

2020 WHIP+ REAUTHORIZATION ACT

SEPTEMBER 20, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DAVID SCOTT of Georgia, from the Committee on Agriculture, submitted the following

R E P O R T

[To accompany H.R. 267]

The Committee on Agriculture, to whom was referred the bill (H.R. 267) to extend the wildfire and hurricane indemnity program to cover certain crop losses in calendar year 2020, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “2020 WHIP+ Reauthorization Act”.

SEC. 2. DISASTER INDEMNITY PROGRAM.

(a) IN GENERAL.—Except as otherwise provided in this section, with respect to the coverage period, the Secretary shall carry out—

(1) a disaster indemnity program in the same manner as the WHIP+ program is carried out under subpart O of part 760 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section);

(2) an on-farm storage loss program in the same manner as the program carried out under subpart P of part 760 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section); and

(3) a milk loss program in the same manner as the program carried out under subpart Q of part 760 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section).

(b) COVERED LOSSES.—In carrying out the programs under this section, the Secretary shall make payments to producers in accordance with subsection (c) for qualified losses of covered crops, including milk, that occurred during the coverage period.

(c) PAYMENTS.—

(1) IN GENERAL.—Payments to producers for qualified losses of covered crops, including milk, under the programs under this section shall be administered, except as provided in paragraph (2), in the same manner as payments under the relevant programs in subsection (a).

(2) EXCEPTIONS.—

(A) DIRECT PAYMENTS REQUIRED.—The Secretary shall make payments under the programs under paragraphs (1), (2), and (3) of subsection (a) as direct payments to producers or processors, at the election of the processor.

(B) SPECIAL RULE FOR UNHARVESTED ACRES.—The Secretary shall make payments under this section with respect to qualified losses of unharvested acres of a covered crop in the same manner as payments are made with respect to eligible crop losses under the noninsured crop assistance program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

(C) PAYMENT LIMITATIONS.—

(i) IN GENERAL.—Except as provided in clauses (ii), (iii), (iv), and (v), the Secretary shall impose payment limitations consistent with section 760.1507 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section).

(ii) EXCEPTION FOR SPECIALTY CROPS OR HIGH VALUE CROPS.—In the case of specialty crops or high value crops, as determined by the Secretary, the Secretary shall impose payment limitations consistent with section 760.1507(a)(2) of title 7, Code of Federal Regulations (as in effect on January 1, 2019).

(iii) TAX YEAR BASIS.—In applying the payment limitations under this subparagraph, the Secretary shall determine a person or legal entity's average adjusted gross income and average adjusted gross farm income based on the 2017, 2018, and 2019 tax years.

(iv) ANNUAL RENEWAL.—With respect to the payment limitations described under this subparagraph, the Secretary shall apply separate payment limits for each of the years under the covered period.

(v) ENTITY RULES.—With respect to payments to a corporation, limited liability company, limited partnership, trust, or estate under this section, the Secretary shall—

(I) determine average adjusted gross income and average adjusted gross farm income in accordance with clause (iii); and

(II) apply rules in the same manner as subsections (d) and (e) of section 9.7 of title 7, Code of Federal Regulations.

(D) NET INDEMNITIES.—In calculating payments under the programs under paragraphs (1), (2), and (3) of subsection (a), the Secretary shall net out crop insurance indemnities, less any insurance premiums paid by the producer.

(E) PAYMENTS TO SUGAR AND DAIRY PROCESSORS.—

(i) IN GENERAL.—At the election of a processor eligible for a loan under section 156 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272) or a cooperative processor of dairy, in lieu of payments to producers provided under a program described in subsection (a), the Secretary shall make payments to a processor to be paid to producer members, as determined by such processors under the same terms and conditions as payments made to processors pursuant to section 791(c) of title VII of division B of the Further Consolidated Appropriations Act, 2020 (Public Law 116–94).

(ii) NON-ELECTION.—Notwithstanding section 760.1503(j) of title 7 of the Code of Federal Regulations, in the event that a processor described in clause (i) does not elect to receive payments under such clause, the Secretary shall make direct payments to producers under a program described in subsection (a).

(F) BLOCK GRANTS.—The Secretary may provide payments in the form of block grants to States and processors described in subparagraph (E).

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$8,500,000,000.

(2) ADMINISTRATION.—The Secretary may use not more than 1 percent of the funds appropriated pursuant to paragraph (1) to carry out the following:

(A) Streamlining the application process.

