

## 2016 Actively Engaged in Farming

### Follow-up Q&A's from Training Session via VTC on February 18, 2016.

**Training Exercise 1.** Brothers Joe and John form a 2-member GP in 2015. In 2016, the 2 eldest sons of Joe and John, Mike and Pat respectively, joined in and now, it is a 4-member GP. In late 2017, John decided to retire. For 2018 programs, the 4-member GP is represented as Joe, John's spouse May, Mike and Pat.

2017	2018
Joe – brother to John (sibling)	Joe – brother-in-law to May
John – brother to Joe (sibling)	May – spouse of former member John
Mike – son of Joe (child)	Mike – son of Joe (child)
Pat – son of Mike (child)	Pat – son of May (child)

**Question 1.** For the 2018 program year, is this considered a joint operation comprised of all family members? OR, a non-family joint operation because Joe and May are not related as sibling or spouse?

**Response 1.** For 2018, this farming operation will be considered a non-family joint operation because all members do not meet the definition of family member. Joe and May are not related as sibling or spouse.

**From Training Exercise 2.** For the 2016 program year, Prehistoric Farms is a joint operation comprised of 2 LLC's, and the interest holders of each are all either a spouse, parent, or child – all family members. Given the fact that we look through the legal entity structure to determine family members, the following are all the persons in the farming operation.

Prehistoric Farms	
<i>Flintstone Family LLC.</i>	<i>Rubble Family LLC</i>
Fred Flintstone – parent; spouse to Wilma Wilma Flintstone – parent; spouse to Fred Pebbles – child of Fred and Wilma	Barney Rubble – parent; spouse of Betty Betty Rubble – parent; spouse to Barney Bam Bam – child of Barney and Betty

**Question 2.** For the 2016 program year, is this considered a joint operation comprised of all family members? OR, a non-family joint operation because Fred and Barney are not related as sibling or spouse?

**Response 2.** For 2016, this farming operation will be considered a non-family joint operation because all members do not meet the definition of family member. Keep in mind that the members are the two LLC's and there is no familial tie between the members of the 2 LLC's.

**Question 3.** *It is common to see joint operations made up of two (or more) different families with connections to each other but no connection between the families (or a non-linear connection, such as two cousins' families). This would be a non-family joint operation, but everyone could have a family relationship term loaded from the dropdown menu. How are we to correctly identify who anyone is related to in the automated system unless we extensively use remarks to do this?*

**Response 3.** For a joint operation to consist of all family members, you should be able to “connect the dots” between the family. As in the response to Question 2, Fred and Barney do not have a familial relationship, therefore the family relationship in business file should be left empty. In the software, if Fred and Barney do not have a family relationship, the management and labor time expended annually page will display for each individual member with active personal management and/or active personal labor.

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**Question 4.** *If 3 members of a 16-member non family joint operation are approved as farm managers, and each of these 3 members are to contribute the required level of active personal management, would the remaining 13 members who each provide a significant contribution of active personal labor be able to meet actively engaged in farming requirements?*

**Response 4.** Yes. The new provisions place a restriction only on the number of persons or members of a farming operation who may qualify as actively engaged in farming with a contribution of active personal management, but not on the persons or members who may qualify by making a significant contribution of active personal labor.

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**Question 5.** *If each member of a 10-member general partnership contributes owned land to the farming operation, and their shares are based on the amount of land they contribute, could the 13 members qualify as actively engaged in farming under landowner exemption?*

**Response 5.** For the landowner exemption to apply, the joint operation must hold title to the land, which is not the same as described in this situation.

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**Question 6.** *Please clarify the recordkeeping requirement when there is only one farm manager in the farming operation and when there is 1 or 2 additional farm managers approved in the farming operation.*

**Response 6.** When there is only 1 farm manager for the farming operation, the additional recordkeeping requirements do not apply, meaning this person does not need to keep and maintain a record of the eligible management activities performed each month throughout the year. When there is more than one person or member that is approved as a farm manager, then each member in the farming operation must keep and maintain a record of eligible management activities performed for the farming operation throughout the entire program or crop year.

