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SECOND SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SECOND SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY (THE SECOND SUPPLEMENTARY AGREEMENT), WHICH CONSISTS OF TWO SEPARATE INSTRUMENTS: A PRINCIPAL AGREEMENT AND AN ADMINISTRATIVE AGREEMENT, PURSUANT TO 42 U.S.C. 443(e)(1)

OCTOBER 10, 1995.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

20–120 WASHINGTON : 1995

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act (the "Act"), as amended by the Social Security Amendments of 1977 (Public Law 95–216; 42 U.S.C. 433(e)(1)), I transmit herewith the Second Supplementary Agreement Amending the Agreement Between the United States of America and the Federal Republic of Germany on Social Security (the Second Supplementary Agreement), which consists of two separate instruments: a principal agreement and an administrative arrangement. The Second Supplementary Agreement, signed at Bonn on March 6, 1995, is intended to modify certain provisions of the original United States-Germany Social Security Agreement, signed January 7, 1976, which was amended once before by the Supplementary Agreement of October 2, 1986.

The United States-Germany Social Security Agreement is similar in objective to the social security agreements with Austria, Belgium, Canada, Finland, France, Greece, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation, and to help prevent the loss of benefit protection that can occur when workers divide their careers between two countries.

The present Second Supplementary Agreement, which would further amend the 1976 Agreement to update and clarify several of its provisions, is necessitated by changes that have occurred in U.S. and German law in recent years. Among other things, it would extend to U.S. residents the advantages of recent German Social Security legislation that allows certain ethnic German Jews from Eastern Europe to receive German benefits based on their Social Security coverage in their former homelands.

The United States-Germany Social Security Agreement, as amended, would continue to contain all provisions mandated by section 233 and other provisions that I deem appropriate to carry out the provisions of section 233, pursuant to section 233(c)(4) of the Act.

I also transmit for the information of the Congress a report prepared by the Social Security Administration explaining the key points of the Second Supplementary Agreement, along with a paragraph-by-paragraph explanation of the effect of the amendments on the principal agreement and the related administrative arrangement. Annexed to this report is the report required by section 233(e)(1) of the Act on the effect of the agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the agreement. The Department of State and the Social Security Administration have recommended the Second Supplementary Agreement and related documents to me.

I commend the United States-Germany Second Supplementary Social Security Agreement and related documents.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 10, 1995.*

Second Supplementary Agreement

Amending the Agreement

between the United States of America

and

the Federal Republic of Germany

on Social Security

of January 7, 1976

The United States of America

and

the Federal Republic of Germany,

intending to revise and supplement the Agreement on Social Security between the United States of America and the Federal Republic of Germany concluded on January 7, 1976, as amended by the Supplementary Agreement of October 2, 1986, hereinafter referred to as "the Agreement",

have agreed as follows:

Article 1

1. Article 1 of the Agreement shall be revised as follows:

a) Paragraph 1 shall be revised to read as follows:

"1. "Territory" means, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, and as regards the Federal Republic of Germany, the area in which the Basic Law (Grundgesetz) of the Federal Republic of Germany is in force;".

b) Paragraph 3 shall be revised to read as follows:

"3. "Competent Authority" means, as regards the United States of America, the Social Security Administration, and as regards the Federal Republic of Germany, the Federal Ministry of Labor and Social Affairs;".

2. In Article 2, paragraph 1(a), of the Agreement, the words "Farmers' Old Age Benefits" shall be replaced with the words "Farmers' Old-Age Security".

3. Article 6, paragraph 2, of the Agreement shall be revised to read as follows:

"2. The employment of a person in the territory of one Contracting State to which he was sent from the territory of the other Contracting State by his employer in that territory shall

continue to be subject to the laws on compulsory coverage of only the other Contracting State, as if he were still employed in the territory of the other Contracting State, even when the employer also has a place of business (Zweigniederlassung) in the territory of the Contracting State of employment, provided that the employment in the territory of the first Contracting State is not expected to exceed 5 years."

4. In Article 8 of the Agreement, the following paragraph 8 shall be added after paragraph 7:

"8. In the application of Article 7, paragraph 1, of the Agreement, a period of coverage under United States laws shall also include a period during which a person employed at an establishment of the United States Government in the Federal Republic of Germany was covered under the provisions of the United States civil service retirement system."

5. Paragraph 2(b) of the Final Protocol to the Agreement shall be revised to read as follows:

"(b) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Pension Insurance system or to the Farmers' Old-Age Security system of the Federal Republic of Germany."

6. Paragraph 5 of the Final Protocol to the Agreement shall be revised by adding the following subparagraph (e):

"(e) If, according to Article 6, paragraphs 2 to 5, of the Agreement, a person

- employed in the territory of the Federal Republic of Germany is not subject to German laws, the German laws on compulsory coverage for sickness insurance and contributions and benefits according to the Act on Social Security for the Risk of Long-Term Care shall also not apply to the person and the person's employer;

- employed in the territory of the United States of America is not subject to United States laws, the United States laws on Federal hospital insurance for the Aged and Disabled (Medicare, Part A) shall also not apply to the person and the person's employer."

7. The following paragraph 8 shall be added after paragraph 7 of the Final Protocol to the Agreement:

"8. (a) Persons described in Article 3(a)-(c) of the Agreement who, prior to the date on which the National Socialist sphere of influence extended to what was then their homeland,

- belonged to the German language and cultural group,
- had already attained age 16, and
- had not acknowledged themselves to be ethnically German because they were Jewish,

and who left the areas of expulsion within the meaning of Article 1, paragraph 2, number 3, of the German Federal Law on Displaced Persons, may, upon application, pay retroactive voluntary contributions to the German pensions insurance system, provided that periods of contributions or periods of employment under the Foreign Pensions Law first become creditable for these persons as a result of §17a of the Foreign Pensions Law. The retroactive voluntary contributions may only be paid for periods after attainment of age 16 and before attainment of age 65 and starting with the time the National Socialist sphere of influence was extended to what was then their homeland. Contributions shall only be permitted for periods that have not already been credited as periods of contributions according to German laws. An event that gives rise to eligibility for benefits shall not preclude the payment of these retroactive voluntary contributions, provided the event occurs prior to the expiration of the time limit for payment of the contributions.

(b) Retroactive voluntary contributions according to subparagraph (a) may not exceed the amount necessary to permit payment of benefits based on periods creditable under §17a of the Foreign Pensions Law in accordance with the statutory pension provisions on payment of benefits to eligible persons abroad that were applicable in the territory of the Federal Republic of Germany--without the Acceding Territory (Beitrittsgebiet)--on July 1, 1990.

(c) Notwithstanding the second sentence of subparagraph (a), persons who attained age 65 on or before October 31, 1991, and who, on July 1, 1990, do not meet the requirements for payment of benefits abroad through retroactive voluntary contributions pursuant to this Agreement, may pay voluntary contributions for the period from July 1, 1990, to

November 30, 1991, but in an amount no greater than that which is necessary for the payment of the benefit abroad; for this purpose, the date of eligibility may be deferred to a point in time after attainment of age 65.

(d) Contributions shall be paid in an amount of 84.48 Deutsche Mark for each calendar month; for this purpose, the amount of retroactive voluntary contributions to be paid may be reduced by the amount of any resulting benefits that are payable retroactively. For the computation of the insured person's relevant German Benefit Computation Base, the values for the year 1994 shall be applied to the retroactively paid contributions.

(e) For purposes of computing the benefit amount, the statutory pension provisions applicable within the territory of the Federal Republic of Germany--without the Acceding Territory--on July 1, 1990, including the provisions on benefit payments to eligible persons abroad, shall be applied, together with this Agreement. The provisions on revaluation of pensions based on Personal Remuneration Points (§307 of Volume VI of the Social Law Code) shall be applied as appropriate. The monthly amount of the benefit that is to be paid abroad shall be derived from the Pension Category Factor, as well as

(aa) the Personal Remuneration Points for contribution periods under §17a of the Foreign Pensions Law that are to be considered in accordance with the first sentence of this subparagraph (e); provided, however, that these shall be multiplied by the Present Pension Value (East)--but not more than 0.7 times the Present Pension Value--and a Pension Value of 15.96 Deutsche Mark shall apply for the period from July 1, 1990, to December 31, 1990, a Pension Value of 18.36 Deutsche Mark shall apply for the period from January 1, 1991, to June 30, 1991, and a Pension Value of 21.11 Deutsche Mark shall apply for the period from July 1, 1991, to December 31, 1991;

(bb) the Personal Remuneration Points for contribution periods to be considered according to subparagraphs (b) and (c) multiplied by the Present Pension Value that is applicable for the year in which the pension is to be paid, with the amount of 46.00 Deutsche Mark being used for periods prior to July 1, 1995; and

(cc) the remaining Personal Remuneration Points multiplied by the Present Pension Value that is applicable for the year for which the pension is to be paid, with the amount of 39.58 Deutsche Mark being used for periods prior to July 1, 1991.

(f) Subparagraphs (a) through (e) shall only apply with respect to eligible persons who established ordinary residence in the United States of America before July 1, 1990.

(g) For purposes of payment of survivors benefits, subparagraphs (a) through (f) shall apply as appropriate to survivors of persons described in subparagraph (a), even if the insured person dies prior to the expiration of the time limit for retroactive voluntary contributions. This shall also apply in the case of benefits for former spouses with pension rights and in the case of reinstated survivors pensions.

(h) An application to pay retroactive voluntary contributions according to this paragraph must be filed within 24 calendar months following the entry into force of this paragraph. The application must be filed with the social insurance agency to which the last German contribution was paid or deemed to have been paid, and which is competent for adjudicating the benefit claim. If the last contribution was paid to an agency of the miners pensions insurance system, retroactive voluntary contributions may only be paid to the wage earners or salaried employees insurance system. The contributions shall be paid to the social insurance agency that is competent to accept and process the application.

(i) Applications under subparagraph (h) shall be considered timely filed applications for benefits. Benefits resulting from this paragraph shall be paid beginning July 1, 1990, if the event giving rise to eligibility occurs prior to this date and the benefit eligibility requirements applicable on July 1, 1990, are met. If the event giving rise to eligibility occurs after June 30, 1990, benefits resulting from this paragraph shall be paid beginning with the calendar month following the month in which the event giving rise to eligibility occurs and the benefit eligibility requirements applicable on July 1, 1990, are met; a survivors benefit shall be paid from the date of death if a benefit was not payable to the insured person for the month of death.

(j) Subparagraphs (h) and (i) shall also apply with respect to persons whose pensions were awarded prior to the entry into force of this paragraph. In this case, the amount of Personal Remuneration Points shall at least equal the amount previously considered."

8. Paragraph 8 of the Final Protocol to the Agreement shall be redesignated as paragraph 9.

Article 2

1. This Supplementary Agreement shall enter into force on the first day of the month following the month in which the Governments of the Contracting States will have notified each other that the internal national requirements necessary to enable the Supplementary Agreement to take effect have been met. Article 1, paragraph 7, shall be applied retroactively from July 1, 1990. Article 1, paragraph 3, shall apply only with respect to persons who are transferred from one Contracting State to the other Contracting State as of the entry into force of this Supplementary Agreement.

2. This Supplementary Agreement shall remain in force for the same period as the Agreement.

IN WITNESS WHEREOF, the undersigned have signed this Supplementary Agreement.

