

April 5, 2019

Greetings,

The 2018 Federal Farm Bill (FFB) changed the legal status of hemp products. Some of the changes within the FFB will take time to enact while certain changes to regulatory requirements are more immediate. The purpose of this letter is to provide clarity on the banking of hemp-related businesses in Minnesota, including Minnesota State Chartered Banks and Credit Unions. This letter does not provide guidance related to the banking of marijuana or cannabinoid related businesses.

### **Background**

Federal law defines hemp 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.”

Minnesota has been operating a hemp pilot program since 2016. Under the pilot program, participants are licensed to grow, process, and market hemp. The program requires that, within 30 days of harvest, each hemp field is inspected and sampled by the State to determine THC compliance. If the sample passes inspection, the grower is issued a “Fit for Commerce Certificate,” and may sell their crop on the open market. If the sample fails, the grower may request one additional sample test at the grower’s own expense. If the grower declines the additional testing or the sample fails the second test, then the grower must destroy their field.

Prior to the 2018 FFB, hemp was a controlled substance at the federal level. This created challenges in providing banking services to hemp-related businesses. The FFB included several changes to the regulation of hemp:

- 1) Removed hemp from Schedule 1 of the Controlled Substances Act,
- 2) Allowed states with existing hemp pilot programs to continue operations, and
- 3) Established the groundwork for states to adopt commercial hemp programs upon approval from the federal government.

Minnesota’s pilot program remains operational, and the Minnesota Department of Agriculture is in the process of working with the federal government to implement a commercial hemp program. The Minnesota Department of Agriculture anticipates transitioning from the pilot program to a commercial hemp program in 2020.

**Regulatory Environment**

Prior to the 2018 FFB, the primary regulatory hurdle to banking a hemp-related business was hemp's status as a Schedule 1 substance under the Controlled Substances Act. Hemp's removal from Schedule 1 lessens the regulatory burden on banks and credit unions interacting with hemp-related businesses. Additionally, the State's hemp pilot program and the anticipated commercial program outline a framework to help hemp-related businesses achieve compliance with state law. An affiliation to hemp will no longer automatically require suspicious activity reporting. However, nothing in the 2018 FFB, Minnesota's hemp programs, or this letter alleviates a bank or credit union's responsibility to assess the legality of customers and transactions, or report identified suspicious activity, as established by current regulations.

**Risk Management**

Whether or not a financial institution interacts with a complex industry is effectively a risk management decision. While the legality of a product is obviously a significant factor, it is not the only risk to consider. Financial institutions considering whether to bank hemp-related businesses should be confident in their ability to assess the risk of agriculture operations of similar size and business models. Financial institutions should also understand licensure requirements in the state, including the potential destruction of non-compliant crops.

Sincerely,

A handwritten signature in black ink that reads "Steve Kelley". The signature is written in a cursive, flowing style.

Steve Kelley  
Commissioner