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**Question 7.** *Please clarify the meaning of the phrase “can no longer wear many hats simultaneously.” Does this mean that if Joe Producer has his own individual farming operation and holds a 25 percent share in a family held corporation that also farms, he must perform a different management activity for each farming interest?*

**Response 7.** A person’s significant contribution of active personal management, or the significant contribution of the combination of active personal labor and active personal management, will qualify only one person or member of the farming operation as actively engaged in farming and with a separate payment limitation. In other words, what one person or member contributes in labor and/or management activities only serves to qualify just one person or member in the same farming operation. This does preclude a person from making labor and/or management contributions to multiple and different farming operations in which he or she may hold an interest and that also requests or receives program payments and benefits subject to limitation. Furthermore, this one to one allowance of contributions per member applies only to non-family member joint operations.

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**Question 8.** *What is there to prevent a farming operation from dismissing the non-family members, reconstituting or dividing the land in the current operation, and the non-family members from starting their own farming operation on the land once part of the original farming operation? Could these actions be considered a means for circumvention of the payment eligibility/limitation provisions?*

**Response 8.** There is no provision to prevent this from occurring, whether due to the new provisions effective for 2016 or for other reasons. The new farming operation must be separate and distinct from all other farming operations and the members must meet the actively engaged in farming requirements on their own. Also, substantive change provisions would apply if these actions result in the increase in the number of persons becoming eligible, each with a separate payment limitation. Circumvention of the payment limitation provisions could be determined that if later it was found that these operations, although represented as separate farming operations, were in fact not separate farming operations.

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**Question 9.** *Where is the inclusion of NRCS or RMA program participation information to be designated on the CCC-902FM, Request for Additional Farm Managers?*

**Response 9.** There space or block titled “Other” on the CCC-902 FM that could be used to indicate that NRCS or RMA information is attached or is part of the requested submitted.

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***Question 10.*** *In reading the CCC-902 FM, the COC has the authority to approve one additional farm manager only when the farming operation meets the operation size requirements, whether it be cropland acres, beehives, or flock size. The STC will make the call on complexity in every case when complexity is the requirement chosen to be met by the farming operation for 1 or 2 additional farm managers. Please clarify the COC's responsibility in cases where 2 additional farm managers are requested based on both operation size and operation complexity. Is the STC to make both determinations in regard to size and complexity in the approval or disapproval of a request for 2 additional farm managers?*

***Response 10.*** Both requirements of operation size and complexity must be met by a farming operation before the STC may approve a written request for 2 additional farm managers for the farming operation. Such a completed and signed request for 2 additional farm managers will be first accepted by the COC. The COC is to review and include recommendations to the STC of whether it believes the farming operation meets the conditions for approval of up to 2 additional farm managers. The COC may point out in the recommendation that the farming operation clearly meets or exceeds the size requirements whether in cropland acres operated, the number of hives if an apiary, or the flock size in the number of ewes. However, for consistency and simplicity purposes for both FSA and the producer, the STC will decide whether both size and/or complexity standards are met in the approval or disapproval of the request for 2 additional farm managers. Furthermore in the event of a disapproval of a request, all or partial, only one administrative appeal will be active and to only the STC. This will eliminate possible confusion of two separate but concurrent appeals, one to the COC on operational size and another appeal to the STC in regard to operational complexity.

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***Question 11.*** *A STC is authorized to make up or down adjustments to the three operation size standards or limitations used for the approval or disapproval of a request for additional farm managers. Is a STC allowed to adjust only one of the three size limitations if deemed appropriate for the State, or must adjustments be made to all three limitations and of the same percentage?*

***Response 11.*** A STC is authorized to adjust any of the one, two, or all three of the operation size standards or limitations as determined appropriate for the conditions that exist in their respective State. Maximum adjustments of 15 percent, up or down, may be made to the current amounts. Adjustments greater than 15 percent may be authorized by DAFP based on supporting documentation included with the request for variances greater than 15 percent.