DONE at Bonn on March 06, 1995 in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

Charles E Redman

FOR THE FEDERAL REPUBLIC OF GERMANY:

Second Supplementary Administrative Agreement

Amending the Administrative Agreement of June 21, 1978,

for the Implementation of the Agreement

between the United States of America

and

the Federal Republic of Germany

on Social Security

of January 7, 1976

The Government of the United States of America

and

the Government of the Federal Republic of Germany,

in application of Article 16, paragraph 1, of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, as amended by the Second Supplementary Agreement of this date, hereinafter referred to as "the Agreement",

for the purpose of amending the Administrative Agreement for the Implementation of the Agreement, signed on June 21, 1978, as amended by the Supplementary Administrative Agreement of October 2, 1986, hereinafter referred to as "the Administrative Agreement",

have agreed as follows:

Article 1

1. Article 4 of the Administrative Agreement shall be revised as follows:

a) Paragraph 3 shall be revised to read as follows:

"3. Article 6, paragraph 2, of the Agreement shall apply to a person if he is transferred from the territory of one Contracting State to the territory of the other Contracting State within the context of a preexisting employment relationship."

b) The following paragraph 3a shall be added after paragraph 3:

"3a. If a person has been sent from the territory of a Contracting State to the territory of the other Contracting State for a specified period of work in accordance with Article 6, paragraph 2, of the Agreement, and the person subsequently begins a new period of work in the territory of the other Contracting State, Article 6, paragraph 2, of the Agreement shall not apply to the new period unless

(a) the new period of work begins at least 12 months after the end of the initial period of work or

(b) the new period of work is not expected to last beyond 5 years from the date on which the initial period of work began."

2. Article 13 of the Administrative Agreement shall be deleted.

Article 2

This Supplementary Administrative Agreement shall enter into force on the date of entry into force of the Second Supplementary Agreement of this date amending the Agreement. Article 1, paragraph 1, shall apply only with respect to persons who are transferred from one Contracting State to the other Contracting State as of the entry into force of this Supplementary Administrative Agreement.

DONE at Bonn on March 06, 1995 in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY:

ANNEX A

AGREEMENT

**SECOND SUPPLEMENTARY AGREEMENT
AMENDING THE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND
THE FEDERAL REPUBLIC OF GERMANY
ON SOCIAL SECURITY OF JANUARY 7, 1976**

The United States of America
and
the Federal Republic of Germany,

intending to revise and supplement the Agreement on Social Security between the United States of America and the Federal Republic of Germany concluded on January 7, 1976, as amended by the Supplementary Agreement of October 2, 1986, hereinafter referred to as "the Agreement",

have agreed as follows:

ANNOTATIONS AND COMMENTS

This Supplementary Agreement will amend the U.S.-German Social Security Agreement (30 UST 6099; TIAS 9542) that was signed on January 7, 1976, and which entered into force on December 1, 1979. A related Supplementary Administrative Agreement will amend an Administrative Agreement that was signed June 21, 1978, for the implementation of the 1976 Agreement. These are the second Supplementary Agreement and Supplementary Administrative Agreement the two countries have negotiated to revise the original instruments. The first supplementary accords were signed in 1986 and entered into force on March 1, 1988.

The primary purpose of the new Supplementary Agreement is to permit payment of German Social Security benefits to certain ethnic German Jews who formerly resided in Eastern Europe and now live in the United States. In addition, the supplementary agreement makes revisions in the original agreement that are necessary to take account of changes in U.S. and German law that have occurred in recent years and to conform the original agreement more closely to other Social Security agreements concluded by the two countries.

AGREEMENT

Article 1

1. Article 1 of the Agreement shall be revised as follows:

a) Paragraph 1 shall be revised to read as follows:

"1. "Territory" means, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, and as regards the Federal Republic of Germany, the area in which the Basic Law (Grundgesetz) of the Federal Republic of Germany is in force;".

ANNOTATIONS AND COMMENTS

Article 1.1 would revise Article 1 of the original agreement to update the definitions of two terms used in the agreement.

The definition of United States "territory" in Article 1.1 of the original U.S.-German Social Security agreement is identical to the definition of "United States" in title II of the U.S. Social Security Act. That definition includes the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa, but not the Northern Mariana Islands (NMI). However, the Covenant establishing the NMI Commonwealth in political union with the United States provides that the U.S. Social Security program is to apply in the NMI as it applies in Guam. Because all U.S. Social Security agreements apply to Guam, the U.S. Social Security Administration began applying the agreements to the NMI as of January 1, 1987, when the U.S. Social Security program was first extended there. Article 1.1(a) makes clear that the definition of United States "territory" includes the NMI.

The Supplementary Agreement makes no change in the definition of German "territory;" i.e., the area in which the Basic Law (Grundgesetz) of the Federal Republic of Germany is in force. Since October 3, 1990, this area has included the 5 new "Länder"; i.e., States, that formerly composed the German Democratic Republic (GDR), as well as the 11 previously existing Länder of the Federal Republic.

AGREEMENT

b) Paragraph 3 shall be revised to read as follows:

"3. "Competent Authority" means, as regards the United States of America, the Social Security Administration, and as regards the Federal Republic of Germany, the Federal Ministry of Labor and Social Affairs;".

2. In Article 2, paragraph 1(a), of the Agreement, the words "Farmers' Old Age Benefits" shall be replaced with the words "Farmers' Old-Age Security".

3. Article 6, paragraph 2, of the Agreement shall be revised to read as follows:

"2. The employment of a person in the territory of one Contracting State to which he was sent from the territory of the other Contracting State by his employer in that territory shall continue to be subject to the laws on compulsory coverage of only the other Contracting State, as if he were still employed in the territory of the other Contracting State, even when the employer also has a place of business (Zweigniederlassung) in the territory of the Contracting State of employment, provided that the employment in the territory of the first Contracting State is not expected to exceed 5 years."

ANNOTATIONS AND COMMENTS

Article 1.1 would also revise the definition of "Competent Authority" in Article 1.3 of the original agreement. With respect to the United States, the revision takes into account the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296) which removes the Social Security Administration from the Department of Health and Human Services and establishes it as an independent agency effective March 31, 1995. With respect to Germany, the definition has been revised to stipulate that the "Federal Ministry" (rather than the "Federal Minister") of Labor and Social Affairs is the German Competent Authority.

Article 1.2 conforms the terminology of the agreement to a recent change in the name of the German Social Security program applicable to farmers (see also Article 1.5).

Article 6.2 of the original Agreement, in conjunction with Article 4.3 of the Administrative Agreement, provides that an employee working for an employer in the United States or Germany who is transferred to work in the other country for the same employer for a temporary period will continue to be covered by the country from which the employee has been sent. Article 1.3 of the Supplementary Agreement amends this provision to make clear that, in order for the rule to apply, the transfer to the other country must not be expected to exceed 5 years. This change brings the U.S.-German agreement into conformity with nearly all other U.S. Social Security agreements.

AGREEMENT	ANNOTATIONS AND COMMENTS
4. In Article 8 of the Agreement, the following paragraph 8 shall be added after paragraph 7: "8. In the application of Article 7, paragraph 1, of the Agreement, a period of coverage under United States laws shall also include a period during which a person employed at an establishment of the United States Government in the Federal Republic of Germany was covered under the provisions of the United States civil service retirement system."	In the past, non-U.S. citizens who were hired in Germany by the United States Government to work at U.S. diplomatic and consular posts were covered under the U.S. civil service retirement system (CSRS). When such persons are hired today, however, they are generally covered under the German Social Security system. Under the U.S.-German Social Security agreement, Germany counts periods of U.S. Social Security coverage to determine eligibility for German benefits. Since the agreement does not apply to the CSRS, however, persons who worked in Germany for the U.S. Government and who were covered under the CSRS cannot use their periods of CSRS coverage to qualify for German benefits. Under Article 1.4 of the Supplementary Agreement, Germany has agreed to count periods of CSRS coverage earned by a person while working for the U.S. Government in Germany for purposes of qualifying for German Social Security benefits. Article 1.4 has no effect on eligibility for U.S. Social Security or CSRS benefits.
5. Paragraph 2(b) of the Final Protocol to the Agreement shall be revised to read as follows: "(b) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Pension Insurance system or to the Farmers' Old-Age Security system of the Federal Republic of Germany."	Article 1.5 conforms the terminology of the Agreement to a recent change in the name of the German Social Security program applicable to farmers (see also Article 1.2).

AGREEMENT

6. Paragraph 5 of the Final Protocol to the Agreement shall be revised by adding the following subparagraph (e):

"(e) If, according to Article 6, paragraphs 2 to 5, of the Agreement, a person

- employed in the territory of the Federal Republic of Germany is not subject to German laws, the German laws on compulsory coverage for sickness insurance and contributions and benefits according to the Act on Social Security for the Risk of Long-Term Care shall also not apply to the person and the person's employer;

- employed in the territory of the United States of America is not subject to United States laws, the United States laws on Federal hospital insurance for the Aged and Disabled (Medicare, Part A) shall also not apply to the person and the person's employer."

ANNOTATIONS AND COMMENTS

One of the main purposes of the original Agreement is the elimination of dual coverage and tax liability under the Social Security systems of the United States and Germany. In accordance with this objective, workers who are sent from the United States to Germany for a temporary assignment are exempted, under specified conditions, from coverage and contributions under the German old-age, survivors and disability insurance system. Under Paragraph 5(e) of the Final Protocol to the Agreement, as added by Article 1.6 of the Supplementary Agreement, workers who are exempt from German coverage and contributions will also be exempt from coverage and contributions under the German sickness insurance program, as well as the program of long-term nursing care that will become effective in Germany in 1995.

The second half of the new Paragraph 5(e) of the Final Protocol states that a person who is exempt from coverage and contributions under the U.S. Social Security program will also be exempt from coverage and contributions under the Medicare hospital insurance program and the portion of U.S. Social Security taxes that finance this program. This clarification merely reaffirms the existing legal situation; it makes no substantive change.

AGREEMENT

7. The following paragraph 8 shall be added after paragraph 7 of the Final Protocol to the Agreement:

"8. (a) Persons described in Article 3(a)-(c) of the Agreement who, prior to the date on which the National Socialist sphere of influence extended to what was then their homeland,

- belonged to the German language and cultural group,
- had already attained age 16, and
- had not acknowledged themselves to be ethnically German because they were Jewish,

and who left the areas of expulsion within the meaning of Article 1, paragraph 2, number 3, of the German Federal Law on Displaced Persons, may, upon application, pay retroactive voluntary contributions to the German pensions insurance system, provided that periods of contributions or periods of employment under the Foreign Pensions Law first become creditable for these persons as a result of §17a of the Foreign Pensions Law. The retroactive voluntary contributions may only be paid for periods after attainment of age 16 and before attainment of age 65 and starting with the time the National Socialist sphere of influence was extended to what was then their homeland. Contributions shall only be permitted for periods that have not already been credited as periods of contributions according to German laws. An event that gives rise to

ANNOTATIONS AND COMMENTS

Article 1.7 of the Supplementary Agreement adds a new Paragraph 8 to the Final Protocol of the original Agreement. As explained below, this new provision is intended to allow certain U.S. residents to pay contributions to the German pensions insurance system on a voluntary basis.

Under Germany's "Foreign Pensions Law" (FPL), members of German ethnic minorities outside Germany who were forced to flee their homelands may receive credits under the German Social Security system for periods during which they were covered under the Social Security system in their country of origin. These "areas of expulsion" according to the German Federal Law on Displaced Persons include territories that now comprise Albania, Bulgaria, China, the Czech Republic, Slovakia, Hungary, Poland, Romania, and the Republics of the former Soviet Union and former Yugoslavia.

