

Banking Regulators Issue Statement Clarifying Requirements for Providing Financial Services to Hemp-Related Businesses

December 3, 2019

Federal and state banking regulators have clarified the requirements for banks providing financial services to hemp-related businesses, including the elimination of the requirement to file a Suspicious Activity Report (“SAR”) on customers solely because they are engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations.

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (“FDIC”), the Financial Crimes Enforcement Network (“FinCEN”), and the Office of the Comptroller of the Currency (“OCC”), in consultation with the Conference of State Bank Supervisors, have issued a policy statement (the “Statement”) providing banks^[1] with background information on the legal status of hemp and the U.S. Department of Agriculture’s (“USDA”) interim final rule on the production of hemp, as well as the legal requirements for banks under the Bank Secrecy Act (“BSA”) when providing banking services to hemp-related businesses. The Statement also sets forth that FinCEN will issue additional guidance after further reviewing and evaluating the USDA interim final rule.

Legal Status of Commercial Growth and Production of Hemp

On December 20, 2018, the Agriculture Improvement Act of 2018 (commonly known as the “2018 Farm Bill”) removed hemp from the Schedule I list of controlled substances. The 2018 Farm Bill also directed the USDA to issue regulations and guidance to implement a program to create a consistent regulatory framework around the production of hemp throughout the United States.

The USDA issued its interim final rule on October 31, 2019 establishing the domestic hemp production regulatory program. The interim final rule includes requirements for maintaining information on the land where hemp is produced, testing hemp for tetrahydrocannabinol (“THC”) levels, disposing of plants with more than 0.3 percent THC, and licensing for hemp producers. The regulations set forth under the interim final rule are in effect for the 2020 planting season.

The Statement issued by the regulators on December 3rd notes the following key points regarding the interim final rule.

- Consistent with the USDA interim final rule, hemp may be grown only with a valid USDA-issued license or under a USDA-approved state or tribal plan. Research and development initiatives authorized under the Agricultural Act of 2014 (“2014 Farm Bill”) remain in effect until one year after the effective date of the USDA interim final rule.
- A state or tribal government may prohibit the production of hemp, even though it is legal under federal law. The 2018 Farm Bill provisions related to USDA-approved state or tribal plans did not preempt state or tribal laws regarding the production of hemp that are more stringent than federal law.
- Separately, marijuana is still a controlled substance under federal law. The 2018 Farm Bill amended the definition of marijuana only to exclude hemp from the Controlled Substances Act.

BSA Considerations

The Statement also clarifies that since hemp has been removed from the Schedule I list of controlled substances, banks are not required to file a SAR on customers solely because they are engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations. Banks are expected to follow standard SAR procedures for hemp-related customers, which requires the filing of a SAR if there is an indication of suspicious activity.

The Statement further clarifies that banks may make a business decision as to the types of permissible services and accounts they will offer to hemp-related businesses and must ensure that a BSA/AML compliance program is in place that is appropriate given the level of complexity and risks involved. When serving hemp-related businesses, banks must 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.

Finally, the Statement clarifies that with respect to marijuana-related businesses, banks should continue to follow the FinCEN guidance [FIN-2014-G001](#) – BSA Expectations Regarding Marijuana-Related Businesses.

If you have any questions regarding this Statement, or banking hemp-related businesses in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenanddykman.com, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenanddykman.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

[1] For the purposes of the Statement, the term ‘bank’ means “each agent, agency, branch or office within the United States of commercial banks, savings banks, savings and loan associations, thrift institutions, and foreign banks.”

Practices

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