



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

June 28, 2007

The Honorable Daniel K. Inouye
Chairman, Committee on Commerce,
Science and Transportation
United States Senate
Washington, D.C. 20510-6125

Dear Mr. Chairman:

I am writing to express the Department of Commerce's (Department) views and concerns regarding the "21st Century Competitiveness Act of 2007" (H.R. 2272), which passed the House on May 21, 2007, and the "America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act" (the "America COMPETES Act," S. 761), which passed the Senate on April 25, 2007.

While the Bush Administration supports many of the goals these bills are intended to advance, several provisions are unacceptable and, in the view of the Administration, should be modified.

As passed, H.R. 2272 contains Title IV, the "Technology Innovation and Manufacturing Stimulation Act of 2007," which provides authorizations of appropriations for, and amendments to, the authorities of the Department of Commerce's National Institute of Standards and Technology (NIST). The House had previously passed this Title in the form of H.R. 1868, on May 3, 2007. The Administration's position on H.R. 1868 is set forth in a Statement of Administration Policy (SAP) issued on May 1, 2007.

Sections authorizing appropriations for, and amending the authorities of, NIST were also contained in Title IV of S. 761, as approved. In addition, Title V of S. 761, entitled "Oceans and Atmospheric Programs," contains provisions that would affect the Department's National Oceanic and Atmospheric Administration (NOAA). The Administration's position on S. 761 is set forth in a SAP issued on April 23, 2007.

This letter highlights certain issues of particular concern to the Department. These and other significant issues are discussed in greater detail in an enclosure to this letter.

FY 2008 President's Budget Request and the American Competitiveness Initiative. Last year the President proposed the American Competitiveness Initiative, which would double over 10 years the funding for innovation-enabling basic research that supports the high-leverage fields of physical science and engineering at NIST, as well as at the National Science Foundation and the Department of Energy's Office of Science. Both S. 761 and H.R. 2272, in relevant parts, recognize the importance of NIST's research to

S. 761 and H.R. 2272, in relevant parts, recognize the importance of NIST's research to our nation's global competitiveness, and authorize much-needed increases in the NIST core (laboratory and construction) funding accounts. However, both S. 761 and H.R. 2272 authorize overall funding levels for core NIST activities that are below the Administration's budget request. Specifically, H.R. 2272 provides NIST's core research and facilities \$22 million less in FY 2008 than the President requested, as well as less than needed in FY 2009 and FY 2010. Furthermore, section 1403 of S. 761 would erode NIST's high priority laboratory research accounts in order to accommodate a proposed 8 percent set aside for the extramural "Innovation Acceleration Research Program." The Administration looks forward to working with the Congress to secure funding for the high-leverage basic research and facilities consistent with the President's FY 2008 Budget request for NIST.

Technology Innovation Program. The Administration's SAP on H.R. 1868 opposes the establishment of a Technology Innovation Program (TIP), and the Administration continues to believe that investing in basic research is a much higher priority. The Administration has been working with the Congress, however, on the focus of the TIP proposal. Although H.R. 2272 reflects several improvements to the TIP proposal that were made during the House's consideration of H.R. 1868, the Administration urges that the program's intent be focused on addressing critical national needs through transformational research on societal challenges that are not currently being addressed. The Administration looks forward to continuing to work with the Congress regarding its concerns with the structure of the TIP proposal.

Restructuring of Technology Administration (TA) Authority. Section 1402 of S. 761 repeals section 5 of the Stevenson-Wydler Technology Innovation Act of 1980 (Stevenson-Wydler Act) (15 U.S.C. § 3704) and makes other conforming amendments related to this repeal and restructuring of the authority of the Department's TA. This section is consistent with the Administration's position, as proposed in the President's FY 2008 Budget. The Administration recommends that this section be included in the final version of the bill. However, we also recommend that the section include two additional conforming amendments. These amendments (as included in the enclosed detailed comments) would — upon the restructuring of TA — specify that the National Technical Information Service, which now reports to the Under Secretary, will report instead to the Director of NIST, eliminate certain authorities of the Under Secretary that are outside section 5, and streamline the requirements associated with an interagency technology transfer report to Congress.

Malcolm Baldrige National Quality Award Program and the National Technology Medal. Section 411(b) of H.R. 2272 authorizes appropriations for the Malcolm Baldrige National Quality Award Program. The Administration requests that the Congress amend the Stevenson-Wydler Act to change the name of the Malcolm Baldrige National Quality Award to the "Malcolm Baldrige Quality, Innovation and Performance Excellence Award," to better reflect the award's updated criteria and greater emphasis on innovation and performance excellence. Specific language is provided in the enclosed detailed comments.

The National Technology Medal is the highest honor awarded by the President of the United States to America's leading innovators. To better reflect the emphasis on innovation, the Administration requests that the Congress change the name in section 1103 of S. 761 to the "National Medal of Technology Innovation".

I would be pleased to have Commerce staff discuss any of these issues with your staff in further detail. If you have any questions, please contact me or Nat Wienecke, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

The Office of Management and Budget has advised that there is no objection to the transmittal of this letter from the standpoint of the Administration's program.

