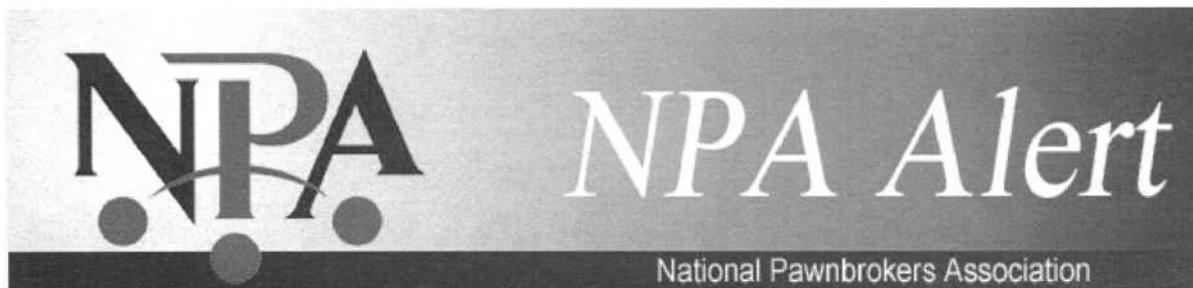


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Subject: **Important FinCEN Update**
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Important FinCEN Update

January 2014

This NPA alert updates prior versions about pawnbrokers' obligations under the FinCEN Dealers in Precious Metals, Gemstones and Jewelry Rule published in June 2005. No substantive changes have been made to the rule since then, but the NPA has received reports from members suggesting that IRS field offices may be launching a new round of compliance audits with general anti-money-laundering regulations enforced by FinCEN for MSB's and the Precious Metals Dealer Rule. The MSB and Precious Metals Dealer Rules are entirely separate of each other.

The Precious Metals Dealer Rule generally imposes requirements to adopt, implement, monitor, and revise anti-money-laundering policies, and to train and re-train employees as dealers adjust their policies to account for changes in money-laundering risks to their businesses. The Rule uses two thresholds:

1. The dealer must have both bought \$50,000 or more in precious metals, precious gemstones, or jewelry from the general public, AND sold \$50,000 or more of the same categories in the prior year. The \$50,000 or more in purchases threshold does not apply to inventory acquired through pawn loan foreclosures, nor to some trade-in transactions.
2. The \$50,000 in sales of covered goods applies whether the sale is to a member of the general public or to a wholesaler, such as a refinery. This \$50,000 test applies to any sales of covered

goods (described below) made in the year, even if they were purchased in a prior year. In other words, the same goods do not have to be purchased and sold in the same year for the dollar tests to be met.

The Precious Metals Dealer Rule contains several exceptions, two of which are directly applicable to pawnbrokers.

First, there is a limited exemption only for pawnbrokers for pawn loan collateral when conducted on the pawn-licensed premises. Covered items that are taken in pawn, subsequently foreclosed and sold do not count against either of the \$50,000 thresholds – the first for buying goods covered by the Rule and the second for selling such goods. This exception applies **only to pawn, not purchase transactions**, and only when the acquisition and sale occur on the premises for which the business has a pawn license issued by a state or local government.

Goods acquired and sold under non-pawn circumstances and at non-pawn-licensed locations remain subject to this Rule's requirements. So, if you opened a non-pawn location during the height of the recent gold rush, purchased \$50,000 or more and also sold \$50,000 or more in covered goods, you must comply with the requirements described below.

Second, there is an exception, published only in a FinCEN General Counsel's interpretation, which removes purchases and sales of silver from both of the \$50,000 or more thresholds.

What does the Precious Metals Dealer Rule require? Businesses are covered by the Precious Metals Dealer Rule if they buy directly from the general public \$50,000 or more in covered goods and sold \$50,000 or more of covered goods in one year or met both purchase and sale thresholds in the prior year. The Rule requires the establishment of an anti-money laundering (AML) compliance program specifically for the precious metals dealer business that contains all four of the following requirements:

1. includes written policies, procedures and internal controls, based on the business's own assessment of the money-laundering and terrorism-financing risks associated with their business;
2. designates a company compliance officer who is responsible for ensuring that the program is implemented effectively;
3. conducts ongoing training of appropriate persons concerning their responsibilities under the program; and
4. designates someone to monitor and make recommendations for changes to the AML program, makes appropriate changes to the program, and retrains personnel, as necessary with thorough regular risk re-assessments, changes in business lines, or other ongoing legal and regulatory changes.

This Precious Metals Dealer AML program must be entirely separate from any other AML compliance program a business has for a Money Services Business it also may operate.

What goods are covered? The Rule 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 per cent or more of their value from jewels, precious metals or precious stones contained therein. Currently however, as mentioned above, silver is excluded from the "covered goods" definition.

How does the Rule's limited Pawnbroker Exception work? The Precious Metals Dealer Rule's compliance responsibilities arise if in the current year or in the preceding year the pawnbroker both purchased and sold at least \$50,000 of non-pawn "covered goods." So, if a business purchased \$50,000 or more from *and sold \$50,000 or more of the same categories of goods* to the general public other than defaulted and foreclosed pawn collateral, that business should have established a compliance program the following year. However, the Rule does not seem to allow a covered entity to quit the program if their dollar volumes fall below the thresholds in a later year. *Once covered, always covered seems to be the Rule's approach.*

If the Precious Metals Dealer Rule applies to your business, does that mean you are an MSB? No, these are separate rules with separate requirements.

Conclusion: This is an excellent time for pawnbrokers to double-check your Precious Metals Dealer Rule and IRS Form 8300 compliance programs to be certain that they are in writing, readily accessible in your stores if the IRS field auditors show up, and current, including any revisions to your own program made for the non-pawn parts of your business. For more information about either requirement, consult your lawyer or contact the company that provides your other Treasury Department/FinCEN/Internal Revenue Service compliance programs.

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