

Special Alert: Banks no longer required to file SARs for hemp-related businesses

December 5, 2019

Federal and state banking regulators confirmed in a December 3 joint [statement](#) that banks are no longer required to file a suspicious activity report on customers solely because they are “engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations.”

Background

Last December’s [Agriculture Improvement Act of 2018](#) removed hemp—defined in the legislation as cannabis not containing more than 0.3 percent of THC on a dry weight basis—from Schedule I of the Controlled Substances Act and directed the United States Department of Agriculture to establish a federal program and requirements for the production of hemp in the U.S. USDA did so by issuing an [interim final rule](#) on October 31, which puts in place a plan for state or Indian tribes that want to retain primary regulatory authority over the production of hemp and a federal licensing plan for producers in states and tribal territories that do not have their own USDA-approved plans.¹ The interim final rule was effective upon publication, with a comment period closing December 30.

Agency Guidance

This week’s joint statement by the Federal Reserve Board, the Federal Deposit Insurance Corp., the Financial Crimes Enforcement Network, the Office of the Comptroller of the Currency, and the Conference of State Bank Supervisors follows USDA’s rulemaking. It states that because hemp—unlike cannabis—is not a controlled substance at the federal level, the Bank Secrecy Act no longer requires banks to file SARs solely because a customer is engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations.² The guidance reminds banks that when serving hemp-related businesses, they are still required to comply with all applicable regulatory requirements, and that the bank’s BSA/AML compliance program should be “commensurate with the level of complexity and risks involved.” Moreover, banks are still expected to follow standard SAR procedures should suspicious activity on a hemp-related business account warrant it.

Additional guidance from FinCEN regarding USDA’s interim final rule will be forthcoming.

¹ The interim final rule only governs the production of hemp under the 2018 Farm Bill and does not cover industrial hemp that is governed under the [Agricultural Act of 2014](#) (2014 Farm Bill).

² A state or tribal government may prohibit the production of hemp, even though it is legal under federal law.

For marijuana-related businesses, banks should continue to follow FinCEN guidance [FIN-2014-G001](#) – BSA Expectations Regarding Marijuana-Related Businesses.³

Impact on Banks

Even though the distinction between banking hemp and cannabis businesses has been generally understood since the 2018 Farm Bill, its recognition by banking regulators through the statement could reduce the SAR filing burden, particularly for risk-averse banks. The guidance also may result in increased availability of banking services to hemp-producing businesses.

That said, banks—and regulators—may continue to view hemp businesses as presenting higher risks than other agricultural businesses because it is grown from the same plant as cannabis. Moreover, hemp may be produced only with a valid USDA license or under a USDA-approved state or tribal plan. The limits on hemp production and sales are likely to vary materially between jurisdictions, as states retain broad authority to limit the production and sale of hemp. Banks are likely to have additional questions regarding the diligence they must undertake to confirm their clients' compliance with these requirements. Finally, sellers of hemp-derived products, particularly cannabidiol (CBD), may face additional risks given recent Food and Drug Administration and Federal Trade Commission enforcement regarding claims of CBD-related health benefits. Banks may face reputational risks from dealings with downstream sellers subject to FDA or FTC enforcement.

For questions about the alert and related issues, please visit our [Bank Secrecy Act/Anti-Money Laundering](#) practice page, or contact a Buckley attorney with whom you have worked in the past.

³ Marijuana is still a controlled substance under federal law, the 2018 Farm Bill amended the definition to exclude hemp only.