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**Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
Financial Crimes Enforcement Network  
Office of the Comptroller of the Currency  
Conference of State Bank Supervisors**

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**Providing Financial Services to Customers Engaged in Hemp-Related Businesses**

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network (FinCEN), and the Office of the Comptroller of the Currency in consultation with the Conference of State Bank Supervisors, are issuing this statement to provide clarity regarding the legal status of commercial growth and production of hemp and relevant requirements for banks<sup>1</sup> under the Bank Secrecy Act (BSA) and its implementing regulations. FinCEN will issue additional guidance after further reviewing and evaluating the U.S. Department of Agriculture (USDA) interim final rule.

Background

The Agriculture Improvement Act of 2018 (2018 Farm Bill),<sup>2</sup> which removed hemp as a Schedule I controlled substance under the Controlled Substances Act<sup>3</sup> was signed into law on December 20, 2018. The 2018 Farm Bill directs the USDA, in consultation with the U.S. Attorney General, to regulate hemp production.<sup>4</sup> The 2018 Farm Bill states that hemp production shall be subject to a hemp production regulatory plan established by the USDA, the states,<sup>5</sup> or tribal governments.

On October 31, 2019, the USDA issued an interim final rule establishing the domestic hemp production regulatory program to facilitate the legal production of hemp, as set forth in the 2018 Farm Bill.<sup>6</sup> Under the interim final rule, state departments of agriculture and tribal governments may submit plans for monitoring and regulating the domestic production of hemp to the USDA for approval. The interim final rule establishes a federal licensing plan for regulating hemp producers in states and tribal territories that do not have their own USDA-approved plans. In the

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<sup>1</sup> For the purposes of this 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.

<sup>2</sup> Pub. L. 115-334, 132 Stat. 4490.

<sup>3</sup> The term “hemp” is defined in the 2018 Farm Bill 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.” 7 U.S.C. 1639o(1).

<sup>4</sup> 7 U.S.C. 1639r(a)(1).

<sup>5</sup> The 2018 Farm Bill defines states to include a state, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States. 7 U.S.C. 1639o(4).

<sup>6</sup> See Establishment of a Domestic Hemp Production Program, 84 *Fed. Reg.* 58522 (Oct. 31, 2019) (to be codified at 7 CFR 990).

absence of a state or tribal regulatory plan, hemp producers will be subject to regulation directly by the USDA unless the state or tribal government prohibits hemp production.

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 USDA regulations are in effect to accommodate the 2020 planting season.

### Key Points

- 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<sup>7</sup> 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

Because hemp is no longer a Schedule I controlled substance under the Controlled Substances Act, banks 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. For hemp-related customers, banks are expected to follow standard SAR procedures, and file a SAR if indicia of suspicious activity warrants.

Bank customers engaged in hemp-related business activities are responsible for complying with the requirements set forth in the 2018 Farm Bill<sup>8</sup> and applicable regulations. It is generally a bank's business decision as to the types of permissible services and accounts to offer, and banks

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<sup>7</sup> The term "marijuana" is defined in the Controlled Substance Act at 21 U.S.C. 802.16, as amended by section 12619 of the 2018 Farm Bill.

<sup>8</sup> The interim final rule governs the production of hemp under the 2018 Farm Bill. The interim final rule does not affect hemp that was or is being cultivated under the 2014 Farm Bill programs. That hemp remains subject to the requirements of the 2014 Farm Bill.

must have a BSA/AML compliance program<sup>9</sup> commensurate with the level of complexity and risks involved. When deciding to serve hemp-related businesses, banks must comply with applicable regulatory requirements for customer identification,<sup>10</sup> suspicious activity reporting,<sup>11</sup> currency transaction reporting,<sup>12</sup> and risk-based customer due diligence,<sup>13</sup> including the collection of beneficial ownership information for legal entity customers.<sup>14</sup>

In the context of marijuana-related businesses, banks should continue following FinCEN guidance FIN-2014-G001 – BSA Expectations Regarding Marijuana-Related Businesses.<sup>15</sup>

### Additional Information

For questions regarding the 2018 Farm Bill and its implementing regulations, banks may consider contacting the USDA, state departments of agriculture, or tribal governments. Additionally, the 2018 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 and section 351 of the Public Health Service Act. Banks may consider contacting the FDA with hemp-related food, drug, and cosmetic questions.

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<sup>9</sup> See 12 CFR 208.63, 12 CFR 211.5(m), and 12 CFR 211.24(j) (Board of Governors of the Federal Reserve System); 12 CFR 326.8 (Federal Deposit Insurance Corporation); 12 CFR 21.21 (Office of the Comptroller of the Currency); and 31 CFR 1020.210 (Financial Crimes Enforcement Network).

<sup>10</sup> See 12 CFR 208.63(b), 211.5(m), 211.24(j) (Board of Governors of the Federal Reserve System); 12 CFR 326.8 (b) (Federal Deposit Insurance Corporation); 12 CFR 21.21 (Office of the Comptroller of the Currency); and 31 CFR 1020.220 (FinCEN).

<sup>11</sup> See 12 CFR 208.62, 211.5(k), 211.24(f), and 225.4(f) (Board of Governors of the Federal Reserve System); 12 CFR 353 (Federal Deposit Insurance Corporation); 12 CFR 21.11 and 163.180 (Office of the Comptroller of the Currency); and 31 CFR 1020.320 (FinCEN).

<sup>12</sup> See 31 CFR 1010.311.

<sup>13</sup> See 31 CFR 1020.210(b)(5).

<sup>14</sup> See 31 CFR 1010.230.

<sup>15</sup> Available at: <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>.