THE WHITE HOUSE

WASHINGTON

November 10, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JAMES M. CANNON

FROM: JAMES E. CONNOR

SUBJECT: Review of "Packer Bonding" Legislation Situation

The President has reviewed your memorandum of November 5th on the above subject and the following decision was made:

-- 1. Support effort to achieve compromise.

Please follow-up with the appropriate action.

cc: Dick Cheney

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

November 8, 1975

MR. PRESIDENT:

The attached was staffed to Jack Marsh and he concurs in Decision #1 -- to support efforts to achieve compromise.

Jim Connor

THE ...NT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

DECISION

November 5, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON Jim

SUBJECT: Review of "Packer Bonding" Legislation Situation

PURPOSE

To respond to assurances you gave Governor Ray and others that you would review your earlier decision to oppose a bill to increase financial protection for livestock producers who sell to meat packers.

THE BILL

As currently drafted, it would protect livestock producers by:

- -- requiring that packers be bonded for the payment of amounts due for livestock purchased; and
- -- modifying the bankruptcy law to improve the status of claims against insolvent packers (and market agencies and dealers) by livestock producers.

BACKGROUND

In late July of this year you decided that USDA should testify in opposition to this bill (See Tab A for decision memo you reviewed at that time).

In late August you told Governor Ray and others that you would review that decision.

DISCUSSION

The Packers and Stockyards Act of 1921, and amendments, has established a scheme of Federal government regulation of meat packers, market agencies and dealers. This regulation is administered by the Packers and Stockyards Administration in the USDA.

While packers fall within the coverage of most of this regulation, they are not required to be bonded for the payments due for livestock purchased from producers. In contrast, market agencies, stockyards and dealers are required to be bonded. In earlier years this was of little consequence, since most sales were through bonded intermediaries. However, over the past decade or two, major changes in the economics of livestock sales have resulted in most sales now being directly from producers to packers.

In the last year, the approximately $25 million of producer losses from packer failures have exceeded the total losses in the 1958-1974 period. This is principally a result of one major bankruptcy -- American Beef Packers. Because of this relatively large loss pressure has mounted for increased financial protection for livestock producers.

In addition to increased efforts to secure Federal bonding protection for producers, twenty-three States have adopted bonding requirements, but only half have more than token laws.

The proposed legislation would expand Federal regulation of packers by extending the Federal bonding scheme to packers. This increase in Federal regulation would require bonding for packers in the same way that it is now required for market agencies and dealers.

Other Considerations

Governor Ray and others cannot understand how the Administration can oppose this "good" regulation. They argue that innocent producers should be protected and that one Federal scheme of protection is better than many different State protection schemes.

While the Administration's decision to oppose the Packer Bonding legislation in July delayed Congressional action, it appears that some scheme for protecting producers will be passed by Congress, probably late this session or early next year.

Possible Compromise

The Administration might compromise on this issue by attempting to delete the objectionable section which modifies the bankruptcy law and by making several other modifications in the Bill recommended by USDA and Justice. However, the packer bonding requirement would be retained.

If the decision is made to seek a compromise, the interested agencies (USDA, Justice, OMB) will "markup" an acceptable compromise and then USDA will take the lead in working to have this adopted by the Agriculture Committees -- with the major effort in the House Committee, which appears more amenable to a compromise.

Arguments

Pro

-- This would eliminate the proposed change in the bankruptcy laws while allowing the Administration to support bonding.

-- It would calm the displeasure of producers, many of whom are staunch supporters of the Administration.

-- Supporters argue that innocent producers should be protected and that Federal protection is better than State protection schemes.

-- Some protection scheme is likely to be passed by Congress and the Administration can have substantial influence on a bill if the decision is made to seek a compromise.

Con

-- There is no assurance that a "compromise" can be achieved and some likelihood that any attempt to compromise will be viewed as a total Administration capitulation.

-- This appears contrary to your effort to reform regulation since it will add new Federal regulation for packers.

-- It is desirable to let the States regulate transactions that are essentially local in nature.

-- This would authorize a new spending program with a Federal enforcement cost estimated by OMB to be $600,000 to $800,000 annually.