To qualify for FPL credits, the persons involved must generally prove that they had acknowledged themselves as ethnic Germans while in their former homelands. However, many ethnic German Jews who lived in areas that came under the influence of the German Nazi regime before and during the Second World War avoided acknowledging themselves as German due to anti-Semitism prevailing at the time and the fear of losing their Jewish identity. Section 17a of the Foreign Pensions Law, which was added by a 1989 amendment effective July 1, 1990, permits these ethnic German Jews to receive FPL credits as well.

While persons who reside in the United States may qualify for FPL credits based on §17a of the Foreign Pensions Law, many who do have been unable to receive benefits based on the newly awarded

AGREEMENT

eligibility for benefits shall not preclude the payment of these retroactive voluntary contributions, provided the event occurs prior to the expiration of the time limit for payment of the contributions.

ANNOTATIONS AND COMMENTS

credits because of benefit portability restrictions in German law. These restrictions generally prevent a person who is outside of Germany from receiving a pension based on FPL credits unless the person has paid contributions to the German pensions insurance system. The more German contributions a person has paid, the greater the amount of pension based on FPL credits the person can receive while outside Germany. (See the annotation to Paragraph 8(b).) Because many U.S. residents who first became eligible for FPL credits as a result of §17a of the Foreign Pensions Law never lived in Germany and were never covered under the German Social Security system, they have been unable to receive any German benefits based on the FPL credits. By allowing these persons to pay German contributions retroactively, Article 1.7 of the Supplementary Agreement will make it possible for them to receive German benefits based on their FPL credits while living in the United States.

To be eligible to pay voluntary contributions under the new Paragraph 8(a), a person must be either a U.S. or German national, a refugee or a stateless person. In conformity with the requirements that were included in §17a of the Foreign Pensions Law at the time of its enactment, contributions will be permitted only by persons who had attained age 16 prior to the date that Nazi influence extended to their homelands. These dates, which are specified for each territory in German regulations, range from January 30, 1933, in the case of Danzig (present-day Gdansk, Poland), to September 1, 1941, in the case of the Baltic States, the Ukraine and certain other territories. Moreover, voluntary contributions will not be permitted under this pro-

AGREEMENT

ANNOTATIONS AND COMMENTS

vision for periods prior to these dates or after the date a person attained age 65, except as provided in Paragraph 8(c).

Following the general provisions of German law, Paragraph 8(a) does not allow voluntary contributions to be paid for any month that has already been credited as a period of coverage under the German pensions insurance system, including a month that is credited under the Foreign Pensions Law. Contributions will be permitted, however, for periods credited under U.S. law.

German law generally prohibits the payment of voluntary contributions for periods after the occurrence of an event that gives rise to benefit eligibility, such as death or disability onset. Under Paragraph 8(a), however, voluntary contributions will be permitted after such an event, as long as it occurs within 2 years following the date the Supplementary Agreement enters into force.

(b) Retroactive voluntary contributions according to subparagraph (a) may not exceed the amount necessary to permit payment of benefits based on periods creditable under §17a of the Foreign Pensions Law in accordance with the statutory pension provisions on payment of benefits to eligible persons abroad that were applicable in the territory of the Federal Republic of Germany--without the Acceding Territory (Beitrittsgebiet)--on July 1, 1990.

Under the provisions of Federal German law applicable on July 1, 1990 (not the law of the "Acceding Territory"--i.e., the former GDR), the number of months of FPL credits that could be taken into account in determining the pension payable to a person living outside Germany could not exceed the number of months of coverage completed by the person in Germany. A person outside Germany who had little or no coverage in Germany, therefore, received little benefit from §17a. By allowing a person to pay retroactive voluntary contributions, Paragraph 8 allows such a person to increase the number of months of FPL credits that are taken into account in determining the pension amount payable abroad. Since the primary purpose

AGREEMENT

(c) Notwithstanding the second sentence of subparagraph (a), persons who attained age 65 on or before October 31, 1991, and who, on July 1, 1990, do not meet the requirements for payment of benefits abroad through retroactive voluntary contributions pursuant to this Agreement, may pay voluntary contributions for the period from July 1, 1990, to November 30, 1991, but in an amount no greater than that which is necessary for the payment of the benefit abroad; for this purpose, the date of eligibility may be deferred to a point in time after attainment of age 65.

(d) Contributions shall be paid in an amount of 84.48 Deutsche Mark for each calendar month; for this purpose, the amount of retroactive voluntary contributions to be paid may be reduced by the amount of any resulting benefits that are payable retroactively. For the computation of the insured person's relevant German Benefit Computation Base, the values for the year 1994 shall be applied to the retroactively paid contributions.

ANNOTATIONS AND COMMENTS

of this provision is to allow payment of benefits based on §17a, Paragraph 8(b) stipulates that voluntary contributions will only be permitted for as many months as are needed to allow full payment abroad of the pension based on §17a credits.

Voluntary contributions under Paragraph 8 will generally be prohibited for periods after age 65. A minor exception is permitted, however, in cases where this limitation would prevent a person from paying enough contributions retroactively to qualify for exportation of the pension based on FPL credits effective July 1, 1990. In this case, a person will be permitted to pay contributions for the period from July 1, 1990, to November 30, 1991, even though the person was over age 65 for the period covered by the contributions. The number of months for which contributions are paid, however, cannot exceed the number of months needed to permit payment of the pension based on FPL credits.

Paragraph 8(d) stipulates that persons who are eligible to make voluntary contributions may pay the contributions only in the amount of 84.48 Deutsche Mark (DM) for each month they wish to have credited. This amount is equivalent to the special minimum voluntary contribution that residents of the former GDR are permitted to make in 1994 under certain conditions. Benefits for which a person qualifies based on voluntary contributions may be paid retroactively to July 1, 1990. According to German authorities, the amount of retroactive benefits a person receives will, in most cases, exceed the amount of voluntary contributions he or she has to pay in order to make the benefits payable. Paragraph 8(d)

AGREEMENT

(e) For purposes of computing the benefit amount, the statutory pension provisions applicable within the territory of the Federal Republic of Germany--without the Acceding Territory--on July 1, 1990, including the provisions on benefit payments to eligible persons abroad, shall be applied, together with this Agreement. The provisions on revaluation of pensions based on Personal Remuneration Points (§307 of Volume VI of the Social Law Code) shall be applied as appropriate. The monthly amount of the benefit that is to be paid abroad shall be derived from the Pension Category Factor, as well as

(aa) the Personal Remuneration Points for contribution periods under §17a of the Foreign Pensions Law that are to be considered in accordance with the first sentence of this subparagraph (e); provided, however, that these shall be multiplied by the Present Pension Value (East)--but not more than 0.7 times the Present Pension Value--and a Pension Value of 15.96 Deutsche Mark shall apply for the period from July 1, 1990, to December 31, 1990, a Pension Value of 18.36 Deutsche Mark shall apply for the period from January 1, 1991,

ANNOTATIONS AND COMMENTS

makes it possible for a person who wishes to make voluntary contributions to have the amount of the contributions deducted from his or her retroactive benefit payment. (See the discussion of Paragraph 8(e)(bb) below for an explanation of the last sentence of Paragraph 8(d).)

Paragraph 8(e) includes provisions for determining the amount of benefits that result from the payment of retroactive voluntary contributions under the Supplementary Agreement. The computation will be based on the law of the Federal Republic as in effect on July 1, 1990 (the effective date of §17a of the Foreign Pensions Law). Amendments to German law that became effective after this date introduced substantially less favorable provisions on exportation of benefits based on FPL credits. In general, applying the German law in effect on July 1, 1990, will, therefore, be much more favorable for the persons concerned than applying present German law.

Another amendment to German law, which became effective on January 1, 1992, introduced a new Social Security benefit computation formula. In general, the new benefit formula is a simplified restatement of the old formula. Although Paragraph 8(e) generally provides for the application of German law as in effect on July 1, 1990, the second sentence of Paragraph 8(e) authorizes Germany to compute benefit amounts using the new simplified benefit formula. The new formula is as follows:

Monthly Pension Amount	=	Personal Remuneration Points	X	Pension Category Factor	X	Present Pension Value

AGREEMENT

to June 30, 1991, and a Pension Value of 21.11 Deutsche Mark shall apply for the period from July 1, 1991, to December 31, 1991;

(bb) the Personal Remuneration Points for contribution periods to be considered according to subparagraphs (b) and (c) multiplied by the Present Pension Value that is applicable for the year in which the pension is to be paid, with the amount of 46.00 Deutsche Mark being used for periods prior to July 1, 1995; and

(cc) the remaining Personal Remuneration Points multiplied by the Present Pension Value that is applicable for the year for which the pension is to be paid, with the amount of 39.58 Deutsche Mark being used for periods prior to July 1, 1991.

ANNOTATIONS AND COMMENTS

A worker receives credit for one "Personal Remuneration Point (PRP)" for each year in which his or her annual earnings amount equals the national average wage and proportionately more or less than one PRP if the earnings amount is more or less than the national average. The "Pension Category Factor" varies with each type of pension. For example, it is 1.0 for old-age and total invalidity pensions; 0.6667 for occupational invalidity pensions; and 0.6 for pensions paid to surviving spouses who are over age 45, disabled or caring for a child. The "Present Pension Value (PPV)" is DM 46.00 as of July 1, 1994, and is adjusted every July 1 for increases in average earnings levels. Personal Remuneration Points that are based on periods of coverage completed in territory comprising the former GDR are generally multiplied by a lower PPV, known as the "Present Pension Value (East)."

The appropriate Pension Category Factor, as determined according to German law, will be used to compute all benefits resulting from Paragraph 8. In accordance with clauses (aa), (bb) and (cc), respectively, three separate benefit computations will be performed to determine the portion of the benefit that is payable based on (1) periods of coverage credited under §17a of the Foreign Pensions Law, (2) periods of coverage for which retroactive voluntary contributions are paid, and (3) other periods of coverage (for example, periods of covered work in the Federal Republic).

<u>Clause (aa)</u>

Under German law, the Personal Remuneration Points that are assigned to periods of coverage credited under §17a of the Foreign Pensions Law

are based on the worker's occupation while working in the country of origin. Under clause (aa), the Present Pension Value by which these PRP's will be multiplied in the benefit formula above will not be the regular PPV, but rather the following values:

Period for which the Pension is Paid:	Present Pension Value:
7/1/90-12/31/90	DM 15.96
1/1/91-6/30/91	DM 18.36
7/1/91-12/31/91	DM 21.11
1/1/92-6/30/92	DM 23.57 (PPV (East))
7/1/92-12/31/92	DM 26.57 (PPV (East))
1/1/93-6/30/93	DM 28.19 (PPV (East))

Beginning July 1, 1993, the PPV (East) has exceeded 70 percent of the regular PPV. In accordance with Paragraph 8(e)(aa), pensions payable for periods beginning with this date based on §17a credits will be determined by multiplying the Personal Remuneration Points under §17a by 70 percent of the regular PPV (DM 31.14 for 7/1/93-6/30/94; DM 32.20 for 7/1/94-6/30/95).