Sincerely,



Carlos M. Gutierrez

Enclosure

Identical letters sent to:

The Honorable Ted Stevens
Co-Chair, Committee on Commerce,
Science and Transportation
United States Senate
Washington, D.C. 20510-6125

The Honorable Bart Gordon
Chairman, Committee on Science
and Technology
U.S. House of Representatives
Washington, D.C. 20515-6301

The Honorable Ralph M. Hall
Ranking Member, Committee on
Science and Technology
U.S. House of Representatives
Washington, D.C. 20515-6301
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**DEPARTMENT OF COMMERCE DETAILED COMMENTS
ON S. 761 AND H.R. 2272**

Restructuring of Technology Administration (TA) Authority. Section 1402 of S. 761 repeals section 5 of the Stevenson-Wydler Technology Innovation Act of 1980 (Stevenson-Wydler Act) (15 U.S.C. § 3704) and makes other conforming amendments related to this repeal and restructuring of the authority of the Department's TA. This section is consistent with the Administration's position, as proposed in the President's FY 2008 Budget. The Administration recommends that this section be included in the final version of the bill. However, as noted in the Secretary's cover letter, we also recommend the inclusion of two additional conforming amendments. These amendments would — upon the restructuring of TA — specify that the National Technical Information Service, which now reports to the Under Secretary, will report to the Director of the National Institute of Standards and Technology (NIST), eliminate current provisions in section 11 under which the Under Secretary is authorized to coordinate with other agencies on technology transfer issues, and streamline the requirements associated with an interagency technology transfer report to Congress by making the Secretary of Commerce solely responsible for producing the report:

SEC. XXXX. CONFORMING AMENDMENT TO NATIONAL TECHNICAL INFORMATION ACT OF 1988.

Section 212(b) of the National Technical Information Act of 1988, as amended (15 U.S.C. § 3704b) is amended by striking "Under Secretary of Commerce for Technology" and inserting "Director of the National Institute of Standards and Technology".

SEC. XXXX. TECHNOLOGY TRANSFER.

(a) Section 11(f)(3) of the Stevenson-Wydler Technology Innovation and Competitiveness Act of 1980, (15 U.S.C. § 3710(f)(3)) is amended to read as follows:

"(3) Copy to the Secretary.

"The agency shall transmit a copy of the report to the Secretary for inclusion in the annual report to Congress and the President as required by subsection (g)."

(b) Section 11 of the Stevenson-Wydler Technology Innovation and Competitiveness Act of 1980 (15 U.S.C. § 3710) is amended by striking subsection (g) and inserting:

"(g) Reports.--

"(1) Annual report required.--The Secretary shall submit each fiscal year, beginning 1 year after January 1, 2007, a summary report to the President, the United States Trade Representative, and the Congress on the use by Federal agencies of the technology transfer authorities specified in this Act and in sections 207 and 209 of Title 35, United States Code.

"(2) Content.--The report shall--

"(A) draw upon the reports prepared by the agencies under subsection (f);

"(B) discuss technology transfer best practices and effective approaches in the licensing and transfer of technology in the context of the agencies' missions; and

"(C) discuss the progress made toward development of additional useful measures of the outcomes of technology transfer programs of Federal agencies.

"(3) Public availability.--The Secretary shall make the report available to the public through Internet sites or other electronic means."

Malcolm Baldrige National Quality Award Program and the National Technology Medal. For reasons set forth in the cover letter, the Administration requests that the Congress rename the Malcolm Baldrige National Quality Award and the National Technology Medal, as follows:

SEC. XXXX. MALCOLM BALDRIGE QUALITY, INNOVATION AND PERFORMANCE EXCELLENCE AWARD AND NATIONAL MEDAL OF TECHNOLOGY INNOVATION.

(a) Section 17 of the Stevenson-Wydler Technology Innovation and Competitiveness Act of 1980 (15 U.S.C. § 3711a) is amended in subsection (a) by striking "Malcolm Baldrige National Quality Award" each place it appears and inserting "*Malcolm Baldrige Quality, Innovation and Performance Excellence Award*".

(b) Section 16 of the Stevenson-Wydler Technology Innovation and Competitiveness Act of 1980 (15 U.S.C. § 3711) is amended-

(1) in the section heading by striking "National Technology Medal" and inserting "*National Medal of Technology Innovation*"; and

(2) in subsection (a) by striking "National Technology Medal" and inserting, "*National Medal of Technology Innovation*".

Technology Innovation Program. While the Administration's Statement of Administration Policy (SAP) on H.R. 1868 opposes the establishment of a Technology Innovation Program (TIP), the Administration and the Department have been working with Congress since then and look forward to continue working with the Congress on this issue. Although H.R. 2272 reflects several improvements to the TIP that were made during the House's consideration of H.R. 1868, where the same provisions appear, the Administration urges that additional changes be made. These changes include: (1) more sharply focusing the program on addressing critical national needs through transformational research on societal challenges that are not currently being addressed; (2) providing NIST flexibility to fund non-profit and university research without corporate involvement; and (3) unambiguously excluding large corporations and projects that could be conducted in the absence of Federal assistance from receiving Federal funds under this program.