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***Question 12.*** *The questions on a manual CCC- 902 form appear to be different than asked on the automated version in business file. The manual CCC-902 requests information on other farming interests, but the automated version in business file does not. Will the software be revised to match the information being collected a manual CCC-902?*

**Response 12.** The ‘difference’ that you are seeing between the manual CCC-902 form vs. the business file version is due to the different processes themselves. Both processes collect the same information, but each in a different manner. Completion of the paper or manual CCC-902 creates a record all by itself, or in other words, is not connected or tied to any other record. The paper form asks for and collects all of the information about the farming operation, including other farming interests, as though this is the very first time any of this data has been collected or reported to FSA. The business file process on the other hand does not need to ‘ask’ for this information again; it automatically pulls this same information from farm records and displays it in the land section of the automated CCC-902 (assuming farm records are up to date).

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**Question 13.** *In a non-family partnership, there are 4 individual members; Jim (25%) and Sue (25%) who are married, plus Joe (25%) and Tom (25%) who are non-family partners. The operation qualified and was approved for 3 farm managers based on operation size and complexity standards. Jim, Joe and Tom are full-time on the farm. Will Sue also be considered actively engaged because she is married to Jim?*

**Response 13.** The new provisions are not applicable to spouses and spousal operations. Sue could be considered actively engaged based on the application of the spousal provisions for actively engaged in farming. If Jim is determined to be actively engaged in farming, Sue will be credited with significant contributions of active personal labor and/or active personal management commensurate with her claimed share of the farming operation. Essentially Jim’s contributions also apply to Sue because both are in the same farming operation. This partnership could have all 4 members determined to be actively engaged in farming provided all other requirements have been met.

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**Question 14.** *Is the CCC-902 MR required or just a form we are providing for them to use for recordkeeping? Also, is it something they will have to file every year or only to have available if review is performed?*

**Response 14.** This form is to be used by any person who is required to record and maintain a record of their performance of eligible management activities for a farming operation throughout the entire program or crop year. Each person required to record performance of management activities will complete one CCC-902 MR each month for a total of up to 12 CCC-902 MR’s for the applicable year. It is recommended that all persons and operations subject to this recordkeeping requirement complete and maintain these records in their files in the event the farming operation and its members are subject to review in the future. Failure to timely provide these records if requested by an FSA reviewing authority will result in the immediate re-determination of payment eligibility for the applicable year(s).

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**Question 15.** *For a joint operation, is the maximum number of payment limits earned determined by the number of members or the number of actively engaged members?*

**Response 15.** Under direct attribution, program payments to a joint operation are limited by the total number of persons or legal entities that are members of the joint operation multiplied times the dollar amount if the limitation of the applicable program (see 5-PL Par. 274). However for ARCPLC, each member must be determined actively engaged in farming and eligible to receive program benefits subject to limitation before each can receive ARCPLC payments. Then each member may receive the amount applicable for their claimed share, not to exceed the limitation of \$125,000 applicable to annual ARCPLC payments. Shares cannot be adjusted if members are determined not actively engaged in farming and ineligible for payments subject to limitation.

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**Question 16.** *The new actively engaged in farming provisions do not apply if prior to February 1, 2016, the non-family joint operation planted or reported prevented planted crops with intended uses in 2016. Perennial crops were included in this exception. Are native grasses, brome, current CRP or expired CRP considered perennials? And does intended use matter? Is there a minimum acreage applicable to these perennials?*

**Response 16.** All perennials, regardless of intended use or acreage reported.

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**Question 17.** *Perennial crops are included as far as the new rule not impacting a joint operation until 2017. Are perennial FAV's included for this purpose?*

**Response 17.** All perennials, regardless of intended use or acreage reported.

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**Question 18.** *Does it make a difference if a perennial crop is reported as planted on cropland acres vs. noncropland acres? Example: producer certified that a perennial forage was planted prior to February 1, 2016 on noncropland acres. These noncropland acres are not eligible for benefits from ARCPLC or MLG or LDP. The farming operation applies for ARCPLC benefits on other cropland acres on the farm for 2016 and crops are planted after February 1, 2016. In this example, is the farming operation subject to the new provisions in 2016 or 2017?*

