

For: State and County Offices

Revised Guidance on Making Direct and Guaranteed Loans to Hemp Producers

Approved by: Deputy Administrator, Farm Loan Program



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 updated guidance on the analysis and evaluation of Direct Loan applications and/or requests for guaranteed loans for industrial hemp growers, especially as it relates to contracts
- obsoletes Notice FLP-807.

C Contact

If there are questions about this notice:

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

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

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2 Applications for Crop Year 2020

A Complete Application Requirements

Starting with crop year 2020, FSA will be able to consider applications to grow hemp from loan applicants in States and tribes with a USDA approved plan, or from individuals who are licensed under a USDA approved plan.

Therefore, a requirement for a complete application, for those operating under the 2018 Farm Bill, is that all producers must provide their license at the time of application. As part of that license requirement, all producers will be required to pass background checks, therefore subcontracting is not allowed. As a result, no Direct or Guaranteed Loan application will be considered complete until the applicant can provide their approved license, a copy of which **must** be included with the application.

Notes: A PLP lender may provide the license number in their narrative and satisfy this requirement.

Individuals who are licensed to produce hemp under provisions of the 2014 Farm Bill will continue to be eligible for FSA assistance.

B Business Plan Development

For hemp income to be included in the Farm Business Plan (FBP), or in the lender's income projections, a contract is required. However, if a hemp grower is properly licensed and shows they can operate without any hemp income in the FBP, FSA will consider a loan for the hemp production expenses without a contract.

Business plans supporting loan and loan guarantee requests for 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
- variety 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.

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

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/>.

2 Applications for Crop Year 2020 (Continued)

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 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.

3-FLP, subparagraph 251 C provides guidance for evaluating Direct Loan feasibility, which requires authorized agency officials to document that 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).

D Financial Transactions and Assignment of Proceeds

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. Producers will be required to assign their sale proceeds to FSA in an amount not to exceed their annual payment.

E Reviewing Hemp Contracts

For income from a hemp contract to be included in the FBP, the contract should:

- provide for termination based on objective "for cause" criteria only
- require that the grower be notified of specific reasons for cancellation

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2 Applications for Crop Year 2020 (Continued)

E Reviewing Hemp Contracts (Continued)

- 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 have a history of 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 the modification of unacceptable contract provisions.

F Security Requirements for Direct or Guaranteed Loans

Normal income security requirements will apply for crop year 2020 Direct Loans involving hemp production. 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 to be followed.

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

G Insurance Availability and Requirements for Hemp Producers

For crop year 2020, it is anticipated that RMA will provide Whole Farm Revenue Protection policies for hemp producers. Because of 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 (such as missed enrollment period or applicant is ineligible for insurance). Either FSA or the guaranteed lender must be named as a loss payee on the crop insurance policy.

Note: Whole Farm Revenue is only available to producers who meet the diversification requirement of farming more than a single eligible commodity. Therefore, an applicant who proposes a hemp-only operation will not be able to obtain Whole Farm Coverage.

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2 Applications for Crop Year 2020 (Continued)

G Insurance Availability and Requirements for Hemp Producers (Continued)

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.

H 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.

I Reporting

Producers will coordinate with Farm Program staff to comply with all reporting requirements mandated by the USDA Agricultural Marketing Services policies pertaining to hemp production and reporting.