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**Guy Traynor,**

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**DEPARTMENT OF JUSTICE**

**28 CFR Part 73**

[Docket No. OAG 124; A.G. Order No. 3018-2008]

**Amendments to the Justice Department Regulations Regarding Countries Whose Agents Do Not Qualify for the Legal Commercial Transaction Exemption Provided in 18 U.S.C. 951(d)(4)**

**AGENCY:** National Security Division, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule makes two amendments to the Department of Justice regulations regarding countries whose agents do not qualify for the legal commercial transaction exemption provided in 18 U.S.C. 951(d)(4).

**DATES:** *Effective Date:* December 2, 2008.  
**FOR FURTHER INFORMATION CONTACT:** John C. Demers, National Security Division, U.S. Department of Justice, Washington, DC 20530, (202) 514-1057.

**SUPPLEMENTARY INFORMATION:** This rule revises the Department's regulations in 28 CFR part 73 to make them consistent with the amended reporting requirements in 18 U.S.C. 951 for agents of foreign governments.

Section 951 prohibits anyone from "act[ing] in the United States as an agent of a foreign government without prior notification to the Attorney General." 18 U.S.C. 951(a). Section 951 exempts a broad category of conduct from its scope. Under section 951(d), an "agent of a foreign government" does not include "any person engaged in a legal commercial transaction." 18 U.S.C. 951(d)(4). In limited situations, however, this legal commercial transaction exemption does not apply. Specifically, under section 951(e)(2)(A), this exemption does not apply to the agents of certain countries. Before 1993, the statute provided that the countries to which the exemption did not apply were "the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania or Cuba." The Department's

implementing regulation, which became effective on November 6, 1989, repeated this list of countries.

Subsequently, Congress removed all but Cuba from the list of countries enumerated in section 951(e)(2)(A) and substituted for it a more general provision covering "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 this section." See Pub. L. 103-199 § 202 (Dec. 17, 1993) (amending section 951(e)(2)(A)). No corresponding change was made to the Justice Department's regulations.

This rule would make two amendments to the Department's regulations under 28 CFR part 73.2(a) to reflect the current statutory scope of the legal commercial transaction exemption. First, the proposed order would delete "the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania or Cuba;" from 28 CFR 73.2(a). Second, the proposed order would add "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;" after the words "such person is an agent of" and before the words "has been convicted \* \* \*". These amendments would synchronize the statute and regulations.

**Administrative Procedure Act**

The rule pertains to a foreign affairs function of the United States. Accordingly, pursuant to 5 U.S.C. 553(a)(1), the requirements of 5 U.S.C. 553 do not apply. Furthermore, even if the requirements of 5 U.S.C. 553 did apply, the Department believes that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) for immediate implementation of this final rule without prior notice and comment. Such notice and comment would be unnecessary because this rule is a nondiscretionary ministerial action to conform the Department's regulations to 18 U.S.C. 951(e)(2)(A)'s amended reporting requirements for agents of foreign governments.

**Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule merely conforms the Department's regulations to 18 U.S.C. 951(e)(2)(A)'s

amended reporting requirements for agents of foreign governments. Furthermore, this rule applies only to agents of a limited number of foreign governments.

**Executive Order 12866**

Because the amendments to 28 CFR part 73 involve a foreign affairs function of the United States, the provisions of Executive Order 12866, in particular the provisions requiring rules to be reviewed by the Office of Management and Budget, do not apply.

**Executive Order 12988**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federal summary impact statement.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a "major rule" as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

**Congressional Review Act**

The Department has determined that this action pertains to the foreign affairs function of the United States and accordingly is not a "rule" as that term is used by the Congressional Review Act

(subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### Paperwork Reduction Act

The Paperwork Reduction Act (PRA) does not apply to this rule change. See 44 U.S.C. 3501–3521. The PRA imposes certain protocol for the “collection of information” by government agencies. The Act defines the “collection of information” as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public [of certain information]” pursuant to requirements “imposed on ten or more persons.” 44 U.S.C. 3502(3)(A). Regulations promulgated by the Office of Management and Budget to implement the PRA explain that “‘ten or more persons’ refers to the persons to whom a collection of information is addressed by the agency within any 12-month period.” 5 CFR 1320.3(c)(4). Current Department of Justice regulations implementing the Foreign Agents Registration Act require the agents of Cuba and seven other countries to register before those agents may engage in legal commercial transactions in the United States. 28 CFR part 73.2(a). Fewer than ten persons have registered per year under these regulations. The proposed rule would eliminate all countries except Cuba from the list of nations in these regulations, a change that would mirror the statutory exception to the legal commercial transaction exemption to the registration requirements imposed by section 951, and is not expected to increase the number of persons registering.

#### List of Subjects in 28 CFR Part 73

Agents of foreign governments; Foreign officials; Foreign relations.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 18 U.S.C. 951 and 28 U.S.C. 509 and 510, Part 73 of Chapter I of title 28 of the Code of Federal Regulations is amended as follows:

#### PART 73.2—EXCEPTIONS

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 18 U.S.C. 951; 28 U.S.C. 509, 510.

■ 2. Revise paragraph (a) of part 73.2 to read as follows:

#### § 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.

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Dated: November 24, 2008.

**Michael B. Mukasey,**

*Attorney General.*

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

#### PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.