**Response 18.** The farming operation will be subject to the new provisions in 2017.

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**Question 19.** *Is the completed CCC-902MR required to be completed and considered when the CCC-902 FM request for an additional farm manager is submitted?*

**Response 19.** A completed CCC-902 MR is not required at the time the CCC-902 FM, Request for Additional Farm Managers, is submitted because in most cases, the CCC-902 FM will be submitted at the beginning of the crop or program year before most activities begin.

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**Question 20.** *The table which illustrates the standards for determining the combined contributions of labor and management is based on the number of ‘hours’ contributed for each contribution (5-PL Par. 218). Are there standards for computing combined contributions when the specific contributions are represented as a percentage of the total on the CCC-902?*

**Response 20.** If a percentage is entered on the CCC-902 to represent the contributions, this amount will need to be converted into hours because hours is the common denominator between active personal labor and active personal management contributions.

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**Question 21.** *The corporation, which is a member of a joint operation, is made up of two brothers, their mother and two aunts (mother’s sisters). Does this qualify as all family members?*

**Response 21.** This group is considered to be all family members under the current definition because each are related as a lineal descendent or sibling. The ‘dots’ are all connected through the mother. The two brothers are lineal descendants of their mother and their mother and the two aunts are siblings.

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**Question 22.** *The COF’s are confused on how to determine the family relationship of each member of a joint operation. They seem predisposed to view many of these joint operations as “family” farming operations because the operations evolved in many cases from one set of parents, whom are now both deceased and some of their siblings are also deceased, and 3<sup>rd</sup> and 4<sup>th</sup> generations may be involved. Many COF’s are looking to see that everyone is related to at least one person in the joint operation in accordance with our family member definition and concluding that is good enough. A few examples of lack of lineal ancestor or lineal descendent and explanations why all members are not considered family members would be great.*

**Response 22.** What can be said other than review these Q&A’s which include some examples and explanations of how the family member rule is to be correctly interpreted and applied in all cases. One important reminder: always look at only the persons that are represented to be involved in the current farming operation and apply to the family members rule accordingly. Draw a diagram if needed to know exactly who the members are. Historical progression of who the members once were does not matter and must be disregarded.

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**Question 23.** *If a farm manager must contribute 25 percent of the total management required in order to be considered actively engaged in farming, how will a 25% contribution of only management be commensurate with a 33 percent claimed share of the farming operation?*

**Response 23.** The measurable standard applied to the management contribution of a farm manager is the minimum amount that must be met, the lesser of either 500 hours or 25 percent of the total management required for the entire farming operation. It is anticipated that in such a case, the level of management activities performed by the farm manager could exceed the minimum levels because their individual performance of such activities will determine whether or not the person will be considered eligible for payment.

**Question 24.** *If the other members in a farming who are not farm managers are determined to be actively engaged based on significant contributions of active personal labor, how will the hours of management performed or contributed by these members be counted when determining whether contributions are commensurate with the claimed shares?*

**Response 24.** If any eligible management activities are performed by other members that are not farm managers, a record must be kept and this will only count toward the determination of the total management performed for the operation. Then from this total amount of management, the determinations can be made whether the farm managers met the minimum hourly thresholds for eligibility. If not, the member or members cannot be determined actively engaged in farming and will be ineligible for payment.