Clause (bb)

The Personal Remuneration Points to be assigned to each year for which retroactive voluntary contributions are paid under the Supplementary Agreement will equal, in accordance with Paragraph 8(d), the ratio between (1) the earnings corresponding to the person's voluntary contributions (contributions + current contribution rate of 19.2 percent) and (2) the average annual earnings of all covered workers for 1994 (DM 51,877). Payment of twelve monthly contributions of

AGREEMENT	ANNOTATIONS AND COMMENTS
	DM 84.48 for a year will thus yield 0.1017 PRP's for the year: (DM 84.48 X 12 ÷ 0.192) ÷ DM 51,877 = 0.1017 The total PRP's based on voluntary contributions will be multiplied by the Present Pension Value for the year for which the pension is paid. For benefits payable retroactively for periods prior to July 1, 1995, the PRP's will be multiplied by DM 46.00 (the Present Pension Value applicable from July 1, 1994, to June 30, 1995) rather than the lower PPV that would actually have applied for those periods. <u>Clause (cc)</u> Personal Remuneration Points based on other periods of coverage under German law, such as periods of covered work in the Federal Republic, will be multiplied by the Present Pension Value for the year for which the pension is paid. For benefits payable retroactively for the period from July 1, 1990, to June 30, 1991, the PRP's will be multiplied by DM 39.58 (equal to the Present Pension Value that would have applied for this period based on German earnings levels at that time).
(f) Subparagraphs (a) through (e) shall only apply with respect to eligible persons who established ordinary residence in the United States of America before July 1, 1990.	To be eligible to pay retroactive voluntary contributions under the Supplementary Agreement, a person will have to have established U.S. residence before July 1, 1990, the effective date of §17a of the Foreign Pensions Law.
(g) For purposes of payment of survivors benefits, subparagraphs (a) through (f) shall apply as appropriate to survivors of persons described in subparagraph (a),	Subparagraph (g) assures that surviving spouses and orphans of persons who would have been eligible to pay retroactive voluntary contributions under the Supplementary Agreement will be able to

AGREEMENT

even if the insured person dies prior to the expiration of the time limit for retroactive voluntary contributions. This shall also apply in the case of benefits for former spouses with pension rights and in the case of reinstated survivors pensions.

(h) An application to pay retroactive voluntary contributions according to this paragraph must be filed within 24 calendar months following the entry into force of this paragraph. The application must be filed with the social insurance agency to which the last German contribution was paid or deemed to have been paid, and which is competent for adjudicating the benefit claim. If the last contribution was paid to an agency of the miners pensions insurance system, retroactive voluntary contributions may only be paid to the wage earners or salaried employees insurance system. The contributions shall be paid to the social insurance agency that is competent to accept and process the application.

(i) Applications under subparagraph (h) shall be considered timely filed applications for benefits. Benefits resulting from this paragraph shall be paid beginning July 1, 1990, if the event giving rise to eligibility occurs prior to this date and the benefit eligibility requirements applicable on July 1, 1990, are met. If the event giving rise to eligibility occurs after June 30, 1990, benefits resulting from this paragraph shall be paid

ANNOTATIONS AND COMMENTS

pay the contributions on behalf of the deceased person in order to qualify for survivors benefits. This provision also applies to surviving divorced spouses and surviving spouses who remarried, but whose subsequent marriage was terminated due to death, divorce, etc.

Subparagraph (h) stipulates that a person must file an application to be eligible to pay contributions under Paragraph 8, and, to be valid, this application must be filed within 2 years after the entry into force of the Supplementary Agreement. Subparagraph (h) also specifies the German agency with which the application must be filed and the contributions paid.

Subparagraph (i) specifies the date from which benefits will be paid based on the new Paragraph 8. This will generally be July 1, 1990, if all benefit eligibility requirements were met as of this date.

AGREEMENT

beginning with the calendar month following the month in which the event giving rise to eligibility occurs and the benefit eligibility requirements applicable on July 1, 1990, are met; a survivors benefit shall be paid from the date of death if a benefit was not payable to the insured person for the month of death.

(j) Subparagraphs (h) and (i) shall also apply with respect to persons whose pensions were awarded prior to the entry into force of this paragraph. In this case, the amount of Personal Remuneration Points shall at least equal the amount previously considered."

8. Paragraph 8 of the Final Protocol to the Agreement shall be redesignated as paragraph 9.

Article 2

1. This Supplementary Agreement shall enter into force on the first day of the month following the month in which the Governments of the Contracting States will have notified each other that the internal national requirements necessary to enable the Supplementary Agreement to take effect have been met. Article 1, paragraph 7, shall be applied retroactively from July 1, 1990. Article 1, paragraph 3, shall apply only with respect to persons who are transferred from one Contracting State to the other Contracting State as of

ANNOTATIONS AND COMMENTS

Subparagraph j) makes it clear that a person who is already entitled to a benefit from German pensions insurance may make retroactive contributions under this Supplementary Agreement in order to increase the amount of the benefit. In this case, the person's benefit will be recomputed to take account of the additional periods of coverage resulting from the retroactive voluntary contributions and periods of coverage under §17a of the Foreign Pensions Law.

Article 1.8 makes a conforming change in numbering.

Article 2 provides that each country will follow its own procedures for approval of the Supplementary Agreement. In Germany, the Supplementary Agreement is subject to Parliamentary review. In the United States, it must be presented to the Congress for a review period during which at least one House has been in session on each of 60 days as required by section 233(e) of the Social Security Act. The Supplementary Agreement will enter into force on the first day of the calendar month following the date each Government has received formal notification of approval from the

AGREEMENT	ANNOTATIONS AND COMMENTS
the entry into force of this Supplementary Agreement.	other Government. However, Article 1.7 of the Supplementary Agreement, which authorizes payment of retroactive voluntary contributions under the German system, shall be applied as if it had entered into force on July 1, 1990. Article 1.3 of the Supplementary Agreement, which establishes a 5-year limit on exemptions from host country Social Security coverage and contributions, will only apply where a worker is transferred from one country to the other after the Supplementary Agreement enters into force.
2. This Supplementary Agreement shall remain in force for the same period as the Agreement.	The Supplementary Agreement shall have the same period of validity as the original Agreement.
IN WITNESS WHEREOF, the undersigned have signed this Supplementary Agreement. DONE at Bonn on March 6, 1995 in duplicate in the English and German languages, both texts being equally authentic. For the United States of America: For the Federal Republic of Germany: Charles E. Redman Dieter Kastrup	The Supplementary Agreement was signed in Bonn on March 6, 1995, by the United States Ambassador to Germany, Charles E. Redman, and State Secretary Dieter Kastrup of the German Foreign Ministry.

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

Second Supplementary Administrative Agreement
Amending the Administrative Agreement
of June 21, 1978,
for the Implementation of the Agreement
between the United States of America
and the Federal Republic of Germany
on Social Security of January 7, 1976

The Government of the United States of America
and
the Government of the Federal Republic of Germany,

in application of Article 16, paragraph 1, of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, as amended by the Second Supplementary Agreement of this date, hereinafter referred to as "the Agreement",

for the purpose of amending the Administrative Agreement for the Implementation of the Agreement, signed on June 21, 1978, as amended by the Supplementary Administrative Agreement of October 2, 1986, hereinafter referred to as "the Administrative Agreement",

have agreed as follows:

ANNOTATIONS AND COMMENTS

The original administrative agreement (30 UST 6150; TIAS 9542) was signed on June 21, 1978. It entered into force on October 30, 1979, with effect from December 1, 1979--the same date the original principal agreement entered into force. The administrative agreement establishes various policies and procedures for implementation of the principal agreement. This is the second supplementary administrative agreement to revise the original administrative agreement. The first supplementary administrative agreement was signed on October 6, 1986, and entered into force on December 1, 1988.

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

Article 1

1. Article 4 of the Administrative Agreement shall be revised as follows:

a) Paragraph 3 shall be revised to read as follows:

"3. Article 6, paragraph 2, of the Agreement shall apply to a person if he is transferred from the territory of one Contracting State to the territory of the other Contracting State within the context of a preexisting employment relationship."

b) The following paragraph 3a shall be added after paragraph 3:

"3a. If a person has been sent from the territory of a Contracting State to the territory of the other Contracting State for a specified period of work in accordance with Article 6, paragraph 2, of the Agreement, and the person subsequently begins a new period of work in the territory of the other Contracting State, Article 6, paragraph 2, of the Agreement shall not apply to the new period unless

(a) the new period of work begins at least 12 months after the end of the initial period of work or

(b) the new period of work is not expected to last beyond 5 years from the date on which the initial period of work began."

ANNOTATIONS AND COMMENTS

Article 1.1(a) makes a conforming change in Article 4.3 of the Administrative Agreement to take account of the new 5-year limit on transfers to which a host country coverage exemption can apply under Article 6.2 of the Agreement.

Article 1.1(b) of this Supplementary Administrative Agreement clarifies the manner in which Article 6.2 of the Agreement will be applied in the case of employed or self-employed persons from one country who have successive assignments or periods of work in the other country. Under Article 6.2 of the Agreement, as amended by the Second Supplementary Agreement, an employee who is transferred by his or her employer from one country to the other for a period not expected to exceed 5 years will remain subject to the Social Security laws of the sending country and exempt from the laws of the host country. In accordance with Article 1.6 of the Agreement, the rule applies similarly to self-employed persons who travel from one country to the other to perform work for a period expected to last 5 years or less.

Article 6.2 of the Agreement is intended to eliminate dual coverage while maintaining the worker's coverage in the country to which he or she has the greater economic attachment. Article 1.1(b) of this Supplementary Administrative Agreement ensures that Article 6.2 of the Agreement will be applied in a manner consistent with its intent

SUPPLEMENTARY ADMINISTRATIVE AGREEMENT	ANNOTATIONS AND COMMENTS
	when a worker from one country undertakes a series of assignments in the other country. Under Article 1.1(b), if an employer sends an employee (or a self-employed person sends himself) from one country to the other for a series of assignments, the worker will remain subject to the laws of the sending country and exempt from the laws of the host country during the second or any subsequent assignment only if that assignment is expected to end within 5 years of the beginning date of the first assignment, or if a period of 1 year has elapsed since the end of the most recent assignment.
2. Article 13 of the Administrative Agreement shall be deleted.	Article 13 of the original Administrative Agreement provides that payments which a Social Security agency must make to a Social Security agency of the other country, for example, as reimbursement for administrative assistance obtained by the other country's agency, must be made in the other country's currency. This requirement has led to small increases in administrative costs due to currency conversions. Repealing Article 13 will add flexibility to the reimbursement procedure so that these additional expenses can be avoided.
Article 2	
This Supplementary Administrative Agreement shall enter into force on the date of entry into force of the Second Supplementary Agreement of this date amending the Agreement. Article 1, paragraph 1, shall apply only with respect to persons who are transferred from one Contracting State to the other Contracting State as of the entry into force of this Supplementary Administrative Agreement.	The Supplementary Administrative Agreement will enter into force on the same date as the Supplementary Agreement. The rule in Article 1, paragraph 1, of the Supplementary Administrative Agreement (regarding coverage exemptions in the case of successive assignments from one country to the other) will only apply where a worker is transferred from one country to the other after the Supplementary Administrative Agreement enters into force.

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SUPPLEMENTARY ADMINISTRATIVE AGREEMENT

DONE at Bonn on March 6, 1995 in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY:
Charles E. Redman	Dieter Kastrup

ANNOTATIONS AND COMMENTS

The Supplementary Administrative Agreement was signed in Bonn on March 6, 1995, by the United States Ambassador to Germany, Charles E. Redman, and State Secretary Dieter Kastrup of the German Foreign Ministry.

