

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice FLP-807

For: State and County Offices

1-FLP, 2-FLP, 3-FLP,
4-FLP, 5-FLP

Guidance on Making Direct and Guaranteed Loans to Hemp Producers

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

Growing industrial hemp has been authorized in many States since the Industrial Hemp State Pilot Program was included in the Agriculture Act of 2014. It is anticipated that there will be increased inquiries and applications to produce hemp with the implementation of the commercial hemp production provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill), as hemp is now recognized as an agricultural commodity by the Federal Government.

While it is understandable that farmers are looking for new and additional ways to increase their profitability, industrial hemp has unique risk exposure for both applicants and FSA. Therefore, guidance is being provided to aid employees in processing both FSA Direct and Guaranteed Loan applications where hemp will be considered as part of the operation.

B Purpose

This notice provides guidance on the analysis and evaluation of direct loan applications and/or requests for guaranteed loans for industrial hemp growers.

C Contact

If there are questions about this notice:

- County Offices shall contact their State Office
- State Offices shall contact LMD at 202-690-0651 with concerns about loan making issues.

Disposal Date	Distribution
July 1, 2020	State Offices; State Offices relay to County Offices

2 Applications for the 2020 Crop Year

A Complete Application Requirements – Licenses and Contracts

Starting with the 2020 crop year, FSA will be able to consider applications to grow hemp beyond the provisions of the 2014 pilot program. While the 2018 Farm Bill does allow for production of hemp, it remains highly regulated for federal loan participation. One requirement is that all producers must be licensed under a State or Tribal plan approved by USDA, or if a producer resides in a State that does not have a USDA-approved plan, the producer must be licensed directly by USDA. As part of that license requirement, all producers will be required to pass background checks, and subcontracting is not allowed. Therefore, no Direct or Guaranteed Loan application will be considered complete until the applicant can provide their USDA-approved license, a copy of which must be included with the application.

Additionally, due to the instability and lack of historical production and price history of hemp operations, no application will be considered complete without a valid contract to grow/purchase hemp. Contracts are required for this commodity according to 7 CFR 761.104(c), (1-FLP, subparagraph 242 A), which states that farm operating plans will be based on accurate and verifiable information.

With the inherent risk associated with this emerging commodity, contracts or other reliable documentation should outline the use of hemp being grown (grain, fiber or CBD/Floral Material) and provide adequate production and pricing information that support budget projections. The proposed use of hemp being grown is necessary as the expenses and income for producing each variety of hemp can be radically different. Additionally, the types of equipment needed can also vary significantly depending on the ultimate use of the hemp being produced. Authority for requiring this information as part of a complete application is under 7 CFR 764.51(b)(13), (3-FLP, subparagraph 42 A), which allows the requirement for “any additional information deemed necessary by the Agency to effectively evaluate the applicant’s eligibility and farm operating plan”.

Furthermore, FLP must ensure as part of the application that all planned hemp acreage matches that reported to Farm Programs and should match the information provided with the license number, (acres being produced and farm number where the hemp will be produced).

Note: A PLP lender may provide the license number and information that they have reviewed and approve of the contract in their narrative and satisfy this requirement.

2 Applications for the 2020 Crop Year (Continued)

B Business Plan Development

Business plans supporting loan and loan guarantee requests for contract hemp growers are to be based upon standard production budgets developed by the applicant based on data from contractors, consultants, or extension specialists. Enterprise budgets are acceptable starting points, but loan approval officials must ensure business plans reflect realistic performance assumptions under current conditions for specific situations, including but not limited to:

- increased input costs by region
- type of hemp being produced
- increased income for organic production
- changes in unit numbers and weights
- quality levels if production is for CBD
- other relevant factors that affect net income.

Note: PLP lenders will need to address all these additional factors in their narrative.

All operations that include hemp as part of the business plan are required to be evaluated according to guidance in this notice, regardless of whether the loan request is directly related to the production of industrial hemp.

Note: The Kentucky State Department of Agriculture website provides several useful enterprise budgets that were prepared in conjunction with the University of Kentucky for all types of hemp being grown, which can be found at <http://hemp.ca.uky.edu/>.

C Dependable Source of Income

The direct loan applicant's proposed operation must project a feasible plan according to 7 CFR 764.401(a)(1)(i), (3-FLP, subparagraph 352 B) and as defined in 7 CFR 761.2(b), (1-FLP, Exhibit 2). FSA regulations require that income sources be dependable and likely to continue.

