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Federal Crop Insurance for Hemp Crops

The 2018 farm bill (Agriculture Improvement Act of 2018; P.L. 115-334) provided a framework to legalize hemp under federal law and facilitate the commercial cultivation, processing, marketing, and sale of hemp and hemp-derived products in the United States. In addition to establishing a regulatory program for production at the U.S. Department of Agriculture (USDA), the 2018 farm bill provided that hemp producers may be eligible to participate in the Federal Crop Insurance Program (FCIP).

Hemp is a nonpsychoactive variety or cultivar of the *Cannabis sativa* plant—the same species as psychoactive marijuana. Hemp is grown for a range of food ingredients, body products, fibers, textiles, and industrial uses. It is also grown for the extraction of cannabinoids, such as cannabidiol (CBD), used in consumer products.

Hemp is defined in statute as the plant and any part of the plant *Cannabis sativa*, including seeds, 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% on a dry weight basis (7 U.S.C. §1639o).

USDA reports that licensed growers planted nearly 70,000 acres of hemp in the United States in 2020 (**Table 1**), comprising a miniscule share of all U.S. planted crop acres. (USDA data are not available on the size of farm-level sales for hemp grown in the United States.)

Table 1. Hemp Licenses and Planted/Harvested Acres

	2016	2017	2018	2019	2020
Licenses Issued	817	1,456	3,543	17,724	13,475
Acres Planted	9,649	25,723	77,844	201,126	69,820
Acres Harvested	NA	NA	NA	134,059	33,844

Source: CRS from data reported by USDA and Vote Hemp.
Notes: The difference between planted and harvested acres reflects unharvested crops and crop failures, including crops found to exceed legal THC limits that are thus noncompliant hemp.

Selected Provisions in the 2018 Farm Bill

The 2018 farm bill enacted a number of provisions regarding crop insurance products and programs available to hemp producers. These provisions allow hemp to be included as an insurable crop under the FCIP and provide additional flexibilities for developing new hemp coverage (e.g., §§11101, 11119, parts of 11113). Other provisions specifically address the treatment of hemp production within the program. For example, Section 11106 exempts hemp (along with tobacco, potatoes, and sweet potatoes) from general requirements that the insurance period "not extend beyond the period during which the insured commodity is in the field." This allows hemp to be insured by the FCIP during the time when it is not growing in the field (such as when dried, cured, or stored). Section 11113 permits the Federal Crop Insurance Corporation (FCIC) to waive "the viability and marketability" requirements for developing a hemp policy or program. Typically, the FCIC must evaluate the feasibility of an insurance product prior to approving it for use in the FCIP, including an assessment of the demand from agricultural producers for the insurance product at the expected cost.

2018 Farm Bill (P.L. 115-334**) Selected Provisions**

Crop Insurance Definitions
The Federal Crop Insurance Act (FCIA) defines certain terms related to the statute **(7 U.S.C. §§1502(b), 1518)**.

P.L. 115-334 added *hemp* to the definition of *agricultural commodity* **(§11119)**. P.L. 115-334 also defined *hemp* to mean the term given in §297A of the Agricultural Marketing Act of 1946 **(§11101)**.

Insurance Period
The FCIA prohibits coverage of post-harvest losses except for tobacco, potatoes, and sweet potatoes **(7 U.S.C. §508(a)(2))**.

P.L. 115-334 added hemp to the crops for which post-harvest losses may be covered **(§11106)**.

Submission of Policies and Materials to the FCIC Board
The Federal Crop Insurance Corporation (FCIC) Board is responsible for reviewing and evaluating private submissions for new crop insurance policies or premium rates. Approved submissions are eligible for cost reimbursement, premium subsidies, administrative and operating subsidies, and FCIC reinsurance. Submitters are required to show that proposed submissions are viable and marketable **(7 U.S.C. §1508(h))**.

P.L. 115-334 authorized the FCIC to waive viability and marketability requirements in the case of a policy or pilot program relating to the production of hemp, if submitted to the FCIC Board **(§11113)**.

Reimbursement for Research and Development Costs
The FCIC is authorized to contract with private submitters to research and develop new crop insurance policies. The FCIC may approve up to 75% of the projected total research and development costs to be paid in advance to an applicant—provides for reimbursement of "reasonable research and development costs" **(7 U.S.C. §1522(b))**.

P.L. 115-334 authorized the FCIC Board to waive the viability and marketability requirements for reimbursement of research and development costs related to a hemp insurance policy **(§11121)**.

Risk Management Options for Hemp

The FCIP provides subsidized insurance policies to farmers. Farmers can purchase policies that pay indemnities when their yields or revenues fall below guaranteed levels. The FCIC, a government corporation within USDA, pays part of the premium—about 63% on average—and policyholders (farmers) pay the balance. USDA's Risk Management Agency (RMA) administers the program.

For hemp, USDA offers insurance policies through the FCIP, among other risk management options. To be eligible, hemp must be grown by licensed producers in accordance with federal, state, and tribal laws and regulations. Hemp found to have a delta-9 THC level above the federal legal level (often referred to as "hot" hemp) is not an "insurable cause of loss." Hemp crops that exceed the allowable THC limit also may not be counted under actual production history (APH) insurance policies.

