

USA PATRIOT ACT COMPLIANCE OBLIGATIONS

BACKGROUND

The USA PATRIOT Act (Uniting and Strengthening of American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) was signed into law on October 26, 2001. Section 352 of the act directly requires that “dealers” in precious metals, stones, or jewels” implement a written AML program. The interim final rules came into effect January 1, 2006. The recent senate action does not affect the jewelry industry. Section 352 was not do to expire and remains law.

What is Money Laundering?

Money laundering is the process of hiding the existence, use, or origin of illegally derived funds to make the funds appear legitimate. In 1970, the U.S. Congress enacted the Bank Secrecy Act (BSA) in order to help combat money laundering. This required financial institutions to maintain records and file reports regarding particular transactions that might be associated with money laundering. Although dealers in precious metals were listed, FinCEN did not define terms or issue regulations regarding dealers. Instead the focus was most notably directed at banks. The USA PATRIOT ACT amends the BSA and now requires that “dealers” in precious metals implement a written AML program.

Why the Jewelry, Pawnbroker, and Mining Industries?

These industries are widely known for its vulnerability to money-laundering schemes. Treasury describes why the industry is so susceptible to this crime.

“Precious metals, precious stones, and jewels are easily transportable, highly concentrated forms of wealth. They serve as international mediums of exchange and can be converted into cash anywhere in the world. In addition, precious metals, especially gold, silver, and platinum, have a readily, actively traded market, and can be melted into various forms, thereby obliterating refinery marks and leaving them virtually untraceable. For these reasons, precious metals, precious stones, and jewels can be highly attractive to money launderers and other criminals, including those involved in the financing of terrorism” (68 FR 8481).

Who is a “Dealer” in Precious Metals?

A person engaged within the United States as a business in the purchase AND sale of precious metals with annual purchases of at least \$50,000 AND annual sales of at least \$50,000 in a calendar or tax year.

Exemption for Retailers:

If you are a retailer and purchase only from other dealers (as defined by the rules) who implement a U.S. AML program, you do not need to comply. If you do purchase from non-dealers, such as members of the public, foreign sources of supply, or estate sales, than you must comply.

Definitions:

Precious Metals: Treasury defines precious metals as gold, silver, platinum, palladium, rhodium, ruthenium, iridium, or osmium that have a purity level of 0.500 (50%) or more or an alloy containing .500 or greater, singly or in any combination.

Covered Goods: Precious metals, stones, or jewels and finished goods that derive 50% or more of their value from precious metal contained in or attached to such finished goods.

Cash: The following is considered cash: cash, cashiers checks, money orders, travelers checks, bank drafts.

Suspicious Activity: Attempted transactions or a pattern of transactions that you know, suspect, or have reason to suspect involve criminal activity, are designed to evade BSA laws, appear to serve no business purpose, for which there is no reasonable explanation, and may involve financial transactions to facilitate criminal activity.

Willful Blindness: occurs when a person is deemed to have knowledge that proceeds were derived from an illegal activity and purposely ignored those facts.

AML Program Obligation

The AML obligation only covers transactions in precious metals as they are defined above. Therefore, lower-grade refining transactions, purchases of precious metal for incorporation into industrial equipment, precious metals with a purity level less than 0.500, and toll refining transactions are not required to be covered by the AML program.

What Does the USA PATRIOT Act Require?

1. The designation of a compliance officer to develop and respond to money laundering issues.
2. An evaluation to determine the risks the business faces in regards to money laundering.
3. The development of written policies and procedures for encountering and dealing with money laundering and the internal controls for such policies.
4. An ongoing employee training program
5. An independent audit function to test the program

What are the Penalties for Non-Compliance?

1. Civil penalties could include a fine of up to \$250,000 or two times the amount of the transaction, not to exceed \$1,000,000.
2. Criminal sanctions could be a fine up to \$500,000 and/or a maximum of 10 years in prison.

Where to get help:

1. Jewelers Vigilance Committee
Website: www.jvclegal.org
Phone: 212-997-2002
2. Materials Management
Mike Reiss
Materialsmanagement.com
3. Department of Treasury, Regulatory Policy and Programs Division
FinCEN 800-949-2732
www.fincen.gov

If you have any questions regarding the Patriot Act, please call Roseanna McDonagh, Compliance Officer at 800-822-1996 X132 or e-mail to Roseanna@dhfco.com

Dated 1/13/06 David H. Fell & Co., Inc.