

The Federal Banking Agencies and FinCEN Issue Joint Statement About Providing Financial Services to the Hemp Industry

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Financial Crimes Enforcement Network, in consultation with the Conference of State Bank Supervisors, issued a joint statement today clarifying the legal status of hemp and the relevant Bank Secrecy Act (BSA) requirements applicable when providing financial services to these customers (the “Joint Statement”).

Clarification of Legal Status of Hemp

The Joint Statement clarifies that:

1. On December 20, 2018 when the Agricultural Improvement Act of 2018 (the “2018 Farm Bill”) was signed into law, hemp¹ became legal as a matter of federal law and was removed from Schedule 1 of the Controlled Substances Act (“CSA”).
2. Under interim final hemp rule promulgated by the U.S. Department of Agriculture (“USDA”), current state-licensed hemp growers can continue to grow hemp in the fall 2019/2020 planting season. However, after that period, hemp may only be grown with a valid USDA-issued license or under state-license issued by a USDA-approved state or tribal plan.
3. The 2018 Farm Bill did not preempt state law, so states can impose more stringent licensing requirements on hemp growers and producers, including prohibiting the growth and production of hemp in a state.
4. The Farm Bill explicitly preserved the authority of the U.S. Food and Drug Administration (“FDA”) to regulate hemp products under the Federal Food, Drug, and Cosmetic Act.²

¹ Hemp is defined as the Cannabis sativa L. plant or any part or derivatives therefrom that has a delta-9 tetrahydrocannabinol (THC) level of not more than 0.3% on a dry weight basis.

² Merchants selling hemp and hemp-derived products are prohibited from advertising or claiming that the hemp product is a drug or dietary supplement unless the product has been approved as such by the FDA. With respect to hemp infused food products for human or animal consumption, FDA approval is required for interstate sales; however, intrastate sales need only be permissible under applicable state law.

BSA Considerations

The Joint Statement notes that because hemp has been removed from Schedule I of the CSA, financial institutions are not required to file a Suspicious Activity Report (SAR) on customers solely because they are engaged in the growth or production of hemp in accordance with applicable law and regulation. Financial institutions are expected to follow their standard SAR filing procedures (i.e., file a SAR when indicia of suspicious activity warrant it).

The Joint Statement further notes that financial institutions providing services to hemp customers must comply with applicable regulatory requirements for customer identification, SAR reporting, currency transaction reporting, and risk-based customer due diligence, including the collection of beneficial ownership information for legal entity customers.

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Luse Gorman is actively assisting financial institutions nationwide in accessing and addressing the risks related to providing products and services to customers involved at all levels of the hemp industry. If you need any assistance or would like to talk about how we can help you, please contact:

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