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**Question 25.** *Are the entries in the example CCC-902 in 5-PL Par. 227 intended to be for a credible case, or are they just random?*

**Response 25.** The entries are to illustrate an example farming operation conducted by a five-member joint operation comprised of family and nonfamily members, and the resultant determinations by the county committee. The CCC-902 FM (Par. 225), the CCC-902 MR (Par. 226), the CCC-902 E (Par. 227), and the CCC-903 (Par. 326) are all connected and follow through with all of the requirements discussed in Section 3.5. Three members of the farming operation qualify as actively engaged in farming with a significant contribution of active personal management, of which 2 of these members were allowed as the 2 additional farm managers following the approval of the CCC-902 FM by the State committee (See Remarks section of CCC-903). Since there is more than one farm manager, all five members must maintain CCC-902 MR's for any eligible management activities performed during the year. The example shown for member Wanda (Par. 226) is how a completed CCC-902 MR could look for one month of the program year. Of the remaining 2 members of this joint operation, both qualify as actively engaged in farming by the significant contribution of active personal labor as represented and recorded to be at least 1,000 hours each for the year. The completed CCC-903 (Par. 326) reflects the observations and determinations that could be made upon examination of the CCC-902 E, CCC-902 FM, and if after the conclusion of the program year, all of the CCC-902 MR's completed and maintained by all 5 members.

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**Training Exercise 3.** The CED has just completed reviewing the current farm operating plan of record with J. Partner of MNY Farms Partnership, an 8-member joint operation. Mr. Partner asked "what revisions should we make for 2016 so we do not lose any limits or payments?"

**Question 26.** *What is the correct response of the CED?*

**Response 26.** The recommendation is for the CED to provide a copy the Fact Sheet, FAQ's dated December 2015, and the handbook page (5-PL, Par. 224, page 4-146) that illustrates what options are available to joint operation affected by the new provisions for 2016 and subsequent years. **Do not give advice**, casual or otherwise, on actions the members of an operation may take in response to the new provisions.

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**Question 27.** How are the members of a joint operation designated as the approved farm managers on the CCC-902 E?

PART D - SUMMARY OF CONTRIBUTIONS TO THE FARMING OPERATION										
1. For the farming operation of the entity identified in Part A, what percentages of the overall inputs will be contributed directly by the Entity? Enter the following information for contributions to be made by the entity identified in Part A. These percentages should reflect the capital provided directly by the legal entity; land and equipment owned and/or cash leased by the legal entity and used in the farming operation; labor hired by the legal entity; and management hired by the legal entity. (Provide detailed information about these contributions in Items A through E.)										
A. Capital	100 %	B. Land	100 %	C. Equipment	100 %	D. Hired Labor	30 %	E. Hired Management	0 %	
2. For the farming operation of the entity identified in Part A, what percentages of the following farm inputs will be contributed by the Members listed in PART C? Enter the following information for the contributions to be made by the members. These percentages should reflect any capital originating from members' funds rather than from the entity; land and equipment owned or obtained by the member(s) and contributed to this farming operation without compensation to the member(s); labor and management hired by the members for the entity; and labor and management performed personally by the member(s) for the benefit of the farming operation identified in Part A. (Provide information about these contributions in Items B through H).										
A. Member's Name	B. Capital (Current Year) %	C. Land %	D. % of Owned Land	E. Equipment %	F. % of Owned Equipment	G. Labor (%)			H. Management (%)	
						Hired	Active Personal	Check if 1000 Hours	Hired	Active Personal
William Wildcat								<input type="checkbox"/>		25
Wanda Wildcat								<input type="checkbox"/>		25
Jack B Morgan								<input type="checkbox"/>		25
Wiley C Smith							35	<input checked="" type="checkbox"/>		
William Wildcat Jr							35	<input checked="" type="checkbox"/>		25
								<input type="checkbox"/>		

For additional space, use and attach CCC-902E Continuation

**Response 27.** The members designate who the farm managers are by representations entered in Parts D and J of the farm operating plan. See 5-PL. Par. 227.

