

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

## EFFECTIVE DATE

Pub. L. 100-203, title I, §1304(b), Dec. 22, 1987, 101 Stat. 1330-17, provided that this section is effective beginning with the 1989 crops.

## TRANSITION PROVISIONS

Section, as in effect on Sept. 30, 2007, to continue to apply with respect to the 2007 and 2008 crops of any covered commodity or peanuts, see section 1603(h) of Pub. L. 110-246, set out as a note under section 1308 of this title.

### § 1308-3. Foreign persons made ineligible for program benefits

Notwithstanding any other provision of law:

#### (a) In general

Any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall be ineligible to receive any type of loans or payments made available under title I of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8701 et seq.], title I of the Agricultural Act of 2014 [7 U.S.C. 9001 et seq.], the Agricultural Market Transition Act [7 U.S.C. 7201 et seq.], the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.),<sup>1</sup> or under any contract entered into under title XII [16 U.S.C. 3801 et seq.], with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm.

#### (b) Corporations or other entities

For purposes of subsection (a), a corporation or other entity shall be considered a person that is ineligible for production adjustment payments, price support program loans, payments, or benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], unless such persons provide a substantial amount of personal labor in the production of crops on such farm. Notwithstanding the foregoing provisions of this subsection, with respect to an entity that is determined to be ineligible to receive such payments, loans, or other benefits, the Secretary may make payments, loans, and other benefits in an amount determined by the Secretary to be representative of the percentage interests of the entity that is owned by citizens of the United States and aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act.

<sup>1</sup> See References in Text note below.

#### (c) Prospective application

No person shall become ineligible under this section for production adjustment payments, price support program loans, payments or benefits as the result of the production of a crop of an agricultural commodity planted, or commodity program or conservation reserve contract entered into, before December 22, 1987.

(Pub. L. 99-198, title X, §1001C, as added Pub. L. 100-203, title I, §1306, Dec. 22, 1987, 101 Stat. 1330-19; amended Pub. L. 101-624, title XI, §1111(b), Nov. 28, 1990, 104 Stat. 3498; Pub. L. 103-66, title I, §1101(b)(3)(B), Aug. 10, 1993, 107 Stat. 314; Pub. L. 104-127, title I, §115(c)(2), Apr. 4, 1996, 110 Stat. 903; Pub. L. 107-171, title I, §1603(c)(3), May 13, 2002, 116 Stat. 215; Pub. L. 110-234, title I, §1603(a), May 22, 2008, 122 Stat. 1002; Pub. L. 110-246, §4(a), title I, §1603(a), June 18, 2008, 122 Stat. 1664, 1730; Pub. L. 113-79, title I, §1603(b)(3), Feb. 7, 2014, 128 Stat. 706.)

## REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsecs. (a) and (b), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (a), is Pub. L. 110-246, June 18, 2008, 122 Stat. 1651. Title I of the Act is classified principally to chapter 113 (§8701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of this title and Tables.

The Agricultural Act of 2014, referred to in subsec. (a), is Pub. L. 113-79, Feb. 7, 2014, 128 Stat. 649. Title I of the Act is classified principally to chapter 115 (§9001 et seq.) of this title. For complete classification of this Act to the Code, see short title note set out under section 9001 of this title and Tables.

The Agricultural Market Transition Act, referred to in subsec. (a), is title I of Pub. L. 104-127, Apr. 4, 1996, 110 Stat. 896, which is classified principally to chapter 100 (§7201 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 7201 of this title and Tables.

The Commodity Credit Corporation Charter Act, referred to in subsec. (a), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

The Food Security Act of 1985, referred to in subsec. (a), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended. Title XII of the Act is classified principally to chapter 58 (§3801 et seq.) of Title 16, Conservation. Subtitle D of title XII of the Act is classified generally to subchapter IV (§3830 et seq.) of chapter 58 of Title 16. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of this title and Tables.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Adjustment Act of 1938 which comprises this chapter.

## AMENDMENTS

2014—Subsec. (a). Pub. L. 113-79 inserted “title I of the Agricultural Act of 2014,” before “the Agricultural Market Transition Act”.

2008—Subsec. (a). Pub. L. 110-246, §1603(a), substituted “Food, Conservation, and Energy Act of 2008” for “Farm Security and Rural Investment Act of 2002”.

