

July 2020

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## *In Guidance to Financial Institutions with Hemp-Related Business Customers, FinCEN Clarifies Due Diligence Requirements*

By [Charles Patrizia](#) & [Daniel Liebowitz](#)

In an effort to expand the availability of financial services for hemp-related businesses<sup>1</sup>, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued guidance on June 29, 2020, clarifying the type of information and documentation that financial institutions should collect from hemp-related business customers to comply with the Bank Secrecy Act ("BSA"). The guidance reiterates that the 2018 Farm Bill removed "hemp" from the definition of marijuana in the Controlled Substances Act ("CSA") and recommends that financial institutions conduct risk-based customer due diligence on any hemp-related business, as they should for all customers. The guidance relates specifically to businesses or individuals that grow hemp, and processors or manufacturers who purchase hemp directly from such growers, and does not replace or supersede FinCEN's earlier guidance regarding marijuana-related businesses operating in violation of the CSA.

In conducting customer due diligence, banks and credit unions may, per the guidance, confirm a hemp grower's compliance with applicable licensing requirements by obtaining either (1) a written attestation from the hemp grower that they are validly licensed, or (2) a copy of such license. Depending on the level of risk posed by the business, the institution may also seek additional information, including crop inspection or testing reports, license renewals, updated attestations from the business, or correspondence with applicable regulators.

With the 2018 removal of hemp from the list of controlled substances under the CSA, financial institutions are no longer required to file a Suspicious Activity Report ("SAR") on customers who engage in the growth or cultivation of hemp in accordance with applicable laws and regulations. Financial institutions are still expected to follow standard SAR procedures, however, and file a SAR if the institution becomes aware of suspicious activity in the normal course of business. FinCEN's guidance provides the following examples of potentially suspicious activity:

- A customer appears to be engaged in hemp production in a jurisdiction where hemp production remains illegal (e.g., Idaho, South Dakota, and Mississippi);
- A customer appears to be using a state-licensed hemp business as a pretext to launder money derived from other criminal activity, including marijuana-related activity;

- A customer engaged in hemp production seeks to conceal or disguise involvement in marijuana-related business activity; and
- A customer is unable or unwilling to certify or provide sufficient information to demonstrate that it is duly licensed and operating consistent with applicable law.

In the event the financial transactions of a hemp-related business are comingled with marijuana-related activities, a financial institution is required to file a SAR in accordance with earlier guidance issued by FinCEN. Where the proceeds from the marijuana-related activities are kept separate, however, a SAR filing is only required for the marijuana-related part of the business.

FinCEN's full guidance may be found [here](#).

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<sup>1</sup> For purposes of this alert, "hemp" and "hemp-related businesses" refer to "hemp" as defined by the amendments to the 2018 Farm Bill, i.e., cannabis sativa plants and derived materials with a tetrahydrocannabinol content of less than 0.3%.

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