



National Pawnbrokers Association[®]

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Keeping our industry strong

IMPORTANT INFORMATION FOR PAWNBROKERS WHO ALSO BUY GOLD AND OTHER PRECIOUS METALS, GEMS AND JEWELRY DIRECTLY FROM THE PUBLIC

The NPA puts out alerts from time to time on pawnbrokers' obligations to comply with federal laws and regulations, including regulations promulgated by the Financial Crimes Enforcement Network (FinCen) and the Internal Revenue Service.

In 2005, FinCEN adopted as an interim final rule, a rule implementing a portion of the USA Patriot Act that affects dealers in precious metals, gems and jewelry. That rule was originally codified in 31 CFR Part 103, the general anti-money laundering regulation for many industries. In October, 2010, FinCEN announced that it was reorganizing this rule effective March 1, 2011 into a new chapter X of 31 CFR Part 103. Little of substance changed. The guidance sent following the publication of the 2005 rule remains appropriate.

As the NPA explained at the time that the 2005 version of the Rule was promulgated, it provides a limited exemption for pawnbrokers. This exemption allows items taken in pawn otherwise covered by the rule, as well as their subsequent foreclosure and sale to be handled without the necessity of complying with the Rule. However, items purchased directly from the public or sales *other than of items of collateral subsequently foreclosed on and sold* remain subject to this Rule's requirements.

So, precisely when does the Rule apply to your non-pawn transactions, and what does it require your business to do to comply?

What does the Rule require?

The Rule requires the establishment of an anti-money laundering compliance program that contains all four of the following requirements:

1. Policies, procedures and internal controls, based on businesses own assessment of the money-laundering and terrorism-financing risks associated with their business
2. Designation of a compliance officer who is responsible for ensuring that the program is implemented effectively
3. Ongoing training of appropriate persons concerning their responsibilities under the program
4. Independent testing to monitor and maintain an adequate program, with modifications and retraining of personnel, as may become appropriate through regular risk re-assessments and the passage of time, changes in business lines, or other ongoing legal and regulatory changes

How does the Rule's limited Pawnbroker Exception work?

1. The Rule does not apply to transactions by persons who hold licenses to provide pawnbroking services to the public to the extent—and only to the extent—that the transaction bringing the precious metals, gems or jewelry into the pawn store is a pawn transaction. That means that outright purchases or sales other than from pawn collateral do not qualify for this exemption.
2. In addition, the Rule's compliance responsibilities arise if in the preceding year the dealer purchased and sold at least \$50,000 of "covered goods." So, if your business had purchases from and sales to the general public or from foreign sources apart from pawn transactions, and the combination of those transactions was more than \$50,000 last year, for example, you should be complying with the Rule this year.
3. The Rules defines "covered goods" as jewels, precious metals, precious stones and finished goods (including but not limited to jewelry, numismatic items and antiques) that derive 50 percent or more of their value from jewels, precious metals or precious stones contained in or attached to the finished goods.
4. If you also operate a check cashing business that buys metals, gems and stones from the general public or from foreign sources, then that business—not covered by your pawn license in most jurisdictions—is not eligible for the pawn exception described here. It must have a full compliance program for the FinCEN Rule's purposes on its own.

How does the Precious Metals, Gems, Stones and Jewelry Rule work with the Requirements to File Information Reports to the Internal Revenue Service for Cash Transactions of \$10,000 or more on Form 8300?

1. **The Precious Metals, Gems, Stones and Jewelry Rule** is focused on getting individual businesses to make assessments of risk, have compliance plans and compliance officers, do training and monitoring, and arrange for yearly annual audits of their compliance programs so that their businesses will not become conduits for money launderers or persons engaged in terrorist financing. It is not focused on information reports on particular transactions. Its focus is on prevention and watchfulness. Only businesses that have retail business in the United States have to comply.
2. **The Form 8300 Information Reporting Rule** is focused on tracking individuals' transactions with your businesses that involve, if appropriate, the receipt by your business of cash and monetary instruments in amounts of \$10,000 or more in a 12-month period. You track transactions and make annual or more frequent reports on Form 8300. You also give notice to customers whose transactions trigger the reporting in January of the year following, the point at which any customer's transactions exceed the aggregated \$10,000 or more threshold for those customers.

Conclusion: With the recent reorganization of the Bank Secrecy Act regulations into new Chapter X of 31 CFR Part 103, we expect that FinCEN and the IRS will be out doing audits of compliance. Because the reorganization went into effect on March 1, 2011, **NOW** is the time to bring your compliance programs up to date, including any revisions to your own program needed to comply for the non-pawn parts of your business under the Precious Metals, Gems, Stones and Jewelry Rule. For more information, ask your lawyer about the Rule (70 Fed. Reg. 33702 (June 9, 2005), codified at 31 CFR Part 103, Title X, or contact the company that provides your Treasury Department/FinCEN/Internal Revenue Service compliance programs.