

## CLIENT ALERT

### FinCEN Provides Additional Guidance for Financial Institutions on Hemp-Related Businesses

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On June 29, 2020, the Financial Crimes Enforcement Network (FinCEN) issued helpful [guidance](#) on due diligence requirements for hemp-related businesses under the Bank Secrecy Act (BSA). The four-page guidance builds upon a December 3, 2019 [joint statement](#) on this topic issued by FinCEN, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, in consultation with the Conference of State Bank Supervisors, and provides additional detail on due diligence and suspicious activity reporting for such businesses. FinCEN's goal for the guidance is to “enhance the availability of financial services for, and the financial transparency of, hemp-related businesses in accordance with federal law.”

#### The 2018 Farm Bill

On December 20, 2018, the Agriculture Improvement Act of 2018 (2018 Farm Bill) removed hemp as a Schedule I substance under the Controlled Substance Act and directed the U.S. Department of Agriculture (USDA) to establish a regulatory framework for legal hemp production. The Bill defines “hemp” as the plant sativa L. and any part of that plant, including any derivatives, with a concentration of delta-9 tetrahydrocannabinol (THC) of 0.3 percent or less. THC is the psychoactive component of the sativa L. plant. Marijuana, a cousin of hemp which contains greater than 0.3 percent of THC, is still a controlled substance under federal law. USDA issued an [interim final rule](#) in October 2019 establishing such a program. It allows the production of hemp under a federal licensing scheme in states that do not prohibit hemp production, or under approved state or tribal licensing plans.

#### 2019 Guidance from Federal Banking Agencies

Following this rule, FinCEN and the federal banking regulators issued the December 2019 joint statement, highlighting the key points of the USDA interim final rule—namely that hemp production requires a USDA-issued license or state or tribal approval and state and tribal governments may still make hemp production illegal.

The 2019 joint statement also discussed BSA anti-money laundering (AML) considerations. Specifically, the statement noted that financial institutions are no longer required to file a Suspicious Activity Report (SAR) solely because a customer is growing or cultivating hemp in accordance with the law, but still must otherwise comply with applicable regulatory “requirements for customer identification, suspicious activity reporting, currency transaction reporting, and risk-based customer due diligence, including the collection of beneficial ownership information for legal entity customers.”

#### June 2020 Guidance

FinCEN’s June 2020 guidance builds upon the December 2019 joint statement by (1) outlining BSA/AML due diligence expectations, (2) detailing SAR requirements and providing examples, and (3) briefly discussing currency transaction reporting.

### **1. BSA/AML Due Diligence**

FinCEN explains that, when conducting customer due diligence, financial institutions may confirm a hemp grower's compliance with state, tribal, or federal licensing requirements by obtaining a written attestation by the business that it is validly licensed, or by obtaining a copy of the business' license. The guidance further suggests that, depending on the risk the financial institution assesses for the customer, it might be appropriate to obtain additional information such as "crop inspection or testing reports, license renewals, updated attestations from the business, or correspondence with the state, tribal government, or USDA."

### **2. Suspicious Activity Reporting**

Consistent with the December 2019 joint statement, FinCEN states that financial institutions no longer are required to file a SAR on a customer solely because it is engaged in the growth or cultivation of hemp in accordance with the law. However, normal SAR requirements otherwise apply, and FinCEN identifies several scenarios that might require reporting on such businesses, including customers that combine hemp with other, illegal, activities, or that operate without appropriate licenses or otherwise in violation of state or federal law. In cases where the transactions of a hemp-related business are comingled with marijuana-related activities, FinCEN instructs financial institutions to file a SAR in compliance with its [2014 guidance](#) on SARs for marijuana-related businesses (MRBs). However, it says, "if the proceeds of the businesses are kept separate, or the customer and its financial institution are able to identify which proceeds are marijuana-related and which are hemp-related," then the 2014 SAR guidance "applies only to the marijuana-related part of the business." This is important guidance for financial institutions that may have understood that any transaction with a MRB would require a SAR.

### **3. Currency Transaction Reports and FinCEN Form 8300**

There are no special requirements for reporting currency transactions in connection with hemp-related businesses. Financial institutions should report hemp-related currency transactions in the same manner they would for any other transaction. Similarly, individuals receiving more than \$10,000 in cash or other monetary instruments from a hemp-related business still need to report the transaction on FinCEN Form 8300.

### **Practical Considerations**

The guidance provides practical, concrete suggestions for financial institutions to meet their customer diligence obligations with respect to hemp businesses, and useful clarification on the interaction of the 2018 Farm Bill with FinCEN's previous guidance on SAR reporting relating to marijuana.

Financial institutions that provide, or are considering providing, financial services to such businesses should consider incorporating these diligence methods. They also should consider any necessary adjustments to their reporting under the 2014 marijuana guidance to reflect FinCEN's new hemp-specific guidance, as well as the red flags FinCEN identifies for events that still may require SARs with respect to hemp businesses.

With implementation of the 2018 Farm Bill provisions on hemp-related businesses continuing, financial institutions should watch for additional guidance on this topic from FinCEN.

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