

Risk Management Agency Interpretation of FCIC Provisions:

Subject: Joint request dated April 13, 2021, to the Risk Management Agency for an interpretation of the 2019 Whole-Farm Revenue Protection (WFRP) Pilot Policy and General Standards Handbook (GSH) regarding what documents may be considered legally sufficient to authorize a person to sign an application if there is no valid power of attorney.

The relevant policy and handbook procedures related to this request are WFRP Policy Section 4(h) and GSH Paragraphs 255, 854 and 855:

WFRP Policy

4. Life of Policy, Termination, and Cancellation

- (h) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign. You are still responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 15(j), and any other consequences, including administrative, criminal or civil sanctions, if any information has been misreported.

General Standards Handbook

255 Corporations

The Application must be signed by a person authorized by the corporation to bind the corporation into contracts. Upon request, the insured must be able to provide written documentation from the corporation identifying the authorized representative of the corporation. The insured must provide to the AIP, in writing, the state in which the articles of incorporation/organization are filed.

854 Signatures

A. Requirement

Any crop insurance document requiring a signature must be signed by the person whose signature is required (e.g., the applicant must sign the Application). A POA or other legally sufficient document is required for any person who is authorized to sign on behalf of the required person.

If the applicant is a minor, the parent or court-appointed guardian must sign all documents that require a signature unless the minor has been legally emancipated.

B. Acceptable Signature Types

Acceptable signatures for crop insurance include the:

- (1) signature of the required person (e.g., applicant, insured, or grantor);
- (2) signature of the authorized representative (or attorney-in-fact) granted by a POA; and
- (3) signature of the authorized representative granted by a legally sufficient document.

C. POA or Other Legally Sufficient Documentation Required

The POA or other legally sufficient document (such as the Articles of Incorporation) must identify who is authorized to sign the initial Application and represents the original agreement between the grantor and its authorized representative.

Exception: The application does not represent the original agreement between the grantor and its authorized representative when an authorized representative who is required to sign the initial application assigns signatory authority to another person by the non-substantive signatory statement.

Example 1: An individual operating as a business person type, where the sole proprietor signs the Application then assigns the signature authority to another person by using the non-substantive signatory statement, represents the original agreement between the sole proprietor and the authorized person.

Example 2: For the partnership person type, the partnership agreement must identify the authorized representative who may sign the Application. The authorized representative, identified by the partnership agreement, then assigns signatory authority using the non-substantive signatory statement to another person. The partnership agreement evidences the original agreement between the partnership and its authorized representative, and the non-substantive signatory evidences the assignment of this authority to another person.

D. Non-Substantive Signatory Statement

The DSSH provides a non-substantive statement that allows the required person or its authorized representative to designate person(s) who are authorized to sign crop insurance documents on its behalf. If the AIP elects to utilize the non-substantive statement contained on the Application or Policy Change form in the DSSH, then the Application or Policy Change is deemed to be a legally sufficient document that allows for the person to sign on behalf of the required person, notwithstanding individual State signature authority requirements.

Example: The State requires that signature authority, which binds a person to the terms of the document being signed, must be notarized. If the AIP elects to utilize the non-substantive statement contained in the DSSH for the Application, the required person may elect to grant signature authority on the Application or provide a separate POA.

If the required person grants authority on the Application, the Application is not subject to the signature requirements of the State. If the required person provides a POA to the AIP, the POA must be notarized in accordance with the signature requirements of the State.

The non-substantive signatory statement is effective from the date it is signed by the grantor and until it is rescinded, revoked, or dissolved. For example, the required person signs the statement on the application, accordingly, any subsequent crop insurance documents may be signed by the authorized representative until the authority is rescinded, revoked, or dissolved. Additionally, the death, disappearance or judicially declared incompetence of the grantor rescinds the signatory statement in accordance with the timelines regarding policy cancellation in Para. 231.

The signatory statement is considered rescinded, revoked, or dissolved when a change of insurance plans requires a new initial Application. The required person must sign the initial Application. The Policy Change modifies an existing Application; the non-substantive signatory statement remains in effect on the existing Application, unless canceled or revoked by the Policy Change.