ANNEX B

REPORT TO CONGRESS ON THE FINANCIAL EFFECT
OF THE UNITED STATES-GERMAN SUPPLEMENTARY SOCIAL SECURITY AGREEMENT
SIGNED ON MARCH 6, 1995

Under the subject supplementary agreement, the basic provisions of the original agreement regarding the elimination of dual coverage and taxation would be modified in two ways. First, explicit wording would be added defining the temporary transfer rule to apply to transfers expected to last five years or less (subject to possible extensions). This change would affect certain persons expecting to work for a period of more than five years either in the U.S. for a German employer, or in Germany for a U.S. employer. These workers, and their employers, would no longer pay social security taxes to the country from which they came, but would pay such taxes to the country in which they work. It is expected that few workers would be affected by this modification. We estimate that this provision would have a negligible effect on both the U.S. and the German social security systems, i.e., a net change of less than $500,000 in tax revenues each year. The direction of the change depends upon the relative numbers of these workers sent to each country. For example, if ten such workers come to this country from Germany and only five workers go to Germany from the U.S., the effect on the U.S. system would be an increase in tax revenues while the effect on the German system would be a reduction in tax revenues.

Second, the supplementary agreement would provide that U.S. workers temporarily in Germany, now exempt only from the German Social Security tax that finances retirement, survivors and disability pensions, will also be exempt from taxes for sickness and long-term nursing care benefits. This change, affecting both employee and employer taxes, would have no effect on the U.S. social security system, but would result in estimated reductions in taxes to the German system of about $15 million per year.

The supplementary agreement also includes provisions that would allow certain ethnic German Jews who were forced to leave their homes in Eastern Europe and who now live in the United States to pay voluntary contributions to the German Social Security system in order to qualify for benefits under that system. These provisions would have no effect on the U.S. social security system, but would result in additional benefit payments (to U.S. residents) from the German system. We have made no estimates of the effect on the German system. However, German authorities have estimated that about 10,000 U.S. residents could get benefits under these provisions. The German authorities have also provided a "typical" example illustrating the estimated benefit and contribution effect of the provision. As an illustration of the overall potential impact of the provision, *if* the 10,000 estimate were correct and *if* the estimated benefits and contribution effect in the example provided to us represent the average effect for the 10,000 persons, then about $50 million per year in additional benefits would be paid from the German social security system. Under this scenario, about $90 million in net retroactive payments for the period from July 1990 through September 1995 would also be paid from the German system.

The estimates for the two coverage and taxation changes and the illustration of the effect of the other change are based on the alternative II assumptions of the 1994 Trustees Report, updated to reflect recent experience. They are in dollars and are based on an exchange rate of 1.529 Deutsche Marks per dollar.

Social Security Administration
November 30, 1994

REPORT TO CONGRESS TO ACCOMPANY THE SECOND SUPPLEMENTARY SOCIAL SECURITY AGREEMENT BETWEEN THE UNITED STATES AND GERMANY

INTRODUCTION

The second supplementary Social Security agreement between the United States and Germany is intended to modify certain provisions of the original U.S.-German Social Security agreement (TIAS 9542), which was signed on January 7, 1976, and which entered into force on December 1, 1979. The original agreement was amended once before by a supplementary agreement that entered into force on March 1, 1988.

U.S.-German Social Security Agreement

The Social Security agreement between the United States and Germany is one of 17 bilateral agreements the United States has concluded with foreign countries to provide limited coordination of the U.S. old-age, survivors, and disability insurance (OASDI) program with the comparable programs of the other countries. Like other U.S. agreements, the agreement with Germany has two main purposes. First, it eliminates dual Social Security coverage and taxation, the situation that occurs when a person from one country works in the other country and is required to pay Social Security taxes to both countries on the same earnings. The agreement includes rules that assign a worker's Social Security coverage and tax liability to only one country.

Second, the agreement helps prevent gaps in Social Security benefit protection for workers who divide their careers between the two countries. Under the agreement, workers and their family members can qualify for partial U.S. or German benefits based on "totalized" (i.e., combined) work credits from both countries. When entitlement to a benefit from the United States or Germany is based on combined credits, the amount of the benefit is proportional to the length of time the worker was covered in the paying country.

Supplementary Agreement

The second supplementary agreement, which was signed by representatives of the U.S. and German Governments on March 6, 1995, would amend the original agreement to update and clarify several of its provisions. The primary purpose of the supplementary agreement is to extend to U.S. residents the advantages of recent German Social Security legislation that allows certain ethnic German Jews from Eastern Europe to receive German benefits based on their Social Security coverage in their former homelands. The supplementary agreement would make a number of additional revisions in the original agreement that are

necessary to take account of changes that have occurred in U.S. and German law in recent years.

The supplementary agreement, which is now being transmitted to Congress for review in accordance with section 233(e) of the Social Security Act, consists of two instruments:

(1) a supplementary agreement revising the original U.S.-German agreement; and

(2) a supplementary administrative agreement which revises an administrative agreement signed on June 21, 1978, for implementation of the original agreement.

Accompanying this report is a paragraph-by-paragraph explanation of the supplementary agreement and supplementary administrative agreement (Annex A) and the estimate required by section 233(e)(1) on the effect of the supplementary agreement on income and expenditures of the U.S. Social Security program (Annex B). Also included is a composite version of the original agreement and administrative agreement marked to show the changes that will be made as a result of the supplementary agreement (Annex C).

MAIN PROVISIONS

German Voluntary Contribution Provision

One of the most important objectives of the new supplementary agreement is to permit payment of German Social Security benefits to certain ethnic German Jews who formerly resided in Eastern Europe and who now live in the United States. Sizable German ethnic minorities have existed in the countries of Eastern Europe for centuries. In the 20th Century, however, many members of these minorities were forced to leave their homelands due to persecution and adverse political conditions. Under Germany's *Fremdrentengesetz*, or "Foreign Pensions Law" (FPL) of 1960, periods of Social Security coverage that these ethnic Germans earned in their country of origin may be taken into account in determining eligibility for benefits under the German Social Security system. In order to have these periods counted, such persons generally must prove that they had acknowledged themselves as ethnic Germans while in their homelands. Unfortunately, many ethnic German Jews in areas that came under German Nazi control during the 1930's and 1940's avoided acknowledging themselves as German due to anti-Semitism prevailing at the time and fear of losing their Jewish identity.

The FPL was amended in 1989 so that these ethnic German Jews from Eastern Europe can also have FPL periods taken into account However, another provision of German law has the effect of nullifying the 1989 liberalization for U.S. residents. This

provision stipulates that pensions based on FPL credits generally cannot be paid to persons outside Germany unless the person has also earned credits under the German Social Security system itself. The more German credits a person has earned, the greater the amount of pension based on FPL credits the person can receive while outside Germany. Since many of the people who were supposed to derive advantages from the 1989 amendment have never worked under the German Social Security system, they have been unable to receive any benefit from the new provisions.

This supplementary agreement will allow U.S. citizens living in the United States, who first became eligible for FPL credits as a result of the 1989 German amendment, to pay voluntary contributions to the German system retroactively, thus making it possible for them to receive German benefits based not only on the voluntary contributions, but on their FPL credits as well. Benefits resulting from this provision will generally be payable retroactively to July 1, 1990, and German authorities have indicated that, in most cases, the total retroactive benefit payments will exceed the amount of voluntary contributions that were required to make the benefits payable.

Coverage of Temporarily Transferred Workers

Under the 1979 agreement, a person who works in the United States or Germany is generally covered and taxed (along with the person's employer) only by the country in which the person is working. However, if an employer in one country sends a person to work in the other country for a temporary period, the person remains covered only by the sending country. Unlike the similar provisions in other U.S. Social Security agreements, the agreement with Germany includes no specific time limit on the transfers to which this provision applies. The supplementary agreement would revise the temporary transfer rule in the U.S.-German agreement so that it explicitly applies only to transfers that are expected to last 5 years or less, subject to possible extensions if both countries agree. This change will bring the U.S.-German agreement into conformity with other U.S. Social Security agreements.

The supplementary agreement would also expand the scope of the German tax exemption available to workers (and their employers) who are sent from the United States to work temporarily in Germany. At present, these workers and employers are exempt only from the German Social Security tax that finances retirement, survivors and disability pensions. Under the supplementary agreement, workers and employers who qualify for a German Social Security tax exemption will also be exempt from the German contributions for sickness and long-term nursing care benefits.

ANNEX C

SOCIAL SECURITY AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY

Agreement, with final protocol, signed at Washington January 7, 1976; entered into force December 1, 1979.
Amended by supplementary agreement signed at Washington October 2, 1986; entered into force March 1, 1988.
Second supplementary agreement signed at Bonn March 6, 1995.

Administrative agreement signed at Washington June 21, 1978; entered into force October 30, 1979; effective December 1, 1979.
Amended by supplementary administrative agreement signed at Washington October 2, 1986; entered into force March 1, 1988.
Second supplementary administrative agreement signed at Bonn March 6, 1995.

The following is a composite version of the U.S.-German Social Security Agreement, marked to show revisions made by the Second Supplementary Agreement and Second Supplementary Administrative Agreement, both signed March 6, 1995. Text in underlined bold italics has been added; text in brackets with strikeout markings has been deleted.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

The United States of America and the Federal Republic of Germany,

Being Desirous of regulating the relationship between them in the area of social security,

Have agreed as follows:

PART I

General Provisions

Article 1

For the purpose of this Agreement

1. "Territory" means, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, [~~and~~] American Samoa ***and the Commonwealth of the Northern Mariana Islands***, and as regards the Federal Republic of Germany, the area in which the Basic Law (Grundgesetz) of the Federal Republic of Germany is in force;

2. "Laws" means the laws and regulations concerning the systems of social security specified in Article 2, paragraph 1;

3. "Competent Authority" means, as regards the United States of America, [~~the Secretary of Health, Education, and Welfare~~] ***the Social Security Administration***, and as regards the Federal Republic of Germany, the Federal [~~Minister~~] ***Ministry*** of Labor and Social Affairs [~~(Bundesminister für Arbeit und Sozialordnung)~~];

4. "Agency" ("Träger") means the institution or authority responsible for implementing laws specified in Article 2, paragraph 1;

5. "Competent Agency" means the agency responsible for applying the laws in a specific case;

6. "Employment" means employment or self-employment as defined by the applicable laws;

7. "Period of coverage" ("Versicherungszeit") means a period of payment of contributions or a period of earnings from employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

8. "Benefit" ("Rente") means old-age, dependent, survivor, or disability insurance benefit provided by the applicable laws;

9. "Cash benefit" ("Geldleistung") means a benefit ("Rente") and any other cash payment provided by the applicable laws; and

10. "Benefit-in-kind" ("Sachleistung") means a rehabilitation benefit-in-kind provided by the applicable laws.

Article 2

1. For the purpose of this Agreement, the applicable laws are:

(a) as regards the Federal Republic of Germany, laws governing

- Wage Earners' Pension Insurance
- Salaried Employees' Pension Insurance
- Miners' Pension Insurance
- Steelworkers' Supplementary Pension Insurance
- Farmers' Old-Age [~~Benefits~~] ***Security***; and

(b) as regards the United States of America, laws governing

- the Federal Old-Age, Survivors and Disability Insurance Program.

2. Laws within the meaning of paragraph 1 of this Article shall not include laws resulting for one Contracting State from other international treaties or supranational legislation, or from laws promulgated for their implementation.

Article 3

Unless otherwise provided, the present Agreement shall apply to

(a) nationals of a Contracting State within the meaning of Article XXV, paragraph 6, of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Federal Republic of Germany of October 29, 1954 and of

paragraph 22 of the Protocol thereto, with the proviso that henceforth the term "Certificate of Residence" (Heimatschein) shall be replaced by the term "Certificate of Nationality" (Staatsangehörigkeitsausweis),

(b) refugees within the meaning of Article 1 of the Convention on the Status of Refugees dated July 28, 1951 and the Protocol to that Convention dated January 31, 1967,

(c) stateless persons within the meaning of Article 1 of the Convention on the Status of Stateless Persons dated September 28, 1954,

(d) other persons with respect to the rights they derive from a national of either Contracting State, from a refugee or a stateless person within the meaning of this Article, and

(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

Article 4

1. Unless otherwise specified in the present Agreement, the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of either Contracting State shall in the application of the laws of one Contracting State receive equal treatment with the nationals of that Contracting State.