Eight Percent Set-Aside of Budget Under Section 1403 of S. 761, Innovation Acceleration Research. Section 1202 would require every Federal research agency to establish an "Innovation Acceleration Research Program" to support and promote U.S. innovation through research projects that could yield results with wide-ranging implications, but are considered too novel, or span too diverse a range of disciplines, to fare well in the traditional peer review process. The President would be required to ensure that the goal of each research agency would be to allocate approximately 8 percent of the agency's total annual research budget to funding research, including grants, under this program. Grants would be for three years, with three-year renewals possible. Section 1403 requires NIST to implement section 1202 by establishing a "Standards and Technology Acceleration Research Program," for which NIST would be required to set aside not less than 8 percent of the funds available to the measurement laboratories.

As previously noted in the SAP on S. 761, issued on April 23, 2007, the Administration strongly objects to requiring each Federal science agency to set aside 8 percent of its research and development budget to fund an "Innovation Acceleration Research Program." This set aside could well have an unintended and significant negative impact on our ability to carry out our mission.

Section 1405 of S. 761, Experimental Program to Stimulate Competitive Technology. The Administration urges the Congress to drop reinstatement of the Experimental Program to Stimulate Competitive Technology.

Section 1502 of S. 761, NOAA Ocean and Atmospheric Science Education Programs. The Administration supports education authority for the National Oceanic and Atmospheric Administration (NOAA), but urges the Congress to focus this authority on direct support of NOAA's mission areas.

Section 1504 of S. 761, NOAA Accountability and Transparency. The Administration opposes section 1504, entitled "NOAA Accountability and Transparency," and recommends that the section be removed.

Section 1504(a) requires the Inspector General (IG) of the Department of Commerce to conduct routine, independent reviews of the activities carried out with grants or other financial assistance made available by NOAA. We believe this section is unnecessary as the IG already conducts audits and evaluations of activities that the IG believes warrant attention or are otherwise selected based on a cost-effective audit plan. An audit process already is conducted as a matter of course for all grant recipients who receive in excess of \$500,000 per year from the Federal Government in grants; under this review process, awardees are required to pay back any amounts that are unjustified or unreasonable expenses. Audit and contract oversight processes also exist for all contracts.

Section 1504(b) would prohibit a contractor or grantee who receives money from NOAA from funding "a banquet or conference, other than a conference related to training or a routine meeting with officers or employees of the Administration to discuss an ongoing project or training." This section adds an unnecessary restriction on the composition of scientific workshops and professional meetings, which foster collaboration within the extramural research community and stakeholders, and thereby add value to NOAA programs. The prohibition would also be inconsistent with the common practice of other Federal agencies, including the National Science Foundation and National Institutes of Health, of supporting scientific workshops and symposia at which non-Federal scientists gather to plan future research and synthesize the results of previously funded research.

Section 1504(c) would require every person who receives funds from the NOAA Administrator through a grant or contract to certify that none of the funds will be made available through a subcontract "or in any other manner" to another person who has a financial interest or other conflict of interest with the person who originally received the funds. As noted in a June 5, 2007, letter to the Congress from the Office of Government Ethics, this language raises concerns regarding the absence of standards for what should

be considered a financial interest or conflict of interest for a grant recipient or contractor. NOAA employees are already subject to the provisions of 18 U.S.C. § 208, one of the criminal conflict-of-interest laws, which prohibits them from participating in Government matters in which they or those whose interests are imputed to them have a financial interest that would be affected by the matter.

Collection of Fees for Conference Costs. The Department also requests that the Congress consider including the following language amending the Stevenson-Wydler Act to provide the Department with authority to collect fees for conference costs. This authority would be used in cases where attendees are the principal beneficiaries of the conference, rather than the general taxpayer.

Sec. XXXX. COLLECTION OF FEES FOR CONFERENCE COSTS. The Stevenson-Wydler Technology Innovation and Competitiveness Act of 1980, (15 U.S.C. §§ 3701 et seq.) is amended by adding after section 23 (15 U.S.C. § 3715) the following new section 24:

"Sec. 24. Collection of Fees for Conference Costs.

"(a) Authority to collect fees.

"(1) The Secretary of Commerce may collect fees from any individual or commercial participant in a conference (including seminars, educational or training meetings, exhibitions, symposia, or other similar meetings) conducted by, or jointly with, the Department of Commerce.

"(2) The Secretary may use contractors to collect fees under paragraph (1).

"(3) Fees collected under paragraph (1) may be collected in advance of a conference.

"(b) Disposition of collected fees.

"To the extent provided in advance in appropriations acts, amounts collected under subsection (a) shall be available to pay all or part of the costs of a conference, and shall be credited to the account from which the costs of the conference have already been paid, or will be paid."