PROVIDING FINANCIAL SERVICES TO CUSTOMERS ENGAGED IN HEMP-RELATED BUSINESSES

I. BACKGROUND

The federal banking agencies, in consultation with the Conference of State Bank Supervisors have issued a joint statement to provide clarity regarding the legal status of commercial growth and production of hemp and relevant requirements for banks 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.

The Agriculture Improvement Act of 2018 (2018 Farm Bill), removed hemp with tetrahydrocannabinol (THC) levels of not more than 0.3 percent, from coverage under the federal Controlled Substances Act (CSA) and relegated the plant to regulation as an agricultural commodity.

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. 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 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 USDA’s regulation affirms that there are certain requirements that all hemp producers must meet, including licensing requirements, maintaining information on the land on which the hemp is produced, procedures for testing the THC concentration levels for hemp, procedures for disposing of non-compliant plants, compliance provisions, and procedures for handling violations. While hemp meeting the 2018 Farm Bill requirements is legal under federal law, states are still permitted to impose their own restrictions on intrastate production of hemp, provided that they are no less stringent than the federal requirements, including the state providing an absolute ban on intrastate production, possession or transportation (but not necessarily interstate transportation).
II. BANK SECRECY ACT 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 and applicable regulations. It is generally a bank’s business decision as to the types of permissible services and accounts to offer, and banks must have a BSA/AML compliance program 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, suspicious activity reporting, currency transaction reporting, and risk-based customer due diligence, including the collection of beneficial ownership information for legal entity customers.

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

III. ADDITIONAL INFORMATION

The joint guidance indicates that 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.