2. Nationals of one Contracting State who ordinarily reside outside of the territories of both Contracting States shall be granted the cash benefits-in-kind provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who ordinarily reside outside of the territories of both Contracting States.

Article 5

Unless otherwise provided in this Agreement, the laws of one Contracting State which require that entitlement to or payment of

cash benefits be dependent on residence in the territory of that Contracting State, shall not be applicable to the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of the other Contracting State.

Article 6

1. Except as otherwise provided in this Article, persons who have employment within the territory of one of the Contracting States shall be subject to the laws on compulsory coverage of only that Contracting State even when the employer is located in the territory of the other Contracting State.

2. The employment of a person in the territory of one Contracting State to which he was sent from the territory of the other Contracting State by his employer in that territory shall continue to be subject to the laws on compulsory coverage of only the other Contracting State, as if he were still employed in the territory of the other Contracting State, even when the employer also has a place of business (Zweigniederlassung) in the territory of the Contracting State of employment, ***provided that the employment in the territory of the first Contracting State is not expected to exceed 5 years***.

3. In the case of the employment of a person as an officer or member of a crew of a sea-going vessel which has been granted the right to fly the flag of the Federal Republic of Germany, a German aircraft, an American vessel, an American aircraft, a vessel which has been granted the right to fly the flag of the Federal Republic of Germany and is at the same time an American vessel under United States laws, or of an aircraft which is a German aircraft but which is treated as an American aircraft under United States laws, the following rules shall apply with regard to the laws on compulsory coverage:

(a) If the person is subject to the laws of only one of the Contracting States, he shall remain subject to those laws.

(b) If the person is a national of one of the Contracting States and subject to the laws of both

Contracting States, he shall be subject only to the laws of the Contracting State of which he is a national.

(c) (1) If the person is a national of both Contracting States or is a member of a group specified in Article 3(b), (c) or (e) and is subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State in whose territory he ordinarily resides.

(2) If he does not ordinarily reside in the territory of either Contracting State, he and his employer may apply for an exemption from the laws on compulsory coverage of one of the Contracting States under the procedure provided in paragraph 5 of this Article.

(d) A person who is a national of one Contracting State employed on the vessel or aircraft of the other Contracting State and who is not otherwise subject to the laws on compulsory coverage of either Contracting State shall be subject to the laws on compulsory coverage of the other Contracting State.

4. (a) A national of one of the Contracting States employed by that Contracting State in the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(b) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he does not ordinarily reside, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(c) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he ordinarily resides, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the other Contracting State.

5. Upon application of a person specified in the preceding paragraphs of this Article, except paragraph 3(c)(2), and his employer, or upon application of a self-employed person, the Competent Authority (or the office designated by it) of the Contracting State from whose laws on compulsory coverage the exemption is desired may grant the exemption, if the person and his employer, or the self-employed person, will be subject to the laws on compulsory coverage of the other Contracting State.

PART II
Benefit Insurance System

Article 7

1. Where periods of coverage have been completed under the laws of both Contracting States, the Agency which determines the entitlement to cash benefits and benefits-in-kind under its laws shall take account of periods of coverage which are creditable under the laws of the other Contracting State and which do not coincide with periods of coverage credited under its own laws.

2. This Agreement shall not result in entitlement to a benefit under the laws of a Contracting State unless a minimum period of coverage has been completed by a person under its laws and the completed period of coverage alone does not result in entitlement to benefits. In the application of United States laws, periods of coverage totaling 6 quarters of coverage shall be the required minimum, and, in the application of German laws, periods of coverage totaling 18 months shall be the required minimum.

3. Where a person's periods of coverage are less than the minimum period required by paragraph 2 of this Article under the laws of one Contracting State, those periods of coverage, whether or not consecutive, shall nevertheless be considered by the Agency of the other Contracting State for purposes of the computation of a benefit, as if they were periods of coverage under its own laws, provided that

(a) the person has the minimum period required by paragraph 2 under the laws of the other Contracting State and has entitlement for benefits with or without the application of paragraph 1, of this Article under the laws of the other Contracting State, or

(b) the person is entitled to benefits under the laws of the other Contracting State with less than the minimum period required by paragraph 2.

Article 8

The following provisions shall apply to the Federal Republic of Germany:

1. The periods of coverage to be considered in accordance with Article 7 shall be taken into account by the insurance system whose Agency is competent for determining a person's benefit if only the German laws were applied. If under this provision the Competent Agency is the Miners' Pension Insurance system, the periods of coverage completed under United States laws shall be taken into account by the Miners' Pension Insurance system if the periods were completed underground in a mine.

2. Periods of coverage completed under United States laws which are to be considered by the Competent Agency for the computation of the benefit payable by it, in accordance with Article 7, paragraph 3, shall only increase the number of creditable insurance years under German laws.

3. In determining the benefit computation base (Rentenbemessungsgrundlage), only periods of coverage considered under German laws shall be taken into account.

4. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, only half of the benefit amount which is attributable to deemed periods of coverage (Zurechnungszeit) shall be payable.

5. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, one-

half of the child's supplement or of the supplement to the orphan's pension shall be payable.

6. For purposes of terminating the right to the compensatory cash benefit for a miner who has been separated from his mining occupation (Knappschaftsausgleichsleistung), a United States mining establishment shall be treated as equivalent to a German mining establishment.

7. In the case of a self-employed craftsman, whose liability status for compulsory coverage is conditional upon payment of a minimum number of contributions, periods of coverage completed under United States laws shall be taken into account to determine whether the craftsman is liable.

8. In the application of Article 7, paragraph 1, of the Agreement, a period of coverage under United States laws shall also include a period during which a person employed at an establishment of the United States Government in the Federal Republic of Germany was covered under the provisions of the United States civil service retirement system.

Article 9

The following provisions shall apply to the United States of America:

1. Where entitlement to a benefit under United States laws is established according to the provisions of Article 7, paragraph 1, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on

(a) the person's average earnings credited under United States laws, and

(b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

2. Periods during which a person was determined by a Competent Germany Agency to be totally disabled under German laws shall, when it is to his advantage, to be excluded in determining whether he meets the insured status requirements under United States laws and in computing a Primary Insurance Amount under this Agreement.

[Paragraph 3 deleted effective March 1, 1988]

PART III
Miscellaneous Provisions

Chapter 1
Administrative Cooperation

Article 10

The Competent Authorities, Agencies and associations of the Agencies of the Contracting States shall assist each other in applying this Agreement and in implementing each other's laws as if they were applying their own laws. This assistance shall be free of charge subject to exceptions to be agreed upon by the Contracting States.

Article 11

1. A final decision of a Court or a ruling by a Competent Authority or an Agency of a Contracting State, concerning a matter arising under its laws, which is enforceable under its laws, shall be recognized by the other Contracting State. A Contracting State may refuse recognition if the decision or ruling is contrary to its public policy including its requirements for due process of law.

2. The final decisions and rulings referred to in paragraph 1 shall be enforced under the laws specified in Article 2, paragraph 1, in the territory of the Contracting State in which the decisions or rulings are recognized.

Article 12

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an Agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an Agency of the other Contracting State in accordance with its laws.

2. A document or a copy of a document, certified as authentic which is accepted as authentic by the Competent Authority or an Agency of one Contracting State shall be accepted as authentic by the Competent Authority or an Agency of the other Contracting State without further certification.

Article 13

1. The Competent Authorities and the Agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected by a Competent Authority or an Agency because it is in the official language of the other Contracting State.

Article 14

1. An application in writing or other document presented to the Competent Authority or an Agency of a Contracting State shall have the same effect as if it were presented to the Competent Authority or an Agency of the other Contracting State.

2. A person who files an application for cash benefits under the laws of a Contracting State may request that it not be treated as an application for cash benefits under the laws of the other Contracting State, or that it be effective on a different date in the other Contracting State, within the limitations of and in conformity with the laws of the other Contracting State.

Article 15

The consular officers of a Contracting State at diplomatic or consular posts in the territory of the other Contracting State, at the request of a person who is a national of the first Contracting State, may take measures necessary to safeguard and maintain the rights of that person. The person's authorization need not be proven.

Chapter 2
Implementation of the Agreement

Article 16

1. The Competent Authorities of the Contracting States shall, by mutual agreement, establish administrative procedures which are required to implement this Agreement. They shall inform each other of any amendments or additions to their laws.

2. Liaison agencies designated for the implementation of this Agreement are:

(a) In the Federal Republic of Germany -

(1) for the Wage Earners' Pension Insurance system, the Landesversicherungsanstalt Freie und Hansestadt Hamburg (Regional Insurance Institution for Hamburg), Hamburg,

(2) for the Salaried Employees' Pension Insurance system, the Bundesversicherungsanstalt für Angestellte (Federal Insurance Institution for Salaried Employees), Berlin,

(3) for the Miners' Pension Insurance system, the Bundesknappschaft (Federal Miners' Insurance Institution), Bochum,

(4) for the Steelworkers' Supplementary Pension Insurance system, the Landesversicherungsanstalt für das Saarland (Regional Insurance Institution for the Saarland), Saarbrücken,

(5) to the extent that the German statutory sickness insurance agencies are involved in administering the Agreement, the Bundesverband der Ortskrankenkassen (Federal Association of Local Sickness Insurance Agencies), Bonn;

(b) In the United States of America - the Social Security Administration.

Article 17

An agency of a Contracting State may validly pay cash benefits to a person in the territory of the other Contracting State in the currency of its own State or of the other Contracting State. If the cash benefits are paid in the currency of the other Contracting State, the currency conversion shall be at the exchange rate in force on the day the remittance is made.

Article 18

[Deleted effective March 1, 1988.]

Article 19

1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities it shall, at the request of either Contracting State, be submitted for arbitration in accordance with the following procedures:

(a) An arbitration board shall be established on an ad hoc basis with each Contracting State appointing one member, and both members agreeing on a citizen from a third North Atlantic Treaty Organization member state as chairman who shall be appointed by the Governments of the two Contracting States. The members shall be appointed within two months,

and the chairman within three months, after one Contracting State has informed the other that it will refer the dispute to an arbitration board.

(b) If the deadlines mentioned in paragraph 2(a) are not met, each Contracting State may, in the absence of other agreements, ask the Secretary General of the North Atlantic Treaty Organization to make the necessary appointments. If the Secretary General is a national of one of the Contracting States or is prevented from acting for another reason, the Deputy Secretary General shall make the appointments. In case the Deputy Secretary General also is a national of one of the two Contracting States or is prevented from acting for another reason, the next Assistant Secretary General following in rank by protocol who is not a national of one of the two Contracting States and who is not prevented from acting for another reason, shall make the appointments.

(c) The arbitration board shall make its decision by majority vote on the basis of the agreements existing between the parties and general international law. Its decision shall be binding on both Contracting States. Each Contracting State shall bear the cost for its member, as well as for its representation in the proceedings before the arbitration board; the cost for the chairman as well as other expenses, shall be shared equally between the Contracting States. The arbitration board can make a different decision concerning the allocation of expenses. In all other respects the arbitration board shall establish its own rules of procedure.

