

changes of residence within three business days. *See* 34 U.S.C. 20913(a), (c). The sex offender attempts to comply with these requirements by contacting the local sheriff's office, which is responsible for sex offender registration in the destination jurisdiction. The sheriff's office advises that it cannot schedule an appointment for him to register within three business days but that he should come by in a week. The sex offender would have a defense to liability if he appeared at the sheriff's office at the appointed time and registered as required. The sex offender's temporary inability to register and inability to report the change of residence within three business days in the new residence jurisdiction was due to a circumstance beyond his control—the sheriff's office's refusal to meet with him until a week had passed—and he complied with the requirement to register as soon as the circumstance preventing compliance ceased to exist.

*Example 2 to paragraph (a)(2).* A sex offender cannot register in a state in which he resides because its registration authorities will not register offenders on the basis of the offense for which the sex offender was convicted. The sex offender would have a defense to liability because the state's unwillingness to register sex offenders like him is a circumstance beyond his control. However, if the sex offender failed to register after becoming aware of a change in state policy or practice allowing his registration, the 18 U.S.C. 2250(c) defense would no longer apply, because in such a case the circumstance preventing compliance with the registration requirement would no longer exist.

*Example 3 to paragraph (a)(2).* A sex offender needs to travel to a foreign country on short notice—less than 21 days—because of an unforeseeable family or work emergency. The sex offender would have a defense to liability for failing to report the intended travel 21 days in advance, as required by §72.7(f), because it is impossible to report an intention to travel outside the United States before the intention exists. However, if the sex offender failed to inform the registration jurisdiction (albeit on short notice) once he intended to travel, 18 U.S.C. 2250(c) would

not excuse that failure, because the preventing circumstance—absence of an intent to travel abroad—would no longer exist.

(b) *Supervision condition.* For a sex offender convicted of a Federal offense, compliance with SORNA is a mandatory condition of probation, supervised release, and parole. The release of such an offender who does not comply with SORNA may be revoked.

## PART 73—NOTIFICATIONS TO THE ATTORNEY GENERAL BY AGENTS OF FOREIGN GOVERNMENTS

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73.1 Definition of terms.

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AUTHORITY: 18 U.S.C. 951, 28 U.S.C. 509, 510.

SOURCE: Order No. 1373–89, 54 FR 46608, Nov. 6, 1989, unless otherwise noted.

### § 73.1 Definition of terms.

(a) The term *agent* means all individuals acting as representatives of, or on behalf of, a foreign government or official, who are subject to the direction or control of that foreign government or official, and who are not specifically excluded by the terms of the Act or the regulations thereunder.

(b) The term *foreign government* includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been regarded by the United States as a governing authority.

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(c) The term *prior notification* means the notification letter, telex, or facsimile must be received by the addressee named in § 73.3 prior to commencing the services contemplated by the parties.

(d) When used in 18 U.S.C. 951(d)(1), the term *duly accredited* means that the sending State has notified the Department of State of the appointment and arrival of the diplomatic or consular officer involved, and the Department of State has not objected.

(e) When used in 18 U.S.C. 951(d) (2) and/or (3), the term *officially and publicly acknowledged and sponsored* means that the person described therein has filed with the Secretary of State a fully-executed notification of status with a foreign government; or is a visitor, officially sponsored by a foreign government, whose status is known and whose visit is authorized by an agency of the United States Government; or is an official of a foreign government on a temporary visit to the United States, for the purpose of conducting official business internal to the affairs of that foreign government; or where an agent of a foreign government is acting pursuant to the requirements of a Treaty, Executive Agreement, Memorandum of Understanding, or other understanding to which the United States or an agency of the United States is a party and which instrument specifically establishes another mechanism for notification of visits by agents and the terms of such visits.

(f) The term *legal commercial transaction*, for the purpose of 18 U.S.C. 951(d)(4), means any exchange, transfer, purchase or sale, of any commodity, service or property of any kind, including information or intellectual property, not prohibited by federal or state legislation or implementing regulations.

