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ATTN: Section 352 -- Jewelry Dealer Regulations

The Industry Council for Tangible Assets (ICTA) is the national trade association for precious metals, rare coin, and currency dealers. Many ICTA's members are small business people who operate shops or offices with fewer than 5 employees. We appreciate the opportunity to respond to the Financial Crimes Enforcement Network's proposed Rule (31 CFR Part 103; Section 352) as it relates to dealers in precious metals.

Our comments concern Section 103.140(c)(4) which requires that periodic testing of a dealer's anti-money laundering/cash reporting program be conducted by "individuals...not involved with the operation or oversight of the program."

A number of our member dealers are sole proprietorships or "mom & pop" operations. In many cases, these companies are staffed solely by a husband and wife team. Sometimes they may employ a bookkeeper or sales helpers on either a part-time or full-time basis; often these other employees are family members, such as sons and daughters.

In such closely held companies, either or both of the principals is either a participant in or acutely aware of every transaction. Since both parties are likely to be "involved in the operation or oversight of the program," the potential risk of non-compliance with cash reporting regulations is minimal. As the regulations are currently proposed, however, these business owners are prohibited from conducting their own periodic review of their anti-money laundering program.

These small companies would be required to hire an outside person to conduct these periodic reviews, since all existing senior employees (mom & pop) are involved in the operation or oversight of their anti-money laundering program. We believe that no real function would be served by the requirement to hire an outside reviewer. Indeed, it would appear that those companies that pose the least risk of missing reportable transactions will be the only entities that would be required to bear the cost of hiring someone to review their program.

The regulations proposed in Section 352 do not change the actual reporting requirements for Form 8300. The burden of penalties for non-compliance *personally* affect these small business owners, and they are acutely aware of their responsibilities.

We would suggest a minimum employee-based threshold for companies to comply with this aspect of the regulations. We believe that companies employing 5 or fewer (including mom & pop) should be exempted from this section. These companies could still be required to have a written plan, a designated compliance officer, and on-going anti-money laundering/cash reporting education for the owners and their employees. However, we might again question the need for a written plan for these small, closely held companies, since the risk of error is so minimal. (Although as we understand it, such a plan could be as simple as “all cash transactions in excess of \$XX must be double-checked by ‘mom or pop’ prior to delivery of any merchandise.”)

ICTA has been conducting free industry-wide educational anti-money laundering/cash reporting seminars (often led by IRS CID special agents) for nearly twelve years. In 1991, we produced a Form 8300 information kit for our industry, which is periodically updated. We provided a copy of this kit to Treasury staff and welcome comments and suggestions. As certain aspects of the regulations change or are clarified, we keep our members informed via our newsletter and via the trade press. We also invite ICTA members to contact the organization’s staff with any questions they may have on cash reporting issues. It has been our experience that our members are very concerned that they comply correctly with all cash reporting regulations.

Once these regulations are final, we will advise our members and educate them on the new requirements. We expect them to contact us with questions. We have been advised that as an association, we cannot prepare “boiler plate” examples for our members due to certain legal concerns and the varying needs of our member firms. It would, therefore, be extremely helpful for our industry education efforts if you could identify a specific person or department within Treasury, FinCEN, IRS or another agency that we can contact for reliable answers to compliance questions. For example, our smaller dealers have already asked whether the ICTA Cash Reporting Kit would qualify as a major portion of any plan.

ICTA appreciates the fact that the proposed regulations were written with consideration for small dealers. We believe the refinement we have suggested will provide the required Form 8300 compliance and eliminate an unnecessary financial burden to small businesses.