Part IV
Transitional and Final Provisions

Article 20

1. This Agreement shall not establish any claim to payment of cash benefits for any period before its entry into force.

2. In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant under the laws occurring before the entry into force of this Agreement.

3. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

4. Cash benefits to which there was entitlement before the entry into force of this Agreement may be recomputed under its provisions. At least the amount of the cash benefits previously payable shall continue to be payable after the recomputation.

Article 21

The attached Final Protocol shall form an integral part of this Agreement.

Article 22

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Agreement.

Article 23

1. This Agreement shall be ratified, and the instruments of ratification shall be exchanged as soon as possible in Bonn.

2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

Article 24

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting States.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of cash benefits acquired under it shall be retained; rights in the process of being acquired shall be recognized in conformity with supplementary agreements.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement and affixed thereto their seals.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:
David Mathews

FOR THE FEDERAL REPUBLIC OF GERMANY:
Von Staden
Walter Arendt

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between the United States of America and the Federal Republic of Germany, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to Article 1, paragraph 2, of the Agreement: The term "laws" shall include the regulations adopted by the German Agencies (Träger) relating to the systems of social security specified in Article 2, paragraph 1, of the Agreement.

2. With reference to Article 2 of the Agreement:

(a) Regarding Article 2, paragraph 1(b), of the Agreement, with respect to the United States of America, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program are title II of the Social Security Act of 1935, as amended, and regulations promulgated under the authority provided therein, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 as amended.

(b) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Pension Insurance system or to the Farmers' Old-Age [~~Benefit~~] **Security** system of the Federal Republic of Germany.

(c) If under the laws of one of the Contracting States the requirements for the application of another Convention or a supranational regulation are fulfilled in addition to the requirements for the application of this Agreement, the

Agency of this Contracting State shall disregard the other Convention or supranational regulation when applying this Agreement.

(d) Article 2, paragraph 2, of the Agreement and paragraph 2(c) of this Protocol shall not apply if the social security laws resulting for the Federal Republic of Germany from international treaties or supranational law or designed to implement such treaties or law contain provisions relating to the apportionment of insurance burdens.

3. With reference to Article 4 of the Agreement:

(a) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.

(b) German laws which guarantee participation of the insured and of the employers in the organs of self-government of the Agencies and of their associations as well as in the adjudication of social security matters shall remain unaffected.

4. With reference to Article 5 of the Agreement:

(a) The German laws regarding cash benefits in respect of periods of coverage accumulated other than under federal law shall remain unaffected.

(b) German laws concerning the granting of medical, occupational and supplementary rehabilitation measures by the Agencies of the Pension Insurance system shall remain unaffected.

(c) Article 5 of the Agreement shall also apply to United States laws under which payment of cash benefits is made dependent on physical presence in the territory of the United States.

(d) For persons who ordinarily reside in the United States of America, Article 5 of the Agreement shall not apply with respect to benefits under German laws on account of occupational invalidity, total invalidity, or miners' occupational invalidity (verminderte bergmännische

Berufsfähigkeit) if the occupational invalidity, total invalidity or miners' occupational invalidity is also due to labor market conditions.

5. With reference to Article 6 of the Agreement:

(a) Article 6 of the Agreement shall also apply to persons who are treated as employees under the laws specified in Article 2, paragraph 1(a), of the Agreement.

(b) Article 6, paragraph 4, of the Agreement shall apply to an employee of any German public employer.

(c) With respect to the United States of America, the term "employed by that Contracting State" in Article 6, paragraph 4(a), of the Agreement shall mean employed by the Federal Government or one of its instrumentalities, and the term "employee of the first Contracting State" in Article 6, paragraph 4, (b) and (c), of the Agreement shall mean an employee of the Federal Government or one of its instrumentalities.

(d) Article 6, paragraph 5, of the Agreement shall not apply to exemptions from United States laws of United States nationals who ordinarily reside in the territory of the United States of America.

(e) If, according to Article 6, paragraphs 2 to 5, of the Agreement, a person

- *employed in the territory of the Federal Republic of Germany is not subject to German laws, the German laws on compulsory coverage for sickness insurance and contributions and benefits according to the Act on Social Security for the Risk of Long-Term Care shall also not apply to the person and the person's employer;*

- *employed in the territory of the United States of America is not subject to United States laws, the United States laws on Federal hospital insurance for the Aged and Disabled (Medicare, Part A) shall also not apply to the person and the person's employer.*

6. With reference to Article 7 of the Agreement:

(a) Periods of coverage completed under United States laws shall not be taken into account for the grant of increments (Leistungszuschlag) provided under German laws governing the Miners' Pension Insurance system.

(b) Under German pension insurance, Article 7, paragraph 1, of the Agreement shall apply mutatis mutandis to cash benefit and benefits-in-kind which may be granted at the discretion of the Agency.

(c) Notwithstanding Article 7, paragraph 3, of the Agreement, the United States Agency shall not be required to take account of periods of coverage completed under German laws in the case of any person who is entitled to transitional benefits on the basis of Section 227 of the United States Social Security Act.

7. With reference to Article 8 of the Agreement:

(a) If, under German laws, provisions on a new assessment of deemed periods of coverage (Zurechnungszeit) and on a pro rata payment of supplements to the orphan's pension enter into force, Article 8, paragraphs 4 and 5, of the Agreement shall not apply to events to which these provisions are applicable.

(b) United States national who ordinarily reside outside the territory of the Federal Republic of Germany shall be eligible for voluntary insurance in the German pension insurance system if they have validly paid contributions for at least 60 months to this system or were eligible for voluntary insurance on the basis of transitional laws in force before October 19, 1972. This rule shall also apply to the persons specified in Article 3(b) and (c) of the Agreement who ordinarily reside in the territory of the United States of America.

(c) Upon application United States nationals may pay voluntary contributions to the German pension insurance system retroactively, if eligibility for continued voluntary

insurance was abolished by the laws governing voluntary insurance which entered into force on October 19, 1972 because they were either ordinarily residing or domiciled outside the territory of the Federal Republic of Germany. Retroactive voluntary contributions may be made for periods from October 19, 1972 to the day of the entry into force of the Agreement provided that these periods are not already covered by contributions paid to the German pension insurance system. Events relevant to eligibility for a benefit (Eintritt des Versicherungsfalles) which arise within one year after the entry into force of the Agreement shall not preclude payment of retroactive voluntary contributions. An application can be validly made only during the five-years' period following the date of entry into force of this Agreement. The Competent Agency may accept payments by installments for a period of up to three years.

(d) United States nationals to whom contributions were refunded between October 19, 1972 and the date of entry into force of this Agreement, may repay such contributions upon application. Such repayment may only be made in the full amount of the contributions refunded; it shall have the effect of cancelling any entry of refund of contributions in the insurance record. Paragraph 7(c), the last three sentences shall apply accordingly.

(e) In applying German laws concerning the calculation of benefits, in particular provisions concerning the higher assessment of periods of contributions in cases where a prescribed minimum number of years of coverage has been completed, periods of coverage completed under United States laws shall not be taken into account.

8. ***(a)*** ***Persons described in Article 3(a)-(c) of the Agreement who, prior to the date on which the National Socialist sphere of influence extended to what was then their homeland,***

- *belonged to the German language and cultural group,*
- *had already attained age 16, and*
- *had not acknowledged themselves to be ethnically German because they were Jewish,*

and who left the areas of expulsion within the meaning of Article 1, paragraph 2, number 3, of the German Federal Law on Displaced Persons, may, upon application, pay retroactive voluntary contributions to the German pensions insurance system, provided that periods of contributions or periods of employment under the Foreign Pensions Law first become creditable for these persons as a result of §17a of the Foreign Pensions Law. The retroactive voluntary contributions may only be paid for periods after attainment of age 16 and before attainment of age 65 and starting with the time the National Socialist sphere of influence was extended to what was then their homeland. Contributions shall only be permitted for periods that have not already been credited as periods of contributions according to German laws. An event that gives rise to eligibility for benefits shall not preclude the payment of these retroactive voluntary contributions, provided the event occurs prior to the expiration of the time limit for payment of the contributions.

(b) Retroactive voluntary contributions according to subparagraph (a) may not exceed the amount necessary to permit payment of benefits based on periods creditable under §17a of the Foreign Pensions Law in accordance with the statutory pension provisions on payment of benefits to eligible persons abroad that were applicable in the territory of the Federal Republic of Germany—without the Acceding Territory (Beitrittsgebiet)—on July 1, 1990.

(c) Notwithstanding the second sentence of subparagraph (a), persons who attained age 65 on or before October 31, 1991, and who, on July 1, 1990, do not meet the requirements for payment of benefits abroad through retroactive voluntary contributions pursuant to this Agreement, may pay voluntary contributions for the period from July 1, 1990, to November 30, 1991, but in an amount no greater than that which is necessary for the payment of the benefit abroad; for this purpose, the date of eligibility may be deferred to a point in time after attainment of age 65.

(d) Contributions shall be paid in an amount of 84.48 Deutsche Mark for each calendar month; for this purpose, the amount of retroactive voluntary contributions to be paid may be reduced by the amount of any resulting benefits that are payable retroactively. For the computation of the insured person's relevant German Benefit Computation Base, the values for the year 1994 shall be applied to the retroactively paid contributions.

(e) For purposes of computing the benefit amount, the statutory pension provisions applicable within the territory of the Federal Republic of Germany—without the Acceding Territory—on July 1, 1990, including the provisions on benefit payments to eligible persons abroad, shall be applied, together with this Agreement. The provisions on revaluation of pensions based on Personal Remuneration Points (§307 of Volume VI of the Social Law Code) shall be applied as appropriate. The monthly amount of the benefit that is to be paid abroad shall be derived from the Pension Category Factor, as well as

(aa) the Personal Remuneration Points for contribution periods under §17a of the Foreign Pensions Law that are to be considered in accordance with the first sentence of this subparagraph (e); provided, however, that these shall be multiplied by the Present Pension Value (East)—but not more than 0.7 times the Present Pension Value—and a Pension Value of 15.96 Deutsche Mark shall apply for the period from July 1, 1990, to December 31, 1990, a Pension Value of 18.36 Deutsche Mark shall apply for the period from January 1, 1991, to June 30, 1991, and a Pension Value of 21.11 Deutsche Mark shall apply for the period from July 1, 1991, to December 31, 1991;

(bb) the Personal Remuneration Points for contribution periods to be considered according to subparagraphs (b) and (c) multiplied by the Present Pension Value that is applicable for the year in which the pension is to be paid, with the amount of 46.00 Deutsche Mark being used for periods prior to July 1, 1995; and

(cc) the remaining Personal Remuneration Points multiplied by the Present Pension Value that is applicable for the year for which the pension is to be paid, with the amount of 39.58 Deutsche Mark being used for periods prior to July 1, 1991.

(f) Subparagraphs (a) through (e) shall only apply with respect to eligible persons who established ordinary residence in the United States of America before July 1, 1990.

(g) For purposes of payment of survivors benefits, subparagraphs (a) through (f) shall apply as appropriate to survivors of persons described in subparagraph (a), even if the insured person dies prior to the

expiration of the time limit for retroactive voluntary contributions. This shall also apply in the case of benefits for former spouses with pension rights and in the case of reinstated survivors pensions.

(h) An application to pay retroactive voluntary contributions according to this paragraph must be filed within 24 calendar months following the entry into force of this paragraph. The application must be filed with the social insurance agency to which the last German contribution was paid or deemed to have been paid, and which is competent for adjudicating the benefit claim. If the last contribution was paid to an agency of the miners pensions insurance system, retroactive voluntary contributions may only be paid to the wage earners or salaried employees insurance system. The contributions shall be paid to the social insurance agency that is competent to accept and process the application.