(B) Utilizing information technology to enable the electronic transfer of data used in such application process between the Risk Management Agency and the Farm Service Agency.

(C) Activities that with respect to county office employees, reduce the workload of such employees in carrying out this section.

(D) To the maximum extent practicable, providing the necessary information to, and assisting crop insurance agents with, providing application information on behalf of insured producers.

(e) EXEMPTION.—Notwithstanding the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282; 31 U.S.C. 6101 note), the requirements of parts 25 and 170 of title 2, Code of Federal Regulations (or successor regulations), shall not apply with respect to assistance received under this section.

(f) DEFINITIONS.—In this section:

(1) COVERAGE PERIOD.—In this section, the term “coverage period” means, with respect to a covered crop, including milk, and a qualifying disaster event described in paragraph (6)(A)(i), calendar years 2020 and 2021.

(2) COVERED CROP.—The term “covered crop” means a crop, tree, bush, or vine described in section 760.1503 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section), including wine grapes, which shall include all insured acreage (regardless of whether such acreage is the initial acreage or not).

(3) MILK LOSS PROGRAM.—The term “milk loss program” means the milk loss program under subpart Q of part 760 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section).

(4) ON-FARM STORAGE LOSS PROGRAM.—The term “on-farm storage loss program” means the on-farm storage loss program under subpart P of part 760 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section).

(5) STATE.—In this section, the term “State” has the meaning given the term in section 1111(20) of the Agricultural Act of 2014.

(6) QUALIFIED LOSS.—The term “qualified loss”—

(A) with respect to a covered crop not described in subparagraph (B), the loss of such crop during the coverage period—

(i) due to a qualifying disaster event described in the definition of “qualifying disaster event” in section 760.1802 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section);

(ii) due to high winds, derechos, excessive heat, or freeze (including a polar vortex);

(iii) due to a drought in—

(I) a county the Secretary designated for drought; or

(II) a county contiguous to a county described in subclause (I);

or

(iv) due to other disruptions (including power outages or curtailments) that are associated with the effects of a qualified disaster event under this section; and

(B) with respect to smoke tainted wine grapes, the loss (including a quality loss) of such crop during the coverage period due to wildfire, as determined by the Secretary.

(7) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(8) WHIP+ PROGRAM.—The term “WHIP+ program” means the WHIP+ program under subpart O of part 760 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this section).

BRIEF EXPLANATION

This legislation, as reported out of Committee, provides for an authorization of appropriations and extends authorization of three disaster programs to provide assistance for agricultural production losses experienced as a result of qualifying weather events in 2020 and 2021. This includes the Wildfire and Hurricane Indemnity Program Plus (WHIP+), the On-Farm Storage Loss Program, and the Milk Loss Program. The authorization of these programs includes several updates to the administration of these programs as well as the causes of loss that would be covered.

PURPOSE AND NEED FOR LEGISLATION

Severe weather events in 2020 and 2021 have resulted in significant agricultural losses for producers across the country. The widespread nature and severity of losses has necessitated supplemental assistance for producers to partially address the economic impact of those weather events.

The Bipartisan Budget Act of 2018 provided the original authorization for the U.S. Department of Agriculture (USDA) to provide disaster assistance to producers impacted by certain weather events in 2017. This aid was delivered through the Wildfire and Hurricane Indemnity Program (WHIP) for crop, tree, bush, and vine losses from wildfires and hurricanes. The program was expanded to WHIP+ via funding and authorization provided in the Additional Supplemental Appropriations for Disaster Relief Act of 2019. This assistance was made available for losses resulting from weather events in 2018 and 2019 and expanded the assistance to cover losses resulting from flooding and other natural disasters, including crops prevented from planting in 2019, on-farm stored commodities, adulterated wine grapes, milk losses, sugar beet losses, and quality losses.

Severe weather events occurred in 2020 and 2021, but WHIP+ is not currently authorized or funded to provide assistance for those losses. Disaster events that occurred in 2020 included wildfires in California, Oregon, Washington, and Colorado, and hurricane, drought, and derecho events that impacted Louisiana, Alabama, Texas, and Iowa, among other events. In 2021, a polar vortex and freeze events affected much of the country, and extreme heat and drought conditions have caused direct losses along with significant wildfires that have also caused agricultural losses. Such losses require authorization for disaster assistance, as well as an expansion of the eligible causes of loss in order to enable sufficient support. Additionally, implementation of earlier iterations of WHIP+ was cumbersome for USDA as well as for producers, and so improvements to the administration of the program are necessary.

