

Banking Hemp: The Banking Regulators Move Forward

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For hemp-related customers, banks no longer need to file suspicious activity reports according to a guidance statement issued by the Federal Reserve, FDIC, OCC and FinCEN, in consultation with the Conference of State Bank Supervisors. The descheduling of hemp from the Controlled Substances Act eliminates the need for banks to file suspicious activity reports under the BSA solely because a customer participates in hemp production or cultivation in accordance with applicable law and regulations, including the 2018 Farm Bill. For hemp-related customers, the standard suspicious activity report procedures are expected to apply.

The announcement follows on the heels of the U.S. Department of Agriculture's (USDA) October 31 interim final rule, which implements the 2018 Farm Bill by establishing a hemp production regulatory program and accommodates the 2020 planting season. Under the USDA's interim final rule, hemp may be produced commercially in states where the USDA has approved a state plan for regulating hemp production or where a federal licensing plan is in place for states that do not have a USDA-approved plan and that have not prohibited hemp production.

In light of the USDA's interim final rule, the banking regulators' joint statement observes the following:

- Under the 2018 Farm Bill and the interim final rule, hemp may only be cultivated under a USDA-approved state plan or USDA-issued license. In the case of research activities, authorization under the 2014 Farm Bill continues until one year after the interim final rule's effective date.
- State governments may prohibit hemp production within their own borders.
- Marijuana remains scheduled under the Controlled Substances Act, as the 2018 Farm Bill merely removed hemp from the definition of marijuana.

These developments affect responsibilities under the BSA, which requires banks to file suspicious activity reports to assist government authorities with identifying transactions that may relate to illicit activities, including drug-related offenses. Formerly, hemp fell within the definition of marijuana so such activities implicated BSA obligations related to marijuana.

Notably, the statement indicates that FinCEN will announce additional guidance following more reflection on the USDA's interim final rule. As for banking marijuana-related businesses, the statement reiterates the ongoing relevance of the 2014 FinCEN Guidance.