(i) Applications under subparagraph (h) shall be considered timely filed applications for benefits. Benefits resulting from this paragraph shall be paid beginning July 1, 1990, if the event giving rise to eligibility occurs prior to this date and the benefit eligibility requirements applicable on July 1, 1990, are met. If the event giving rise to eligibility occurs after June 30, 1990, benefits resulting from this paragraph shall be paid beginning with the calendar month following the month in which the event giving rise to eligibility occurs and the benefit eligibility requirements applicable on July 1, 1990, are met; a survivors benefit shall be paid from the date of death if a benefit was not payable to the insured person for the month of death.

(l) Subparagraphs (h) and (i) shall also apply with respect to persons whose pensions were awarded prior to the entry into force of this paragraph. In this case, the amount of Personal Remuneration Points shall at least equal the amount previously considered.

2. In the implementation of the Agreement, German laws to the extent that they contain more favorable provisions for persons who have suffered damages because of their political attitude or because of their race, religion or ideology, shall remain unaffected.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:
David Mathews

FOR THE FEDERAL REPUBLIC OF GERMANY:
Von Staden
Walter Arendt

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976

The Government of the United States of America and the Government of the Federal Republic of Germany,

In application of Article 16.1 of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, hereinafter referred to as the "Agreement",

Have agreed as follows:

ARTICLE 1

For the purposes of the application of this Administrative Agreement, terms used in the Administrative Agreement shall have the meaning they have in the Agreement.

ARTICLE 2

The liaison agencies established under Article 16.2 of the Agreement and the Competent Agencies referred to in the second sentence of Article 3 of this Administrative Agreement with the participation of the Competent Authorities shall agree jointly upon uniform administrative measures, procedures, and forms for the implementation of the Agreement. The provisions of Article 16.1 of the Agreement shall not be affected.

ARTICLE 3

Where German laws do not already make provision to this effect, the liaison agency designated for the Wage Earners' Pension Insurance system for the determination and award of cash benefits, with the exception of medical, occupational, ~~and~~ supplementary rehabilitation benefits, provided that:

(a) periods of coverage have been completed or are creditable under German and United States laws; or

(b) the person eligible ordinarily resides in the territory of the United States of America; or

(c) the person eligible is a United States national ordinarily residing outside the territories of both Contracting States.

The jurisdiction of the German special institutions ("Sonderanstalten") shall not be affected.

ARTICLE 4

1. The Agency of the Contracting State to whose laws on compulsory coverage a person will remain subject in accordance with Article 6 of the Agreement shall issue to the person or his employer a certificate to that effect when requested to do so by the person or his employer.

(a) In the Federal Republic of Germany that certificate shall be issued by the sickness insurance agency to which pension insurance contributions are paid.

(b) In the United States of America the certificate shall be issued by the Social Security Administration.

2. In order to prove that a person is exempt from the tax on compulsory coverage of one Contracting State, it shall be necessary for the person or his employer to present the certificate referred to in paragraph 1 confirming that the person is subject to the laws on compulsory coverage of the other Contracting State.

3. Article 6 [~~.2~~], ***paragraph 2,*** of the Agreement shall apply to a person if he is transferred from the territory of one Contracting State to the territory of the other Contracting State within the context of a preexisting employment relationship [~~and the transfer is not expected to be permanent as evidenced by a contract or a written notice from the employer~~].

3a. If a person has been sent from the territory of a Contracting State to the territory of the other Contracting State for a specified period of work in accordance with Article 6, paragraph 2, of the Agreement, and the person subsequently begins a new period of work in the territory of the other Contracting State, Article 6, paragraph 2, of the Agreement shall not apply to the new period unless

(a) the new period of work begins at least 12 months after the end of the initial period of work or

(b) the new period of work is not expected to last beyond 5 years from the date on which the initial period of work began.

4. (a) In making a determination concerning an exemption from the laws on compulsory coverage of one Contracting State pursuant to Article 6.3(c) or Article 6.5 of the Agreement, the nature and circumstances of the employment shall be taken into consideration. Before making the determination, the Competent Authority (or the office designated by it) of the other Contracting State shall be given an opportunity to express an opinion; the opinion shall in particular address the issue of whether the person concerned and his employer will be made subject to the laws on compulsory coverage of the other Contracting State.

(b) With regard to the Federal Republic of Germany, if the person is not employed in its territory he shall be deemed to be employed at the place of his last previous employment. If the person was not employed previously in that territory, he shall be deemed to be employed at the place where the German Competent Authority has its seat.

(c) Subparagraphs (a) and (b) shall also apply to self-employed persons.

ARTICLE 5

[Paragraph 1 deleted effective March 1, 1988].

2. In applying the Agreement, the United States Agency shall take account of German periods of coverage occurring before 1937 in accordance with United States laws.

3. (a) In determining eligibility for cash benefits under Article 7.1 of the Agreement, the United States Agency shall credit one quarter of coverage for every three months of coverage certified as creditable by the German Competent Agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(b) In determining eligibility for cash benefits and benefits-in-kind under Article 7.1 of the Agreement, the German Competent Agency shall credit three months of coverage for each quarter of coverage certified as creditable by the United States Agency to the extent that the months in any such quarter of coverage do not coincide with periods of coverage already credited as periods of coverage under German laws.

4. Regarding Article 7.3 of the Agreement, the United States Agency shall consider German periods of coverage which are less than the minimum required by Article 7.2 of the Agreement only if the person is not eligible for a benefit under United States laws without considering such periods of coverage.

5. Article 9.2 of the Agreement shall only apply in cases where eligibility for a benefit under United States laws exists by applying Article 7.1 of the Agreement.

[Paragraphs 6 and 7 deleted effective March 1, 1988.]

ARTICLE 6

[Paragraph 1 deleted effective March 1, 1988.]

2. When an individual is already entitled to a benefit from the United States Competent Agency under Part II of the Agreement and subsequently meets the requirements for receipt of a higher

benefit amount from the United States Competent Agency without recourse to Part II of the Agreement, the higher benefit amount shall become payable from the date that the requirements are met.

ARTICLE 7

1. An application for cash benefits under the laws of one Contracting State shall also be treated as an application for cash benefits under the laws of the other Contracting State if the application indicates that periods of coverage under the laws of the other Contracting State are also alleged. Article 14.2 of the Agreement shall remain unaffected.

2. In the application of Article 15 of the Agreement, additional requirements under national statutes for the protection of privacy and confidentiality of personal data shall remain unaffected.

ARTICLE 8

1. In the application of Article 14 of the Agreement, applications, appeals, statements, and documents necessary to establish eligibility shall be forwarded without delay by the Competent Agency of a Contracting State to which they have been presented to the liaison agency of the other Contracting State.

2. In the application of Article 7 of the Agreement, the German Competent Agency shall notify the United States Competent Agency of the periods of coverage creditable under German laws, together with a list of the months in the periods of coverage.

3. In accordance with procedures to be agreed upon pursuant to Article 2, the agencies referred to in Article 2 shall furnish each other available information or copies of documents relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2.1 of the Agreement.

4. Each Agency shall be the final judge of the probative value of documentary evidence presented to it from whatever source.

5. The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The date shall include the number and total amount of benefits and commuted lump-sum payments, by type of benefit.

ARTICLE 9

The Agency of a Contracting State shall pay any cash benefits due to beneficiaries in the territory of the other Contracting State without recourse to a liaison agency of the other Contracting State.

ARTICLE 10

1. Where administrative assistance is requested under Article 10 of the Agreement, expenses, other than postage and regular personnel and operating costs of the Competent Authorities, Agencies and associations of the Agencies providing the assistance shall be reimbursed.

2. Where the Agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the Agency of the other Contracting State in which the claimant or beneficiary resides at the expense of the Agency which requests the examination.

3. The Agency of either Contracting State shall furnish to the liaison agency of the other Contracting State at its request and without expense any medical information and documentation relevant to the disability of the claimant or beneficiary which may come into its possession.

ARTICLE 11

For the purpose of Article 11.2 of the Agreement, the text of the decision or ruling must contain a certificate by a body

competent to issue such a certification testifying to its enforceability under the laws of the Contracting State in whose territory the certification was issued.

ARTICLE 12

For the purpose of Article 13.1 of the Agreement, laws governing the recourse to interpreters shall not be affected. Rulings, official notifications, or other documents may be transmitted directly to a person resident in the territory of the other Contracting State by registered letter.

[~~ARTICLE 13~~]

[~~Where an Agency of one Contracting State is required to make payments to an Agency of the other Contracting State, such payments shall be made in the currency of the other Contracting State.~~]

ARTICLE 14

[Deleted effective March 1, 1988.]

ARTICLE 15

The use of information furnished under the Agreement by one Contracting State to another with regard to an individual shall be governed by the respective national statutes for the protection of privacy and confidentiality of personal data.

ARTICLE 16

1. (a) Pursuant to the provisions of Article 2, paragraph 51a, subparagraphs 2 and 3 of the German Wage-Earners' Pension Insurance (Reform) Act (ArVNG) and of Article 2, paragraph 49a, subparagraphs 2 and 3 of the German Salaried Employees' Pension Insurance (Reform) Act (AnVNG), all of which entered into force on October 19, 1972, persons who are persecutees within the meaning of the German Federal ~~Act~~ - concerning Compensation for Victims of National Socialist

Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive voluntary contributions to the German pension insurance system for the period from January 1, 1956, through December 31, 1973. Such persons shall be deemed to be eligible for voluntary insurance under the German pension insurance system as if they were German nationals.

(b) An application under paragraph (a) of this system may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement. Such an application shall be filed with the German Competent Agency to which the person's last contribution was paid or, if the last contribution was paid to the Miners' Pension Insurance system, with the liaison agency of the Salaried Employees' Pension Insurance system.

(c) The contributions shall be paid directly to the Agency specified in paragraph (b) with which the application was filed.

(d) The contributions may be accepted by the agency concerned in installments over a period of up to three years. Such contributions may be made only up to the German contribution assessment ceiling for monthly earnings of the year 1973. The calculation of the German benefit computation base applicable to the insured persons shall be based on the figures for 1973.

(e) Events relevant to eligibility for a benefit under German laws which arise in the period between October 18, 1972, and the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(f) The application of the provisions of this section shall in all other respects be subject to the German transitional laws which entered into force on October 19, 1972.

2. (a) Pursuant to the provisions of Section 10 and Section 10a of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG), persons who

are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive contributions to the German pension insurance system.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement.

(c) In applying the provisions specified in paragraph (a) of this section, periods of coverage under United States laws shall be taken into account to the same extent as periods of coverage under German laws for the required period of coverage of 60 calendar months.

(d) Events relevant to eligibility for a benefit under German laws which arise before the end of the first twelve months after the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(e) If a person specified in paragraph (a) of this section has died before the date specified in the first sentence of Article 18 of this Administrative Agreement, Section 10 subsection 3 and Section 10a subsection 3 of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG) shall apply accordingly.

(f) Paragraph (d) of section (1) of this Article shall also apply to this section.

ARTICLE 17

This Administrative Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months after the date of entry into force of this Administrative Agreement.

ARTICLE 18

This Administrative Agreement shall enter into force on the date on which both Governments will have informed each other that the steps necessary under their national statutes to enable the Administrative Agreement to take effect have been taken. It shall be effective from the date of entry into force of the Agreement.

DONE at Washington on June 21, 1978, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY:
Joseph A. Califano, Jr.	B. von Staden