

## § 73.2

(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

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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 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