

**For:** State and County Offices

**Guidance on Servicing Direct and Guaranteed Loans with Hemp Producers**

**Approved by:** Deputy Administrator, Farm Loan Programs



**1 Overview**

**A Background**

With the Federal Government now recognizing hemp as an agricultural commodity, our Agency will soon see its presence within both our Direct and Guaranteed case files. While it's understood that this new commodity will likely produce some servicing challenges because of State and Federal regulations, it should be treated as closely as possible to any other agricultural commodity and serviced in the same manner. Guidance is being provided to assist Agency employees in servicing their Direct and Guaranteed loan caseloads where hemp is being produced.

**B Purpose**

This notice provides guidance on servicing Direct and Guaranteed loans for industrial hemp producers.

**C Contact**

If there are questions about this notice:

- County Offices shall contact their State Office
- for loan servicing inquiries, State Offices shall contact LSPMD, at 202-720-4572.

<b>Disposal Date</b>	<b>Distribution</b>
August 1, 2020	State Offices; State Offices relay to County Offices

## 2 Servicing

### A General Servicing

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, there are specific requirements that producers must meet. One requirement, under the 2018 Farm Bill provision, is that all producers must be licensed under a State or Tribal plan approved by USDA, or if a producer resides in a State or Tribe that does not have a USDA-approved plan, the producer must be licensed directly by USDA. Before approving a direct loan servicing action, FSA must have a copy of the borrower's current license.

Individuals who are approved to produce hemp under provisions of the 2014 Farm Bill will continue to be eligible for FSA loan servicing assistance. The AMS website maintains a list of States and tribes that are under the 2014 and the 2018 Farm Bill. Production under the 2014 Farm Bill expires October 30, 2020.

For hemp income to be included in the projected cash flow or used within income projections, a contract is required. For direct loans contracts are required for this commodity in accordance with 7 CFR 761.104(c), (1-FLP, subparagraph 242 A), which states that farm operating plans will be based on accurate and verifiable information. For guaranteed loans contracts are also required in accordance with 7 CFR 762.125(a), (2-FLP, paragraphs 151, 152, and 153) which states that plans must be based upon applicant's proven record of production for SEL's, proven record of financial management for CLP's, and the lender's CMS for PLP's. A lender must be able to determine that the applicant has the financial resources to repay. The contract to grow/purchase will assist in providing accurate and verifiable information and assist in determining that financial resources are available. The contract should indicate the following:

- 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, and
- be issued by a purchaser that has a reasonable and realistic prospect of fulfilling the contract.

**Note:** Purchasers should be properly licensed to purchase hemp and have a history of satisfying similar contracts.

If a hemp grower is properly licensed and shows they can cash flow without any hemp income in the servicing action's projected plan, FSA and/or the Guaranteed lender may consider servicing a loan without a hemp contract.

## 2 Servicing

### A General Servicing (Continued)

FSA and Guaranteed lenders should ensure that all planned hemp acreage matches the acreage reported to Farm Programs using FSA-578. Additionally, this should match the information provided with the license number, (acres being produced and farm number where the hemp will be produced).

### B Disposal

Any hemp exceeding the acceptable THC level must be disposed of onsite according to the disposal methods approved by USDA. For further information on proper disposal methods see 7 CFR Part 900 found at <https://www.federalregister.gov/documents/2019/10/31/2019-23749/establishment-of-domestic-hemp-production-program>. The State, tribe, or the State's department of agriculture will be responsible for establishing protocols and procedures to ensure non-compliant hemp is appropriately destroyed in compliance with applicable State, tribal and Federal law. FSA will **not** pay for these services for direct loans and FSA will **not** cover a lender's advance to the borrower to cover the cost as part of any guaranteed loan loss claim.

### C Non-Monetary Default

Existing borrowers growing hemp without an individual USDA, State, or Tribal license are considered to be in non-monetary default. Similarly, if the hemp is being grown on FSA financed real estate or FSA financed equipment and supplies are being used to produce the crop with either a direct or guaranteed loan, borrowers will also be considered in non-monetary default. Borrowers are only allowed to produce hemp pursuant to the 2014 Farm Bill Pilot Program and the 2018 Farm Bill requirements.

