

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice FLP-836

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

For: State and County Offices

Making Direct and Guaranteed Loans to Hemp Producers for the 2021 Crop Year

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A Background

The hemp provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill) were to be fully implemented as of October 1, 2020. However, the recently passed “Continuing Appropriations Act, 2021 and Other Extensions Act” extended the 2014 Farm Bill Pilot Program until January 1, 2022. Therefore, guidance is being provided to aid employees in processing applications from hemp producers for the 2021 crop year who are operating under either the 2014 or 2018 Farm Bill rules.

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, particularly as it relates to loan processing and feasibility determinations
- obsoletes Notice FLP-827.

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, 2021	State Offices; State Offices relay to County Offices

2 Applications for Crop Year 2021

A Complete Application Requirements

After October 1, 2020, FSA will continue to accept applications to grow hemp from licensed loan applicants using provisions of either the 2014 or 2018 Farm Bill. One provision of the extension of the 2014 Pilot Program was that a State may withdraw from a 2018 Farm Bill approved plan and authorize hemp production under the 2014 Pilot Program until January 1, 2022. Therefore, offices need to confirm which plan their State is operating under and which licensing rules apply.

A requirement for a complete application is that all producers must provide their license at time of application. As a result, Direct and Guaranteed Loan applications will not be considered complete until an applicant provides a copy of their approved license.

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

B Business Plan Development

For hemp income to be included in the Farm Business Plan (FBP) or in the lender's income projections, either a contract to purchase is required or the applicant must provide proof of a prior history of processing and selling hemp without a contract.

Income and expense projections for applicants without a contract, but who have prior processing and sales history, may be included in the cash-flow. The amount of income included will be based on prior history, but may include reasonable increases in production based on improved operations or realistic expansion plans.

For those applicants who do not have a contract to purchase hemp, or any prior history processing and selling their own hemp, a loan may still be made to produce hemp, if they are properly licensed, and show they can cash-flow all expenses without any hemp income.

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 that 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

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2 Applications for Crop Year 2021 (Continued)

B Business Plan Development (Continued)

- quality levels if production is for Cannabidiol (CBD)
- other relevant factors that affect net income
- for growers operating according to the 2014 Pilot Program, all hemp must be harvested by December 31, 2021, or that crop is subject to the 2018 Farm Bill provisions, which may render it valueless. In addition, loan staff must ensure that marketing plans for 2014 Farm Bill hemp comply with the State plan's provisions regarding commercial sales.

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

With many States implementing hemp production plans under either the 2014 or 2018 Farm Bill, there may be additional risk with increased scrutiny from local law enforcement attempting to validate a producer's hemp operation. Accordingly, loan staff should work closely with applicants to ensure that they are prepared to demonstrate legal compliance when necessary.

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 and relative to historical performance and local practices and conditions. Applicants' experience in producing similar crops should be considered.

- positive and negative trends, 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 Crop Year 2021 (Continued)

C Dependable Source of Income (Continued)

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 still do not accept financial transactions from hemp operations. 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
- 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.

2 Applications for Crop Year 2021 (Continued)

F Security Requirements for Direct or Guaranteed Loans

Normal income security requirements will apply for crop year 2021 Direct Loans involving hemp production. According to 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 2021, it is anticipated that RMA will provide expanded 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.

Farm Programs may also have NAP coverage available for hemp's 2021 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 AMS policies pertaining to hemp production and reporting.