

seeks to take advantage of those existing practices by focusing the due diligence conducted by dealers to include the potential for money laundering or terrorist financing.

A. Definitions

Section 103.140(a) defines the key terms used in the proposed rule. Paragraph 103.140(a)(1)(i) defines "dealer" as any person who is "engaged in the business of purchasing and selling jewels, precious metals, or precious stones, or jewelry composed of jewels, precious metals, or precious stones." The proposed definition of dealer reflects Treasury's determination that all segments of the industry are vulnerable to money laundering and terrorist financing. Thus, the anti-money laundering requirement contained in the proposed rule covers entities including manufacturers, refiners, wholesalers, retailers, and any other entity engaged in the business of purchasing and selling jewels, precious metals, precious stones, or jewelry.

The proposed definition contains an explicit minimum dollar threshold, to carve out small businesses that may, on a part-time basis, deal in precious metals, stones, jewels, or jewelry. Thus, paragraphs (a)(1)(i)(A) and (B) provide that a person is a "dealer" only if, during the prior calendar or tax year, the person (1) purchased more than \$50,000 in jewels, precious metals, precious stones, or jewelry, or (2) received more than \$50,000 in gross proceeds from the sale of jewels, precious metals, precious stones, or jewelry. Thus, an amateur silversmith, who sells a portion of his production to finance his hobby, would not be subject to this rule if he were to remain below the proposed threshold. FinCEN specifically solicits comment on the amount of the proposed threshold, and whether an alternative threshold should be employed, such as specific physical quantities of precious metals, stones, or jewels, or other types of thresholds.

In addition to the minimum dollar threshold, the definition of "dealer" contains two exceptions, found in proposed paragraph (a)(1)(ii). The first exception provides that a retailer⁴ is a dealer only if it purchased more than \$50,000 in jewels, precious metals, precious stones, or jewelry from persons other than dealers during the prior calendar or tax year. Thus, a retailer that purchases jewels, precious metals, precious stones, or jewelry from a dealer

(for example, from a wholesaler), would not fall within the definition of "dealer," even if its gross sales of jewels, precious metals, stones, and jewelry exceeded \$50,000 in the prior calendar or tax year. However, a retailer that, in the prior calendar or tax year, purchased more than \$50,000 in jewels, precious metals, precious stones, or jewelry from sources other than a dealer (for example, from the general public), would be a dealer for purposes of the rule. The rationale for this limited exception is that, in order to abuse this industry, a money launderer must be able to sell as well as purchase the goods. Therefore, there is substantially less risk that a retailer who purchases goods exclusively or almost exclusively from dealers subject to the proposed rule will be abused by money launderers.

The second exception, contained in proposed paragraph (a)(1)(ii)(B), carves out from the definition of "dealer" a person buying or selling value-added fabricated goods containing minor amounts of precious metals or gemstones. Precious metals, stones, and jewels often have minor uses in equipment for which they act as a very small component, for example, in computers or drills with industrial diamond cutting tools, or as reflective coating on windows. Similarly, sapphire bearings may be used in highly precise electronic equipment, because of the toughness exhibited by corundum. Although the amount of precious metals, stones, and jewels contained in each industrial product may be minimal, the high volume production or sale of such products could result in a high volume of sale of precious metals, stones, or jewels. FinCEN has determined that the anti-money laundering program requirement should be imposed on those sectors of the industry that pose the most significant risk of money laundering and terrorist financing, and for this reason, persons who buy and sell value-added fabricated goods containing minor amounts of precious metals or gemstones are excluded from the proposed definition of "dealer."

The term "jewel" is defined in paragraph (a)(2) to include organic substances that have a market-recognized gem level of quality, beauty, and rarity. Certain substances, such as coral, are available in two forms that are not generally transmutable, one that is of gem quality, and another that is of non-gem quality. As proposed, the definition of "jewel" would not include substances that are of non-gem quality.

Paragraph (a)(3) contains a definition of the term "precious metal," which is

defined to include gold, silver, and the platinum group of metals, when it is at a level of purity of 0.500 (50 percent) or greater, singly or in any combination. For example, an alloy of 25 percent gold and 30 percent platinum would be a precious metal under the proposed rule. Similarly, this definition excludes the products of a mining firm or refinery that does not deal in precious metals refined to that purity level, but would include 12 karat gold jewelry. The 50 percent threshold is intended to exclude materials that have incidental levels of precious metals, such as polymer resin castings that have been electroplated with gold, or antique mirrors with a thin silver foil on the back. Similarly, operations that process lead ore that may contain smaller amounts of silver or gold would also be excluded. As a result, the focus of the definition is on materials that are predominantly precious metal.

The term "precious stone" is defined in paragraph (a)(4) to include inorganic substances that have a market-recognized gem level of quality, beauty, and rarity. Certain substances, such as diamonds, are available in two forms that are not generally transmutable, one that is of gem quality, and another that is of industrial (or non-gem) quality. For example, diamonds are available in both industrial grades and gem quality grades. However, industrial grade diamonds cannot generally be transformed into gem quality diamonds. Similarly, a flame fusion synthetic corundum may be chemically identical to a gem quality ruby, yet not be a "precious stone." Therefore, precious stones of industrial quality have been carved out of the definition of precious stones.

B. Anti-Money Laundering Program Requirements

Section 103.140(b) requires that each dealer develop and implement an anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering or the financing of terrorist activities. The program must be in writing and should set forth clearly the details of the program, including the responsibilities of the individuals and departments involved. To ensure that this requirement receives the highest level of attention throughout the company, the proposed rule requires that each dealer's program be approved in writing by its senior management.⁵ A

⁴ The NPRM defines a retailer as a person engaged in the business of selling to the public jewels, precious metals, or precious stones or jewelry composed of jewels, precious metals, or precious stones.

⁵ This may be the sole proprietor in the case of a sole proprietorship, the board of directors, or a committee authorized for this purpose in the case of a corporation, or partners representing a majority interest in a general partnership.