H.R. 267, as amended during consideration by the House Agriculture Committee, would provide authority, pending appropriation, for USDA to provide expanded and improved assistance to producers through WHIP+, the On-Farm Storage Loss Program, and the Milk Loss Program for losses resulting from eligible disaster events in 2020 and 2021.

H.R. 267, 2020 WHIP+ REAUTHORIZATION ACT

SECTION-BY-SECTION

Section 1. Disaster indemnity program

Subsection (a). In general

Subsection (a) requires the Secretary to carry out a disaster indemnity program, an on-farm storage loss program, and a milk loss program for 2020 and 2021.

Subsection (b). Covered losses

Subsection (b) requires the Secretary to make payments to producers for qualified losses of covered crops and milk.

Subsection (c). Payments

Subsection (c) requires the Secretary to distribute payments to producers for qualified losses of covered crops and milk in the same way that the already-established WHIP+ Program, On-Farm Storage Loss Program, and WHIP+ Milk Loss Program payments are made (paragraph (1)). Payments are to be direct payments to pro-

ducers and certain processors, if the processors so choose (paragraph (2)(A)). If the sugar processors and dairy cooperatives elect to participate, the payments are to be determined under the same terms and conditions as already established in the Further Consolidated Appropriations Act, 2020 (subparagraph (E)(i)). If the cooperative processors do not elect to participate, then the Secretary will make payments directly to farmers under this program (subparagraph (E)(ii)). It also allows the Secretary to provide block grants to States or to sugar processors and dairy cooperatives (subparagraph (F)).

Payments for qualified losses of unharvested acres of a covered crop are to be paid the same way that payments are made under the already-established non-insured crop assistance program (NAP) (paragraph (2)(B)).

Payment limitations are to be consistent with the WHIP+ program (subparagraph (C)(i)) with the exception that payment limitations for specialty crops or high value crops, as defined by the Secretary, will be subject to the same payment limitations that were in effect for the initial 2017 WHIP (subparagraph (C)(ii)). It also provides that the Secretary determine the average adjusted gross income and average adjusted gross farm income for payment limitations based on 2017, 2018, and 2019 tax years (subparagraph (C)(iii)). Payment limitations are to be applied separately for each year (subparagraph (C)(iv)). It also provides that the Secretary apply rules for payment limits for joint entities as done under the Coronavirus Food Assistance Program (CFAP) (subparagraph (C)(v)).

It requires the Secretary to account for insurance premiums paid by producers and crop insurance indemnities when distributing payments for the disaster indemnity program (subparagraph (D)).

Subsection (d). Authorization of appropriations

Subsection (d) authorizes \$8.5 billion in appropriations. It also allows the Secretary to use not more than 1 percent of appropriated funds to streamline the application process, utilize information technology to electronically transfer data between the Risk Management Agency and the Farm Service Agency, reduce workload in county offices related to implementation, and allow crop insurance agents to provide application information on behalf of insured producers.

Subsection (e). Exemption

This subsection provides for an exemption under this program for producers from needing to obtain a Data Universal Numbering System (DUNS) number or to be registered in the System for Award Management (SAM) for participation. This is a similar exemption that was provided in the Consolidated Appropriations Act of 2018 for participation in NRCS programs.

Subsection (f). Definitions

Subsection (f) defines “coverage period” as calendar years 2020 and 2021 (paragraph (1)) and “covered crop” means a crop, tree, bush, or vine as described in WHIP+ and specifically includes wine grapes as well as clarifies eligibility insured acreage (paragraph (2)). Paragraphs (3) and (4) provide for definitions of the Milk Loss

Program and the On-Farm Storage Loss Program by defining them as the regulations for those programs as in effect on the date of enactment. It also defines a “State” as including all States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, and any other territory or possession of the United States (paragraph (5)).

It also defines the ways in which the loss of a covered crop qualifies as a “qualified loss.” This includes all qualifying disaster events included in WHIP+, along with losses due to high winds, derechos, excessive heat, freeze (including a polar vortex), and counties the Secretary has designated for drought (which is D2 on the Drought Monitor for eight consecutive weeks) as well as contiguous counties, along with losses due to other disruptions (including power outages or curtailments) resulting from a qualified disaster event (subparagraph (6)(A)(i–iv)). It specifies that losses, including quality losses, of smoke-tainted wine grapes due to wildfires during the coverage period are included (subparagraph (6)(B)).