2002—Subsec. (a). Pub. L. 107-171 inserted “title I of the Farm Security and Rural Investment Act of 2002,” after “made available under”.

1996—Subsec. (a). Pub. L. 104-127 substituted “Any person” for “For each of the 1991 through 1997 crops, any person”, substituted “loans or payments made available under the Agricultural Market Transition Act,” for “production adjustment payments, price support program loans, payments, or benefits made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.),” and struck out “during the 1989 through 1997 crop years” before “, with respect to any commodity produced”.

1993—Subsec. (a). Pub. L. 103-66 substituted “1997” for “1995” in two places.

1990—Subsec. (a). Pub. L. 101-624 substituted “1991 through 1995 crops” for “1989 and 1990 crops” and inserted “, or under any contract entered into under title XII during the 1989 through 1995 crop years,” after “(16 U.S.C. 3831 et seq.)”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-79 applicable beginning with the 2014 crop year, see section 1603(c) of Pub. L. 113-79, set out as a note under section 1308 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-624 effective beginning with 1991 crop of an agricultural commodity, with provision for prior crops, see section 1171 of Pub. L. 101-624, set out as a note under section 1421 of this title.

#### EFFECTIVE DATE

Pub. L. 100-203, title I, §1306, Dec. 22, 1987, 101 Stat. 1330-19, provided that this section is effective beginning with the 1989 crops.

### § 1308-3a. Adjusted gross income limitation

#### (a) Definitions

##### (1) Average adjusted gross income

In this section, the term “average adjusted gross income”, with respect to a person or legal entity, means the average of the adjusted gross income or comparable measure of the person or legal entity over the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Secretary.

##### (2) Special rules for certain persons and legal entities

In the case of a legal entity that is not required to file a Federal income tax return or a person or legal entity that did not have taxable income in 1 or more of the taxable years used to determine the average under paragraph (1), the Secretary shall provide, by regulation, a method for determining the average adjusted gross income of the person or legal entity for purposes of this section.

##### (3) Allocation of income

On the request of any person filing a joint tax return, the Secretary shall provide for the allocation of average adjusted gross income among the persons filing the return if—

(A) the person provides a certified statement by a certified public accountant or attorney that specifies the method by which the average adjusted gross income would have been declared and reported had the persons filed 2 separate returns; and

(B) the Secretary determines that the method described in the statement is consistent with the information supporting the filed joint tax return.

#### (b) Limitations on commodity and conservation programs

##### (1) Limitation

Notwithstanding any other provision of law, subject to paragraph (3), a person or legal entity shall not be eligible to receive any benefit described in paragraph (2) during a crop, fiscal, or program year, as appropriate, if the average adjusted gross income of the person or legal entity exceeds \$900,000.

##### (2) Covered benefits

Paragraph (1) applies with respect to the following:

(A) A payment or benefit under subtitle A or E of title I of the Agricultural Act of 2014 [7 U.S.C. 9011 et seq., 9081].

(B) A marketing loan gain or loan deficiency payment under subtitle B of title I of the Agricultural Act of 2014 [7 U.S.C. 9031 et seq.].

(C) Starting with fiscal year 2015, a payment or benefit under title II of the Agriculture Improvement Act of 2018, title II of the Agricultural Act of 2014, title II of the Farm Security and Rural Investment Act of 2002, title II of the Food, Conservation, and Energy Act of 2008, or title XII of the Food Security Act of 1985 [16 U.S.C. 3801 et seq.].

(D) A payment or benefit under section 1524(b) of this title.

(E) A payment or benefit under section 7333 of this title.

##### (3) Waiver

The Secretary may waive the limitation established by paragraph (1) with respect to a payment pursuant to a covered benefit described in paragraph (2)(C), on a case-by-case basis, if the Secretary determines that environmentally sensitive land of special significance would be protected as a result of such waiver.

#### (c) Enforcement

##### (1) In general

To comply with subsection (b), at least once every 3 years a person or legal entity shall provide to the Secretary—

(A) a certification by a certified public accountant or another third party that is acceptable to the Secretary that the average adjusted gross income of the person or legal entity does not exceed the applicable limitation specified in that subsection; or

(B) information and documentation regarding the average adjusted gross income of the person or legal entity through other procedures established by the Secretary.

##### (2) Denial of program benefits

If the Secretary determines that a person or legal entity has failed to comply with this sec-