



Via Email (regcomments@fincen.treas.gov)

April 22, 2003

Financial Crimes Enforcement Network (FinCEN)
Post Office Box 39
Vienna, Virginia 22183-0039

Attn: Section 352 – Jewelry Dealer Regulations

Dear Sir or Madam:

The National Mining Association (“NMA”)¹ appreciates the opportunity to submit comments on the proposed regulation intended to implement the USA PATRIOT Act² (“the Act”) as it applies to dealers “in precious metals, stones, or jewels.”³ The NMA generally supports the efforts of the Secretary of the Treasury to tailor these regulations for anti-money laundering controls to the “size, location, and activities” of this industry, as prescribed by Section 352 of the Act. There are, however, three instances where we believe that the scope of the proposed rule should be either narrowed or clarified as it applies to mining companies given the nature of the industry and the practices already in place. Our comments in this regard are set forth below.

Clarification that Precious Metals Producers Are Not Covered by the Rule in the Absence of Both Purchase and Sale Activity

As proposed, the rule would define “dealer” as any person who is “engaged in the business of purchasing and selling...precious metals.”⁴ The wording of this rule implies that a dealer must be engaged in both purchasing and selling precious metals to be covered by the rule. This interpretation is further reinforced by the rationale offered for the limited exception for retailers in which the proposal notes that, in order to abuse this industry, a money launderer must be able to sell as well as purchase the goods.

1 The National Mining Association is a non-profit industry group, representing the broad interests of America’s mining industry before Congress, federal regulatory agencies, and the courts. Among its more than 325 members, are the nation’s leading producers of precious metals.

2 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (Public Law 107-56).

3 *Federal Register*, February 21, 2003, Volume 68, Number 35, pages 8480-8486.

4 Paragraph 103.140(a)(1)(i).

Mining companies that produce precious metals (“Precious Metals Producers”)⁵, do so for sale into the marketplace, and rarely, if at all, engage in the purchase of precious metals.⁶ It is unclear from the proposed rule whether this one-sided activity would subject Precious Metals Producers to the panoply of anti-money laundering program requirements called for by the proposed rule. Therefore, we request that FinCEN clarify that this rule does not apply to Precious Metals Producers in the absence of both purchase and sale activity.

The Definition of “Dealer” Should Exclude Precious Metals Producers

While we believe that Precious Metals Producers are not covered by the rule for the reasons noted above, should FinCEN come to a different conclusion, we believe the activities of Precious Metals Producers justify an exclusion from the rule similar to that given to small retailers and those who buy and sell value-added goods.

As proposed, the rule excludes small dealers, as well as those who buy and sell value-added goods with minor amounts of precious metals. In offering these exemptions, FinCEN determined that, as a public policy matter, these sectors pose little risk of money laundering and terrorist financing.

We believe that the activities of Precious Metals Producers likewise do not represent the type of risks intended to be covered by the rule. Specifically, these mining companies are not engaged in a retail trade with the public. Instead, their activities are confined to a narrow circle of participants, most of whom already are subject to the Bank Secrecy Act and to this rule specifically. There is a well-established network of bullion banks, bullion dealers, and refiners that are counter-parties to transactions with these established mining companies. Given the existing protections in place, the burdens of establishing and maintaining a compliance program would far outweigh any additional benefits that could be achieved. For this reason, we request that Precious Metals Producers be excluded from the definition of “dealer” in the final rule.

Clarify Rule Application to Global Operations

Today, companies are often part of multi-national corporations. It is unclear how the rule would work in this context, and suggest that clarification of the rule’s application would be beneficial. To that end, we respectfully request clarification of the rule’s extraterritorial application. Would it require the parent

⁵ Precious Metals Producers are publicly traded mining companies listed on major stock exchanges. These companies, which produce gold, silver, or platinum group metals as either primary or by-product metal, are clearly distinguishable from small operators, artisanal, and recreational miners.

⁶ There are limited instances where mining companies might purchase precious metals to unwind hedging contracts. However, these purchases are paper transactions and do not involve physical metal.

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companies of foreign-owned U.S. subsidiaries to implement comprehensive compliance programs? Likewise, would the rule require foreign subsidiaries of U.S. corporations to establish the anti-money laundering programs envisioned in the rule?

We appreciate the opportunity to share our comments on the proposed rule. Should you require additional information from us, please contact me on (202) 463-2643, or by email (bfrisby@nma.org).

Sincerely,

A handwritten signature in black ink that reads "Bradford V. Frisby". The signature is written in a cursive style with a large, prominent initial 'B'.

Bradford V. Frisby
Associate General Counsel
National Mining Association