It also clarifies that “Secretary” means the Secretary of Agriculture (paragraph (7)), and “WHIP+ program” means the program under subpart O of part 760 of title 7, Code of Federal Regulations (paragraph (8)).

COMMITTEE CONSIDERATION

I. Hearing

The Committee on Agriculture and Subcommittee on General Farm Commodities and Risk Management held one hearing in the 117th Congress to gather input from agricultural producers and other stakeholders about the impacts of disaster events and the functioning of existing programs, among other input.

On June 23, 2021, the Subcommittee on General Farm Commodities and Risk Management held a hearing titled “A Hearing to Review the Efficacy of the Farm Safety Net” where the following witnesses testified on some matters that were subsequently addressed in H.R. 267:

- Mr. Jeff Kirwan, Owner, Kirwan Farms, New Windsor, IL
- Mr. Brian Talley, President and Chief Executive Officer, Talley Farms and Talley Vineyards, Arroyo Grande, CA
- Mr. Wayne E. “Wes” Shannon, Farmer, Shannon Farms, Tifton, GA
- Mr. Robert Tate, Crop Insurance Agent, Crop Revenue Consultants, Cannon Falls, MN
- Dr. Gary D. Schnitkey, Professor, Department of Agricultural and Consumer Economics, University of Illinois, Urbana, IL

This hearing examined the importance of farm safety net programs, risk management tools, and other programs in good times and in bad. Members of the Committee heard testimony about how conditions in recent years have economically impacted farming operations as well as how programs have functioned in helping them through those challenges.

II. Full Committee

On July 27, 2021, the Committee on Agriculture met pursuant to notice, with a quorum present, to consider H.R. 267, 2020

WHIP+ Reauthorization Act. Chairman Scott made an opening statement as did Ranking Member Thompson. Chairman Scott requested other Members submit their opening statements for the record. Without objection, the 2020 WHIP+ Reauthorization Act was placed before the Committee for consideration, a first reading of the bill was waived, and it was opened for amendment at any point.

Chairman Scott offered an amendment in the nature of a substitute, and without objection, the reading of the amendment was waived, and the substitute was considered as original text for the purposes of further amendment. Discussion occurred and there being no further amendments, a voice vote was conducted and the amendment in the nature of a substitute was approved. Mr. Thompson moved that H.R. 267, as amended, be reported favorably to the House with an amendment in the nature of a substitute consisting of the amendment agreed to in the markup with the recommendation that the amendment be agreed to and the bill pass. The motion was subsequently approved by voice vote.

At the conclusion of the meeting, Chairman Scott advised members that pursuant to the Rules of the House of Representatives, Members had until July 30, 2021, to file any supplemental, additional, dissenting, or minority views with the Committee. Without objection, staff was given permission to make any necessary technical, clarifying, or conforming changes to reflect the intent of the Committee. Chairman Scott thanked all the Members and adjourned the meeting.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, H.R. 267 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimates prepared by the Direction of the Congressional Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

COST OF LEGISLATION AND THE CONGRESSIONAL BUDGET ACT

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee adopts as its own cost estimate the forthcoming cost estimate of the Director of the Congressional Budget Office, should such cost estimate be made available before House passage of the bill.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit

authority, or an increase or decrease in revenues or tax expenditures.

CONSTITUTIONAL AUTHORITY STATEMENT

The Committee finds the Constitutional authority for this legislation in Article I, section 8, clause 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the consideration of the United States or in any department or officer thereof. The Committee further finds the Constitutional authority for this legislation in Article I, section 8, clause 3, that grants Congress the authority to regulate foreign and interstate commerce.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the House of Representatives, the performance goals and objectives of this measure are to extend the wildfire and hurricane indemnity program to cover certain crop losses in calendar 2020, and for other purposes.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

EARMARK STATEMENT

This measure does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the House of Representatives.

DUPLICATION OF FEDERAL PROGRAMS

This measure does not establish or reauthorize a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee does not believe that the legislation directs an Executive Branch official to conduct any specific rule making proceedings within the meaning of 5 U.S.C. 551.

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