For direct loans, the dependability of income is covered by 7 CFR 761.104(c), (1-FLP, paragraph 242), which states that farm operating plans will be based on the following accurate and verifiable information:

- historical information will be used as a guide when available

Note: The authorized agency official will review the farm operating plan to ensure that it is reasonable, relative to historical performance and local practices and conditions. Applicants' experience in producing similar crops should be considered.

- positive and negative trends, and mutually agreed upon changes and improvements, and current input prices will be taken into consideration when arriving at reasonable projections.

Note: The primary focus should always be on developing a realistic projection.

2 Applications for the 2020 Crop Year (Continued)

C Dependable Source of Income (Continued)

3-FLP, subparagraph 251 C provides additional guidance for evaluating feasibility for direct loans, which requires the authorized agency official to document that the operating and living expenses, nonfarm income, and farm and other income included in the farm operating plan are realistic.

Similar requirements also exist for loan guarantees, as provided in 7 CFR 762.125(a)(3)-(7), (2-FLP, subparagraph 151 B), which states that a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue. Additional guidance about feasibility for guaranteed loans can be found in all of 7 CFR 762.125, (2-FLP, paragraphs 151 through 155).

It should also be noted that some banking institutions do not accept financial transactions from hemp operations at this time. Applicants should ensure the availability of a banking institution authorizing these financial transactions to ensure availability of proceeds to support payment of expenses and debts. Additionally, producers will be required to assign their sale proceeds to FSA in an amount not to exceed their annual payment.

D Reviewing Dependability of Hemp Contracts

For income from a hemp contract to be considered dependable, the contract should:

- provide for termination based on objective “for cause” criteria only
- require that the grower be notified of specific reasons for cancellation
- provide assurance of the producer’s opportunity to generate enough income to develop a cash flow budget and repay the loan
- be issued by a purchaser that has a reasonable and realistic prospect of fulfilling the contract. Purchasers should be properly licensed to purchase hemp and should not have a history of not satisfying similar contracts.

When contract income does not appear dependable and likely to continue, authorized agency officials should:

- inform the direct loan applicant or guaranteed lender of the problematic contract provisions
- provide an opportunity for submission of a revised contract before a final decision on the request.

Note: Loan or guarantee requests may be approved subject to modification of unacceptable contract provisions.

Denials of loan and guarantee requests when a reasonable plan cannot be developed because of unacceptable contract terms should reference the rationale and CFR citations in this notice, as applicable.

2 Applications for the 2020 Crop Year (Continued)

E Security Requirements for Direct or Guaranteed Loans

Normal income security requirements will apply for 2020 Direct hemp loans. As per 7 CFR 764.107(b)(1), (3-FLP, subparagraph 95 A) the security value of crop production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses. The additional requirement to obtain 150 percent collateral for direct loans if available will continue be followed.

Existing security requirements for Guaranteed loans will be followed including requirements related to additional security as outlined in 7 CFR 762.126, (2-FLP paragraphs 166 through 169).

F Insurance Availability and Requirements for Hemp Producers

For the 2020 crop year, it is anticipated that RMA will provide Whole Farm Revenue Protection policies for hemp producers. Due to the potential for crop failures, crop insurance is required for all Direct and/or Guaranteed loans for hemp operations. This provision cannot be waived unless crop insurance is unavailable (i.e. missed enrollment period or applicant is ineligible for insurance). Either FSA or the guaranteed lender must be named as loss payee on the crop insurance policy.

Farm Programs will also have NAP coverage available for hemp beginning with the 2020 crop year, which can be recommended but not required. Obtaining a NAP policy for hemp does not replace the requirement for crop insurance.

G Impact on Guaranteed Lenders

The requirements in this notice related to contracts and feasibility apply to all guaranteed lenders unless a PLP lender's Credit Management System (CMS) specifically addresses how the lender currently considers production contract terms in evaluating and analyzing financial feasibility for hemp. Every CMS includes language that states in part that "...Requirements for loan administration, servicing and reporting activities not specifically addressed in this attachment are governed by the attached Form FSA-2201, Lender's Agreement, and 7 CFR 762." This notice clarifies policies and requirements in 7 CFR Part 762, and thus applies when the lender's CMS does not specifically address production contract terms for hemp.