PART J - MANAGEMENT			
Enter all managerial duties and/or activities required for the farming operation identified in Part A which will be provided personally by member(s) or shareholder(s) of the entity or joint operation; or by hired management.			
1. Active personal management:			
List each member or shareholder in column A; the specific managerial duties/activities that will be performed personally by each member or shareholder in column B. For nonfamily member operations only, complete items in column C to include the amount of time expended annually, either in hours or as a percentage of the total management hours required for the farming operation.			
A. Member/Shareholder	B. Duties/Activities	C. Time expended annually (For nonfamily member operations only)	
William Wildcat	Crops, equipment, irrigation, financing, cattle	hrs.	25 %
Wanda Wildcat	Bookkeeping, financing, insurance, FSA business	hrs.	25 %
Jack B Morgan	Feeder cattle and feedyard, marketing, hired labor	hrs.	25 %
Wiley C Smith		hrs.	%
William Wildcat Jr	Crops, equipment, irrigation, financing, pasture cattle	hrs.	25 %
		hrs.	%
For additional space, use and attach CCC-902E Continuation			
2. Hired management: Describe any hired management duties/activities that will be provided by someone other than a member or shareholder (include management by an administrator or trustee who receives compensation for this service or activity):			
3. Other management: Describe any non-compensated management that will be provided by someone other than a member or shareholder (include management by an administrator or trustee who does not receive compensation for this activity):			

**Question 28.** *A District Director has questioned me regarding 5-PL, paragraph 213 which has an example somewhat similar to training slide 46. Within subparagraph 213 D, the determination refers to “a majority of the persons of the joint operation are family members” and “the family member provision”. I believe perhaps the DD and the COF’s are erroneously confusing the wording with the new policy in section 3.5 as although the definition of family member would be the same the new regulation does not contain a “majority” consideration. On the other hand, I wonder if the wording in paragraph 213 is actually in some way impacted by the new regulations, and to what extent, or if still intact, does an explanation need to be included in a future amendment to denote the difference between paragraph 213 and section 3.5. It appears paragraph 213 may be pertaining to adding an adult family member and not directly related to the section 3.5. If that is accurate, at best it is still very confusing to the field. Please comment and explain any distinction between paragraph 213 and paragraph 217 in section 3.5.*

**Response 28.** The family member rule and the definition of family member did not change. However, do not confuse the application of the family member provision.

<b>5-PL Par. 213 majority are family members</b>	<b>5-PL Par. 217 all members are family members</b>
This is strictly for the purpose as stated – for the addition of an adult family member to an existing farming operation, and in some cases with limited contributions of active personal labor and/or active personal management, this adult family member can be considered actively engaged in farming.	This is strictly for the purposes as outlined in the Section 3.5 – which include the restrictions placed on number of members of a non-family joint operation who may qualify as actively engaged in farming (Farm manager) with <b>only</b> the contribution/performance of eligible management activities as defined to the farming operation.

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**Question 29.** *How does the death of a family member of a family joint operation impact the farming operation?*

**Response 29.** Please refer to and apply the current provision found in 5-PL paragraph 193 for the year in which the death of the member occurs. Any determinations of record at the time of a member’s death remain in place for the year in which the death occurs. Then the following year, the family member provision would be applicable to the person who becomes a member of the joint operation in place of the deceased member, or a legal entity, such as the deceased member’s estate, that becomes a member of the joint operation in place of the deceased member.

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**Question 30.** *If the joint operation is non-family member and has one member who will be considered to meet the significant contribution of active personal management (farm manager) but the other member(s) perform some active personal management (activities included in the chart in subpar. 218 B), do we ignore the management contributed by the other member(s) for all purposes, or can we attribute some weight to it for evaluation of commensurate share?*

**Response 30.** The other persons in this farming operation are not precluded from making management contributions, but such contributions will not be considered to meet the requirements as being significant contributions of active personal management. While each member of the farming operation (in this example) is not required to keep and maintain a management record, the performance of these activities (if at-risk) can be considered in the determination of commensurate share, based on the assumption that each of these members made significant contributions of active personal labor to the farming operation to qualify as actively engaged in farming.

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**Question 31.** *If I have a General Partnership with two members 50/50 (both non-family) and both have equal labor and management contributions 50/50, how would I treat this under the new rule?*

**Response 31.** Please see Question and Response 26. Provide the members of the General Partnership all of the information available on the new provisions effective for 2016. The members must decide what is best for themselves and their farm operation's ability to meet all payment eligibility and payment limitation provisions for the 2016 and subsequent program years.

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