subchapter.

7. In § 752.401, paragraphs (c) and (d) are revised to read as follows:

**§ 752.401 Coverage.**

(c) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous service in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at 5 U.S.C. 105, the U.S. Postal Service, or the Postal Rate Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100-90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at 5 U.S.C. 105 and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;



(6) An employee with competitive status who occupies a position is Schedule B of part 213 of this chapter;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position; and

(8) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by: The President for a position that the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in 5 U.S.C. 8337(h)(1) who is employed under section 709(b) of title 32;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency, the General Accounting Office, and the Veterans Health Services and Research Administration;

(8) A nonpreference eligible employee with the U.S. Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10;

(9) An employee described in 5 U.S.C. 5102(c)(11) who is an alien or noncitizen occupying a position outside the United States;

(10) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service; and

(11) An employee whose agency or position has otherwise been excluded from the appointing and adverse action provisions of title 5 by separate statutory provision.

[FR Doc. 92-10804 Filed 5-8-92; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 92-AWA-3]

#### Amendment to Manchester Airport Radar Service Area, NH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the description of the Manchester, NH, Airport Radar Service Area (ARSA). A final rule was published in the *Federal Register* on October 23, 1991, (56 FR 55028), that established the Manchester ARSA. This action clarifies the airspace to be excluded from the ARSA.

**EFFECTIVE DATE:** 0901 U.t.c., June 25, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

#### SUPPLEMENTARY INFORMATION:

##### History

A final rule was published in the *Federal Register* on October 23, 1991 (56 FR 55028), with an effective date of December 12, 1991, that established the Manchester ARSA. The rule inadvertently failed to describe the ARSA airspace correctly. This action corrects that error. The airport radar service area listed in this document is published in section 71.501 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

##### The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the description of the Manchester ARSA. This action clarifies the airspace to be excluded from the ARSA. Accordingly, since this action merely involves describing the ARSA correctly and does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas, Incorporation by reference.

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, *Compilation of Regulations*, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.501 Airport Radar Service Areas*

\* \* \* \* \*

Manchester Airport, NH [Revised]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Manchester Airport (lat. 42°56'00"N., long. 71°26'18"W.); including that airspace extending upward from 2,500 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport; including that airspace from 1,500 feet MSL between a 5-mile radius and 10-mile radius south of the airport from Interstate 93 clockwise to the eastern edge of the 5-mile radius of Nashua Airport; including that airspace from 2,000 feet MSL between a 5-mile radius and 10-mile radius north of the airport from the Manchester VORTAC 315° radial clockwise to Interstate 93.

\* \* \* \* \*

Issued in Washington, DC, on April 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-10907 Filed 5-8-92; 8:45 am]

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