Departmental and Staff Comments

Support Compromise Effort

Secretary Butz (USDA) - Feels strongly that the Administration should modify its position. He sees this as "hot" issue in Mid-America. "Companies are going to be saddled with added regulation in this matter anyway. It's just a question whether they have it with twenty or more separate State requirements or a single Federal requirement". (See Memorandum from Secretary Butz at Tab B).

Bill Seidman - "I am informed that the major difficulty with state regulation in this area is that it requires packers to meet separate bonding requirements in a number of states. This substantially increases their cost and capital utilization. It does not provide any greater protection to livestock producers and results merely in increasing the total cost of operations. If this is true, I believe it is a strong argument for a uniform national standard."

Phil Buchen - "This bill would not replace market forces with regulation. Rather, it is in the legitimate tradition of government regulation designed to assure some measure of regularity in commercial dealings, as through financial reporting and disclosure, Federal Reserve requirements for bank reserves, and the like. Politically, opposition to this bill under the banner of regulatory reform will undermine rather than further that program."

Support Compromise Effort (Continued)

Jim Cannon - "Governor Ray makes a compelling argument that Federal packer bonding legislation is really needed in meat-packing country. As to Administration deregulation policy, it appears that packers, some of whom operate interstate, would be subject to less onerous regulations through one Federal requirement than they would under several differing state requirements."

No Strong Feeling

Max Friedersdorf - Has not received too much Hill heat on this issue. "I don't feel strongly about changing our position."

Oppose Compromise

Paul MacAvoy (CEA) - "If the decision were to be made purely on economic grounds, it would be preferable to continue to oppose any new regulation. However, the economic arguments against required packer bonding do not indicate that the costs of required packer bonding will be larger. Consequently, it may not be unreasonable to let political considerations carry the day. But it should be pointed out that economic considerations do argue against required packer bonding, for reasons both of particular economic costs imposed and of inconsistency with the President's general economic policy."

Robert T. Hartmann - "Stick to original Presidential decision -- better to be wrong once than always switching."

Jim Mitchell (OMB) - Strongly opposes a change in position.

Decision

1. Support effort to achieve compromise (Butz, Seidman, Buchen, Cannon). ____________

2. Continue to oppose any new regulation (Hartmann, OMB, CEA) ____________

A

THE WHITE HOUSE

WASHINGTON

DECISION

July 22, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: USDA Testimony on Legislation to Regulate Meat Packers

PURPOSE

Jim Lynn has asked for a decision on whether USDA should testify tomorrow in support of, or in opposition to, a bill which would increase financial protection for livestock producers who sell to meat packers.

THE BILL

It would protect livestock producers by:

-- requiring meat packers to be bonded for the payment of livestock purchased.

-- authorizing the Department of Agriculture to enforce the law by seeking temporary court injunctions against noncomplying packers or issuing cease-and-desist orders against insolvent packers, and

-- modifying the bankruptcy law to improve the status of claims against insolvent packers by livestock producers.

BACKGROUND

Efforts at the national level to bond meat packers have been made for at least two decades. To date, 21 States require such bonding, but only half have more than token laws. American Beef Packers recently went bankrupt leaving $20 million of liabilities to livestock producers. A large percentage of other packers also have highly leveraged balance sheets with great financial risk.

Until this year, meat packing companies have successfully opposed national bonding legislation. However, because State legislation is becoming so stringent and diverse, the companies are now indicating no opposition to a national, State-preemptive act. Sentiment among livestock producers and their representatives in Congress is so strong that both the House and Senate have coordinated on having hearings this week within a three-day period so that witnesses can be heard in both bodies on one trip to Washington.

ARGUMENTS

Pro:

1. This national legislation would preempt some stringent and diverse State legislation.

2. It would provide some protection for livestock producers who are innocent victims of packer financial problems.

3. Livestock producers and their friends in Congress support enthusiastically.

4. Packers are indicating no opposition.

Con:

1. This authorizes a new spending program with an enforcement cost estimated by OMB to be $800,000 annually.

2. It is contrary to your regulatory reform effort since it provides for new Federal regulation.

3. It will have some inflationary impact, since meat packing costs are predicted to rise if the legislation is enacted.

4. It gives preference to livestock producers vis-a-vis other businesses who sell (i.e., extend credit) to packers.

DEPARTMENTAL AND STAFF COMMENTS

Support: The Department of Agriculture--Strongly favors enactment of the bill. It believes the additional regulation is needed to remove the risk of serious financial loss by producers if packers fail to pay for livestock purchases.

