

A Step Forward for Cannabis Legitimacy: *FinCEN Issues Guidance for Hemp Related Businesses*



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On June 29, 2020, the Financial Crimes Enforcement Network (FinCEN) issued guidance to assist banks, brokers, and money-services businesses in delivering financial services to members of the growing hemp industry. The new guidance addresses questions related to Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regulatory requirements for hemp-related business customers.

As explained by [Richard Blau](#), the head of GrayRobinson's [Cannabis Law Group](#), The Agriculture Improvement Act of 2018 (the 2018 Farm Bill) removed hemp from the definition of "marihuana" in the Controlled Substances Act, and directed the establishment of a regulatory framework for the legal production of hemp. The 2018 Farm Bill defines "hemp" as the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.

FinCEN's latest guidance explains how financial institutions can conduct due diligence for hemp-related businesses, and identifies the type of information and documentation financial institutions can collect from hemp-related businesses to comply with BSA regulatory requirements imposed by federal law.

Core Due Diligence: Financial institutions must conduct customer due diligence (CDD) for all customers, including hemp-related businesses. Financial institutions should obtain basic identifying information about hemp-related businesses through the application of the financial

institutions' customer identification programs and risk-based CDD processes, including beneficial ownership collection and verification, as they would for all customers. Financial institutions must also establish appropriate risk-based procedures for conducting ongoing CDD.

Compliance Confirmation: For customers who are hemp growers, financial institutions may confirm the hemp grower's compliance with state, tribal government, or the USDA licensing requirements, as applicable, by either obtaining (1) a written attestation by the hemp grower that they are validly licensed, or (2) a copy of such license. The extent to which a financial institution will seek additional information beyond the steps outlined above will depend on the financial institution's assessment of the level of risk posed by each customer. Additional information might include crop inspection or testing reports, license renewals, updated attestations from the business, or correspondence with the state, tribal government, or USDA.

Suspicious Activity Reports: Because hemp is no longer a Schedule I controlled substance under 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 cultivation of hemp in accordance with applicable laws and regulations. However, FinCEN expects financial institutions to monitor the transactions of hemp-related businesses for signs of suspicious or unlawful activity, just as with other customers.

Currency Transaction Reports: Financial institutions must report currency transactions in connection with hemp-related businesses in the same manner they would for any other customers (i.e., report all currency transactions above \$10,000 in aggregate on a single business day). Similarly, any person or entity engaged in a non-financial trade or business would need to report on FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business) transactions in which the person receives more than \$10,000 in cash and other monetary instruments from a hemp-related business for the purchase of goods or services.

Combined Hem and Marijuana Businesses: To the extent the financial transactions of a hemp-related business are comingled with marijuana-related activities, a financial institution should apply FinCEN's 2014 Marijuana Guidance, which provides clarity on how to file SARs on marijuana-related activities.

FinCEN's June 29, 2020 guidance regarding financial institutions servicing hemp industry members is accessible [here](#).

For more information regarding the new guidelines and their implementation, please contact GrayRobinson's CannabisLaw Group at (866) 382-5132 or cannabislaw@gray-robinson.com