FCIP Actual Production History for Hemp

APH insurance policies protect hemp producers against yield losses due to adverse weather (such as excess precipitation, hail, frost, and freeze), unavoidable damage from insects and plant disease, other natural causes (such as drought, fire, earthquakes, wildlife damage, and volcanic eruptions), and failure of an irrigation system due to an insurable cause. The policies do not provide coverage for replanting, prevented planting, or required destruction of the crop due to THC levels exceeding allowable levels. They also do not cover failure to comply with requirements of processor contracts, post-harvest quality issues, or inability to market (other than actual physical damage to the hemp from an insurable cause of loss). The policies cover hemp grown for fiber, grain, or CBD. The APH hemp policies are available in selected states and counties and may not be available to all growers. The APH hemp policies replaced the previous Multi-Peril Crop Insurance (MPCI) Hemp Pilot Program policies available to growers for the 2020 crop year. Under that program, 744 policies were sold across 20 states (**Table 2**), accounting for roughly one-third of all planted hemp acres in the 2020 crop year. Complete data for the 2021 crop year are not yet available.

Table 2. FCIP Coverage for Hemp, 2020 and 2021

	2020	2021
Total Premium ($million)	3.9	2.5
Premium Subsidy ($million)	2.5	1.5
Producer-Paid Premium ($million)	1.4	0.9
Liabilities ($million)	27.1	12.3
Indemnity ($million)	12.1	2.5
Policies Sold	744	879
Policies Earning Premium	148	70
Covered Acres (number)	21,245	13,105

Source: CRS using *RMA Summary of Business* data, accessed September 2021. Data for 2021 are as of September and do not reflect the full calendar year. Data exclude hemp insured under WFRP and nursery policies (see below).

Notes: A premium subsidy is the amount of the premium paid by the federal government. Policies earning premiums are policies that went into effect and for which premiums were due, as opposed to policies producers signed up for but did not ultimately purchase or policies that were cancelled or did not go into effect for other reasons.

FCIP Whole-Farm Revenue Protection

Whole-Farm Revenue Protection (WFRP) insurance provides coverage of all revenue for commodities produced on a farm (not specific crops) up to a total insured revenue of $8.5 million. It allows for coverage of hemp grown for fiber, flower, or seeds. Hemp growers can purchase WFRP coverage if they have a contract with a processor for the purchase of the insured hemp and if they meet all applicable federal, state, and tribal regulations.

FCIP Nursery Programs and Policies

Hemp is insurable under the FCIP Nursery Crop Insurance Program and the Nursery Value Select pilot crop insurance program if grown in containers and when grown and sold with the root system attached in containers. Stock plants, or plants grown solely for harvest of buds, flowers, or greenery, are excluded.

Other Risk Protection Options

Hemp growers in states where FCIP hemp crop insurance may not be available may be eligible for risk protection under USDA's Noninsured Crop Disaster Assistance Program (NAP). NAP provides catastrophic-level coverage for hemp grown for fiber, grain, seed, or CBD. Growers must have a contract with a hemp processor and must provide THC testing results when reporting lost production or when reporting for historical production purposes. Private insurance companies may also provide policies to cover hemp and may provide coverage in the event that a hemp crop is destroyed due to excessive THC levels.

Considerations for Congress

Despite changes in the 2018 farm bill making the FCIP available to hemp growers, certain challenges remain. The development of crop insurance that is actuarially sound and based on actual covered risks requires extensive data covering historical production factors (i.e., yields, pests, quality issues) and pricing (i.e., contract prices, open bid prices, quality price adjustments, and other adjustments for different uses). Such data help mitigate against fraud, waste, and abuse. However, hemp production and pricing data are limited and may vary greatly depending on whether the hemp is grown for fiber, grain/seed, or flower and how it will be used. USDA has begun collecting data about U.S. hemp production, production costs and practices, contracting and marketing practices, and demographics. Whether these efforts will improve program efficiency and support effective oversight has yet to be determined.

Price risk and market volatility in the U.S. hemp market raise questions about FCIP coverage for hemp. Hemp prices have been volatile in recent years due, in part, to an oversupply of biomass and oftentimes too few potential buyers. There are limited market pricing mechanisms for hemp. Farmers continue to look for ways to sell their crops and protect themselves from this price volatility through development of alternative market mechanisms (such as futures contracts and forward purchase agreements). Continued regulatory uncertainty in the marketplace has further complicated the market situation for hemp.

It remains to be seen whether allowances provided in the 2018 farm bill—waiving the "viability and marketability" requirements for developing a hemp insurance policy or program—could result in hemp crop insurance that is not actuarially sound (i.e., with premium rates not based on actual production and price risks), potentially disrupting hemp insurance markets. Removing the viability and marketability requirements for hemp FCIP policies might allow RMA to more quickly review and roll out insurance proposals from private providers. This could also result in higher loss ratios (and higher costs to the U.S. government) if, for example, the developed insurance product proves to be financially unstable, unsuccessful, or unsustainable. This outcome could raise the cost of administering FCIP insurance for hemp. These and other related issues could be the subject of oversight by Congress as hemp crop insurance and related programs expand.

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