### § 73.2 Exceptions.

(a) The exemption provided in 18 U.S.C. 951(d)(4) for a “legal commercial transaction” shall not be available to any person acting subject to the direction or control of a foreign government or official where such person is an agent of Cuba or any other country that the President determines (and so

reports to the Congress) poses a threat to the national security interest of the United States for purposes of 18 U.S.C. 951; or has been convicted of or entered a plea of *nolo contendere* to any offense under 18 U.S.C. 792–799, 831, or 2381, or under section 11 of the Export Administration Act of 1979, 50 U.S.C. app. 2410.

(b) The provisions of 18 U.S.C. 951(e)(2)(A) do not apply if the Attorney General, after consultation with the Secretary of State, determines and reports to Congress that the national security or foreign policy interests of the United States require that these provisions do not apply in specific circumstances to agents of such country.

(c) The provisions of 18 U.S.C. 951(e)(2)(B) do not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of *nolo contendere*.

[Order No. 1373–89, 54 FR 46608, Nov. 6, 1989, as amended by Order No. 3018–2008, 73 FR 73182, Dec. 2, 2008]

### § 73.3 Form of notification.

(a) Notification shall be made by the agent in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the National Security Division, except for those agents described in paragraphs (b) and (c) of this section. The document shall state that it is a notification under 18 U.S.C. 951, and provide the name or names of the agent making the notification, the firm name, if any, and the business address or addresses of the agent, the identity of the foreign government or official for whom the agent is acting, and a brief description of the activities to be conducted for the foreign government or official and the anticipated duration of the activities. Each notification shall contain a certification, pursuant to 28 U.S.C. 1746, that the notification is true and correct.

(b) Notification by agents engaged in law enforcement investigations or regulatory agency activity shall be in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of Interpol–United States National Central Bureau. Notification by agents engaged in

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intelligence, counterintelligence, espionage, counterespionage or counterterrorism assignment or service shall be in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the nearest FBI Legal Attache. In case of exceptional circumstances, notification shall be provided contemporaneously or as soon as reasonably possible by the agent or the agent's supervisor. The letter, telex, or facsimile shall include the information set forth in paragraph (a) of this section.

(c) Notification made by agents engaged in judicial investigations pursuant to treaties or other mutual assistance requests or letters rogatory, shall be made in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the Office of International Affairs, Criminal Division. The letter, telex, or facsimile shall include the information set forth in paragraph (a) of this section.

(d) Any subsequent change in the information required by paragraph (a) of this section shall require a notification within 10 days of the change.

(e) Notification under 18 U.S.C. 951 shall be effective only if it has been done in compliance with this section, or if the agent has filed a registration under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*, which provides the information required by paragraphs (a) and (d) of this section.

[Order No. 1373-89, 54 FR 46608, Nov. 6, 1989, as amended by Order No. 2865-2007, 72 FR 10070, Mar. 7, 2007]

### § 73.4 Partial compliance not deemed compliance.

The fact that a notification has been filed shall not necessarily be deemed full compliance with 18 U.S.C. 951 or these regulations on the part of the agent; nor shall it indicate that the Attorney General has in any way passed on the merits of such notification or the legality of the agent's activities; nor shall it preclude prosecution, as provided for in 18 U.S.C. 951, for failure to file a notification when due, or for a false statement of a material fact therein, or for an omission of a material fact required to be stated therein.

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### § 73.5 Termination of notification.

(a) An agent shall, within 30 days after the termination of his agency relationship, advise the Attorney General of such change.

(b) All notifications pursuant to this part will automatically expire five years from the date of the most recent notification.

(c) An agent, whose notification expires pursuant to (b) above, must file a new notification within 10 days if the relationship continues.

### § 73.6 Relation to other statutes.

The filing of a notification under this section shall not be deemed compliance with the requirements of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*, nor compliance with any other statute.

## PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

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