Where it is determined that a lender is financing an operation that includes hemp that is not a licensed operation under the Farm Bill, FSA considers the borrower to be in non-monetary default and losses related to hemp will **not** be covered under the guarantee. Lenders will check with their legal counsel for nonmonetary default actions that are covered under their promissory notes and loan agreements.

### D Assumption and Transfer

Currently under the 2018 Farm Bill, a hemp operation's license, registration, and hemp production **cannot** be transferred to another producer or a creditor. If a borrower proposes to transfer anything related to hemp operation, FSA will require the borrower to provide documentation from the licensing authority authorizing the transfer.

## 3 Direct Loan Servicing

### A Business Plan Development

Farm Business Plans (FBP) supporting servicing 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.

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### 3 Direct Loan Servicing (Continued)

#### A Business Plan Development (Continued)

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
- intended use of hemp being produced (CBD, fiber, seed, grain, etc.)
- 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.

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.

#### B Dependable Source of Income

FSA regulations require that income sources be dependable and likely to continue. For direct loans, the requirements for the farm operating plan are 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.
- FSA approval officials will review the previous production year contract and compare it with the borrower's actual performance. The lack of a contract and/or the continued use of an unenforceable contract is considered a management decision.

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, mutually agreed upon changes and improvements, and current input prices will be taken into consideration when arriving at reasonable projections. The primary focus should always be on developing a realistic projection.

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.

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### 3 Direct Loan Servicing (Continued)

#### C Routine General Servicing

Hemp will be considered like any other borrower produced commodity, if the hemp was produced under a license authorized by the 2014 or 2018 farm bills, and provided the crop is not abandoned or destroyed.

#### D Primary Loan Servicing

If the borrower's delinquency or distress is the result of hemp being produced without a contract or the borrower used an **unenforceable contract**, the borrower would **not** meet the eligibility criteria in 5-FLP, subparagraph 102 D, 7 CFR 766.104(a)(1). The borrower may be eligible for primary loan servicing if other eligible commodities meet the eligibility criteria.

If a hemp crop is collected and/or destroyed according to the license requirements, the borrower must provide FSA with a copy of the required lot-destruction documentation submitted to AMS. FSA may consider the action similar to a disease or insect damaged crop as provided in 5-FLP, subparagraph 102 D, 7 CFR 766.104(a)(1), provided the destruction of the hemp was for reasons beyond the borrower's control and the borrower did not commit a negligent violation as determined by the licensing authority.

Under the 2018 Farm Bill, to produce hemp, a license is required. A hemp operation's license and registration **cannot** be transferred to another party. Thus, if the borrower defaults on the loan, dies, or abandons the operation, under no circumstance could another legal individual, lender, or FSA Agency official obtain the right to the commodity and attempt to liquidate it as a full or partial income recovery attempt. Under these circumstances, protective advances are not authorized.

#### E Collateral

When conducting routine loan servicing actions that require a market value and income projections, hemp will be appraised and valued like all other production crops. Please contact the National Office with any hemp valuation questions you may have during servicing actions.

#### F eDALRS

When FSA is required to complete the eDALRS Net Recovery Property Screen, FSA will appraise and include Hemp as an asset as provided in paragraph 38 of the eDALRS User's Guide. Unless USDA or State/Tribal plans or licenses specially address a creditor's ability to take possession and dispose of hemp, FSA will offset the market value of hemp in eDALRS to reduce the net recovery value, reflecting that FSA cannot take possession. When inputting hemp into eDALRS on the Net Recovery Property Screen, use the security type "Chattel Asset". Include a cost amount equal to the market value of the hemp security on the "Expense Cost" field. On the "Exp Description" field, include a note that states "FSA cannot possess or sell hemp security".