No Objection: The Department of Commerce.

Oppose: The Department of Justice--Strongly opposes supporting this bill. All businesses face the risk of failure and have the same means of protecting themselves from debtors defaulting in their obligations. There is no evidence to justify extending preferential bonding treatment to further protect livestock producers.

Bill Seidman--Should be handled on a State basis; accordingly, national legislation is not recommended.

Max Friedersdorf--Vehemently opposes this bill, feels it is a budget buster.

OMB--Agriculture should oppose this bill.

DECISION

________ Agriculture should oppose this bill and indicate they would recommend a veto if enacted (Justice, Seidman, Friedersdorf, Lynn, Cannon).

________ Agriculture should support this bill (Butz).

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 21, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: JIM LYNN

SUBJECT: H.R. 5493; S. 1532

Issue

The Department of Agriculture is being asked to testify in the House this Wednesday and in the Senate this Friday on a bill which would increase the financial protection of livestock producers by

-- requiring meat packers across the country to be bonded for the payment of livestock purchased

-- authorizing the Department of Agriculture to enforce the law by seeking temporary court injunctions against noncomplying packers or issuing cease-and-desist orders against insolvent packers, and

-- modifying the bankruptcy law to improve the status of claims against insolvent packers by livestock producers.

OMB estimates Ag enforcement responsibilities would cost $800,000 annually.

Background

Efforts at the national level to bond meat packers have been made for at least two decades. To date, twenty-one States require such bonding but only half have more than token laws. American Beef Packers recently went bankrupt leaving $20 million of liabilities to livestock producers. Packers slaughtering over 90% of U.S. livestock have aggregate current liabilities in excess of aggregate current assets.

Until this year, meat packing companies have successfully opposed national bonding legislation. This year, because State legislation is becoming so stringent and diverse, the companies are indicating no opposition to a national, state-preemptive act. Livestock producers and their representatives in the Congress are uniformly enthusiastic about the bill -- as is the Department of Agriculture. Sentiment is so strong that both the House and Senate have coordinated on having hearings within a three-day period so that witnesses can be heard in both bodies on one trip to Washington.

Relationship to the President's Program

The bill presents several serious conflicts with the President's program -- it

-- authorizes a new spending program

-- runs counter to the President's emphasis on deregulation of industry

-- has some inflationary impact since meat packing costs will be higher

-- unjustifiably prefers livestock producers in their relations with purchasers over other sellers.

Opposing the legislation may well be tantamount to falling on one's sword. Supporting this kind of legislation seriously weakens other key Administration initiatives.

Signal please.

B

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

October 30, 1975

MEMORANDUM

To: Paul Leach, Associate Director
Domestic Council

From: Earl L. Butz, Secretary

Subject: Packer Bonding

I feel strongly that the Administration should modify its earlier opposition to legislation for packer bonding.

This has become a pretty hot issue in Mid-America. Farmers and farm leaders out there simply can't understand why the Administration does not favor some sort of compulsory packer bonding. In the meantime, since failure of American Beef some months ago, more than twenty states have passed individual bonding requirements. This means that a packer doing business in two or more states has to comply with a number of bonding requirements, not uniform in requirements, at considerably more cost and inconvenience than if he had a simple federal requirement.

Moreover, the President made a commitment to Governor Ray in Iowa that he "would examine this issue."

Those people out there interpret this to mean that he will modify the position of earlier opposition to bonding.

Legislation is being developed on the Hill. We are going to get some form of legislation. I think our people should work with the Committee personnel, and develop legislation that is acceptable to us, and avoid an issue at the Presidential level. Indeed, we can work this around so the President can get credit for working with the Congress and getting a uniform bonding requirement.

I note in your option paper an OMB estimate that this would cost an additional $600,000 to $800,000 annually. I doubt seriously if the cost would be that much. I think this must be an initial estimate by the agency. After all, they have personnel in practically all those markets now. My off-the-cuff opinion would be that the cost would be substantially less than that. And the benefits would outweigh the cost. As a final point, companies are going to be saddled with added regulation in this matter anyway. It's just a question whether they have it with twenty or more separate State requirements, or a single federal requirement. I favor the latter.

Earl

EARL L. BUTZ