855 Power of Attorney

Insureds may grant a third-party the authority to sign crop insurance documents on their behalf if a legally executed POA is provided to the AIP.

A. POA Types

- (1) A POA that is executed in accordance with the laws of the state of execution is acceptable for crop insurance purposes. Such POA must be in writing and specify the powers granted to the authorized representative by the grantor. A POA is executed when it is signed.
- (2) A POA that is executed according to federal authorities, such as an FSA Power of Attorney, is acceptable. An acceptable POA executed according to federal authorities is a POA that includes language that the form is applicable for crop insurance purposes. A form executed in accordance with federal authorities is a form that has been approved by the Office of Management and Budget.

Note: A POA developed by an AIP, in accordance with the standards provided by the DSSH, is not considered a “federal form” executed according to federal authorities, unlike the FSA POA which is a federal form that supersedes state law. Any AIP developed POA requires compliance with state law.

B. POA Requirements

(1) Authority

POAs which grant authority to sign contracts and legally bind the grantor(s) are sufficient for crop insurance purposes. The POA must specify the person authorized, the period of authorization, and powers granted.

Exception: Oral or open powers of attorney are not acceptable. An oral or open POA is a POA that does not specify who the authorized representative receiving the power is at the time of execution.

(2) Notarization

In states that require POAs to be notarized, the signatures of the grantor and grantee must be notarized. If notarization is not required by the state, the signatures of the grantor and grantee must be witnessed and the signatures of the witness obtained on the document.

C. Filing Requirement

A POA must be filed with the office where the official insurance file is maintained and must remain in full force and effect until written notice of its revocation has been received by the office maintaining the official insurance file. The revocation must maintain in the official insurance file.

Interpretation Submitted by Requestor(s)

First Requestor's Interpretation

The first requestor's interpretation of GSH Subparagraph 854D, is that the example states, "if the required person grants authority on the application, the application is not subject to the signature requirements of the State," therefore, the obverse would be that if the required person does not grant authority on the application, then the signature requirements of the State would control.

The first requestor also states that when the State law allows actions of corporate actors to be authorized in the corporate minutes, those corporate minutes become "other legally sufficient documentation" authorizing actions to be taken, including but not limited to authorizing a person to sign an application for crop insurance on behalf of a corporation.

Second Requestor's Interpretation

The second requestor's interpretation of WFRP Pilot Policy Section 4(h), is that for an insured that is a corporation, if the articles of incorporation or similar organizational documents identify a person as an officer or director of the corporation and applicable state law vests such an officer or director with authority to enter into contracts on behalf of a corporation, such documentation would be sufficient to authorize that person to sign the application.

The second requestor also states that if the person signing the application is not shown to be an officer or director with requisite authority to bind the corporation, a valid and properly executed POA is the only means by which such authority can be established.

Federal Crop Insurance Corporation Determination

FCIC disagrees with the first requestor's interpretation of Subparagraph 854D of the 2019 GSH that absent the designation on the application to authorize a person to sign crop insurance documents on its behalf, the signature authority would revert to the signature requirements by the law of the state. GSH Paragraph 255 is clear that the application for a corporation must be signed by a person authorized by the corporation to bind the corporation into contracts. WFRP Pilot Policy Section 4(h) states that, "Any person may sign ... on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign." The applicant must be able to provide written documentation from the corporation identifying the authorized representative(s) of the corporation. If the person signing the application does not appear in the documentation from the corporation identifying them as authorized to bind the corporation, then a valid POA must exist for the signature on the application to be valid.

FCIC agrees with the second requestor's interpretation of WFRP Pilot Policy Section 4(h) that the application for a corporation must be signed by a person authorized by the corporation to bind the corporation into contracts. The applicant must be able to provide written documentation from the corporation identifying the authorized representative(s) of the corporation. Additionally, if the person signing the application is not identified in the articles of incorporation as a person authorized to bind the corporation into contracts, then a valid POA is the only means that such a person would be able to provide an acceptable signature on the application.

In accordance with section 33(a)(1) of the WFRP Pilot Policy, this FCIC interpretation is generally applicable and binding in any mediation or arbitration. In accordance with section 33(a)(1), any appeal of this interpretation must be in accordance with 7 C.F.R. part 11.