Please contact the National Office with any eDALRS input questions related to hemp security.

**4 Guaranteed Loan Servicing**

**A Applications for Consideration of Servicing**

When reviewing an SEL servicing application the Agency official must ensure as part of the application that all planned hemp acreage matches the acres reported to Farm Programs and match the information provided with the license number, (acres being produced and farm number where the hemp will be produced). CLP and PLP lenders will also complete this action before further considering servicing options with their borrowers. If Agency concurrence is needed for a CLP or PLP servicing action, the Agency official should review Farm Programs reports or information provided by the lender according to this subparagraph.

Guaranteed lenders should ensure, before approving a servicing action, they have obtained a copy of their borrower's current license. A copy of the license should then be kept within the lender's case files.

**B Routine Servicing**

SEL and CLP lenders will continue to routinely service borrowers and monitor collateral. SEL lenders will provide FSA documentation when needed for line of credit renewals and CLP lenders will provide FSA certification of positive cashflows, etc. when applicable. The Agency official shall check Farm Program records to ensure there are no inconsistencies in the acreage and/or the associated license.

PLP lender's annual servicing requirements are described in their agency approved Credit Management System (CMS). Lenders will not be required to submit documentation in support of annual routine servicing. FSA officials will remind lenders to annually ensure all borrowers have the proper State, Tribal and/or Federal licensing and registration and have not had such certification revoked (without a valid license the borrower will be in violation of the Farm Bill and would be in non-monetary default). This reminder can be completed during lender training, lender reviews or any other venue determined by State Office.

**C Restructuring**

SEL and CLP lenders will continue to restructure loans as required and seek FSA approval as needed. Lenders shall ensure the borrower is in compliance with all State, Tribal and Federal production hemp licensing. Otherwise the borrower is in violation of the Farm Bill and is in nonmonetary default.

PLP lenders will restructure loans in accordance with their agency approved CMS. Lenders may request guidance or seek concurrence; however, FSA approval shall not be required. Agency officials shall review the lender's request for compliance with 2-FLP and the terms indicated within their CMS. Unless the lender's CMS specifically outlines and addressed how the lender services production hemp operations, this notice and the requirements in 2-FLP, Part 12 [7 CFR 762.145] shall be followed.

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### 4 Guaranteed Loan Servicing (Continued)

#### C Restructuring (Continued)

When reviewing servicing options and creating future plans for a hemp operation, all lenders shall:

- use as much of the operation's historical information as possible for a general guide
- review the previous production year's contract
- compare the contract with the operation's actual performance
- review the new contract (if applicable) to ensure the production is attainable and the borrower has the means of meeting any contract requirements.

It's also a best practice for lenders to check with Farm Programs to ensure all required Agency reporting has been completed and to also serve as further documentation for ensuring the use of accurate acreage amounts, production location(s), etc.

Agency officials will check with Farm Programs when they obtain a servicing request from an SEL lender.

#### D Liquidation

SEL and CLP lenders will develop and submit their liquidations plans to FSA as required. Liquidation plans are required to be developed by PLP lenders. A PLP lender may request guidance and concurrence; however, their liquidation plans do not need to be approved by FSA. Liquidation plans will be reviewed by Agency officials during routine lender reviews. It should be noted that all lenders shall ensure proper State, Tribal and Federal hemp guidelines are followed during the liquidation process, particularly regarding any disposal methods, if needed.

Under the 2018 Farm Bill; a hemp operation's license and registration **cannot** be transferred to another party. Thus, if the borrower defaults on the loan, dies, or abandons the operation, under no circumstance could another legal individual, lender, or FSA Agency official obtain the right to the commodity and attempt to liquidate it as a full or partial income recovery attempt. Because of this provision, if liquidation is imminent or if the operation is in liquidation mode; protective advances are not authorized with regards to the planting or harvesting of the hemp crop.

#### E Loss Claims

The Estimated and Final Loss Claims will continue to be processed according to 2-FLP, paragraphs 359-360 [ 7 CFR 762.149].