

**Selected Q&A Correspondence with FinCEN**

**September, 2017:**

**Q:** Would you consider a cannabis testing lab/facility a MRB per the 2014 guidance?

**A: For the purposes of the guidance, FIN-2014-G001, a marijuana-related business is any business that manufactures, dispenses, or distributes marijuana.  If the business in question is not engaging in said activities, it would not be a marijuana-related business for the purposes of FIN-2014-G001.**

**August, 2017:**

**Q:** Are hemp cultivators/distributors/manufacturers considered MRBs?

**Q:** Are hemp-derived CBD cultivators/distributors/manufacturers/merchants considered MRBs?

I understand if they hold applicable state licenses for THC, they would be MRBs and could operate their hemp and/or hemp-derived CBD business accordingly and under the prevailing guidances. But how about if they are not state-licensed? Can they be offered bank services if the financial institution follows the same MRB BSA/AML/KYC guidelines as if they were an MRB? Or would MRB guidance & reporting not be required but could be applied as a best practice? (Of course, all new accounts are subjected to standard KYC/AML guidelines & reporting in any event.)

For clarity, kindly provide separate answers for hemp vs hemp-derived CBD if applicable.

**A: A “marijuana-related business” is defined as any business that manufactures, distributes, or dispenses marijuana, which all of the businesses mentioned below would appear to be, therefore a singular response would apply to all.  The Marijuana Guidance, FIN-2014-G001 explains the SAR filing requirements and expectations for financial institutions that seek to bank Marijuana-Related businesses that are duly licensed to engage in such activity within their State.  That would be the extent of the guidance we would be able to provide, as FinCEN can merely explain the SAR filing expectations are for institutions that seek to offer services to these types of businesses, not the permissibility of banking such businesses.  These businesses would still be considered to be involved in activity that is in violation of the Controlled Substances Act, therefore banking such businesses has never been endorsed or recommended by FinCEN.  That being said, if a business engaged in marijuana-related activity is not duly licensed in a state where such activity is legal (on a state-level), the filing expectations outlined in the guidance, FIN-2014-G001 would not apply, and financial institutions should adhere to the existing SAR filing requirements outlined in 31 CFR 1020.320.**

**August, 2017:**

**Q:** I have been advising clients that if they accept such 'indirect' cash deposits, and notwithstanding the guidance in your reply, they should in the interest of best practice still initially and then at regular intervals, confirm their MRB customers identity and background, that their state license is in good standing, and that further they remain in full compliance with state compliance regulations. I also recommend a periodic on-site inspection to confirm compliance and verify that suspicion is unwarranted. Kindly comment on this.

**A: To your first point, while the guidance FIN-2014-G001 does not expressly or implicitly mirror your recommendations, they would be consistent with maintaining an effective compliance program, and would likely be seen as a "best practice". Please be mindful, FinCEN would not take issue with your recommendations, but anything not outlined in FIN-2014-G001, BSA regulations, or any other items published by FinCEN would be "your" recommendations, and not expectations or procedures required by FinCEN.**

**July, 2017**

**Q:** In the instance of a wholesale distributor of non-cannabis smoking accessories (vape pens, glassware, et.al.) whose business customer is a state-licensee without access to banking and therefore desires to pay for purchases in cash, in addition to implementing adequate initial and ongoing verification of that licensees state compliance, is it recommended or required that the financial institution knowingly receiving such cash deposits on behalf of their customer file a "Marijuana Limited SAR" for each such transaction?

**A: Based on what you have described below, your institution is not offering services directly to a "marijuana-related business". A marijuana-related business is any business that manufactures, distributes, or dispenses marijuana. If the business in question is not a marijuana-related business, the guidance, FIN-2014-G001 would not apply. The expectations outlined in the guidance are explicitly directed towards financial institutions that are directly banking the marijuana-related business. FinCEN does not expect a financial institution to file SARs on the basis that a customer relationship indirectly involves a state-regulated marijuana-related business, so long as there is not any other suspicious activity that would otherwise warrant the filing of a SAR. While a financial institution may file SARs in such circumstances, the activity associated with these indirect relationships is not the focus of the Marijuana Guidance, and such reports may be of limited value with respect to the priorities of FinCEN and its stakeholders. However, to be clear, financial institutions should file SARs in these circumstances when there are other suspicious activity that would serve as an independent basis for filing SARs.**