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

July 31, 2007
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 3161 – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008

(Sponsor: Obey (D), Wisconsin)

The Administration strongly opposes H.R. 3161 because, in combination with the other FY 2008 appropriations bills, it includes an irresponsible and excessive level of spending and includes other objectionable provisions.

The President has proposed a responsible plan for a balanced budget by 2012 through spending restraint and without raising taxes. To achieve this important goal, the Administration supports a responsible discretionary spending total of not more than $933 billion in FY 2008, which is a $60 billion increase over the FY 2007 enacted level. The Democratic Budget Resolution and subsequent spending allocations adopted by the House Appropriations Committee exceed the President's discretionary spending topline by $22 billion, causing a 9 percent increase in FY 2008 discretionary spending. In addition, the Administration opposes the House Appropriations Committee's plan to shift $3.5 billion from the Defense appropriations bill to non-defense spending, which is inconsistent with the Democrats' Budget Resolution and risks diminishing America's war fighting capacity.

H.R. 3161 exceeds the President's request for programs funded in this bill by nearly $1 billion, part of the $22 billion increase above the President's request for FY 2008 appropriations. The Administration has asked that Congress demonstrate a path to live within the President's top line and cover the excess spending in this bill through reductions elsewhere, while ensuring the Department of Defense has the resources necessary to accomplish its mission. Because Congress has failed to demonstrate such a path, if H.R. 3161 were presented to the President, he would veto the bill.

The President has called on Congress to reform the earmarking process that has led to wasteful and unnecessary spending. Specifically, he called on Congress to provide greater transparency and full disclosure of earmarks, to put them in the language of the bill itself, eliminate wasteful earmarks, and to cut the cost and number by at least half. The Administration opposes any efforts to shield earmarks from public scrutiny and urges Congress to bring full transparency to the earmarking process and to cut the cost and number of earmarks by at least half.

The Administration would like to take this opportunity to share additional views regarding the Committee's version of the bill.

Drug Importation

The Administration strongly opposes the prescription drug importation provision, which does not include any protections to ensure that imported drugs are safe and effective and which will have a negative effect on incentives for beneficial innovation. In 2004, a Department of Health and Human Services Task Force found that there are significant safety and economic issues that must be addressed with respect to prescription drug re-importation. While the provision theoretically limits importation to only FDA-approved prescription drugs, it would be impossible for FDA to verify at the border that they are not counterfeit.

Farm Service Agency

The Administration opposes the provision that would place a six-month moratorium on any other closure or consolidation of county offices. A moratorium would stymie a process that is essential for the agency to effectively and efficiently control cost and manage its workforce.

International Programs and Farm Program Delivery

The House should fully fund the request for: (1) the Provincial Reconstruction Teams, which provide essential policy advice, technical assistance, and related support to reconstruction efforts currently underway in rural areas of Afghanistan and Iraq; and (2) the Foreign Agricultural Service (FAS), which is needed to meet higher overseas operating expenses, including increased payments to the State Department for overseas administrative services and the Capital Security Cost Sharing Program. Without additional funding, FAS will have to absorb these costs by, among other things, eliminating up to 62 full-time equivalents.

While the Administration supports the funding for discretionary food aid programs, the House should provide the authority to use up to 25 percent of P.L. 480 Title II funding for local or regional food aid purchases in order to deliver food rapidly to meet urgent unanticipated needs.

Food Safety and Inspection Service

The Administration opposes section 731, which would prevent the Department of Agriculture (USDA) from issuing a rule affecting the possible importation of poultry products into the United States from the People's Republic of China. The proposed rule states that USDA has reviewed the Chinese inspection systems and determined that China's poultry slaughter inspection system is equivalent to the system in the United States. However, China would continue to be prohibited from exporting poultry to the United States due to the presence of Highly Pathogenic Avian Influenza.

The Administration opposes Section 733 of the bill, which would delay USDA from implementing risk-based inspection for processing. Such inspections will promote a safer food supply by allowing inspection resources to be used where they are needed most.

Food and Nutrition Service

The Administration strongly opposes the funding increase for the Commodity Supplemental Food Program, which the Administration proposed to eliminate because it duplicates the

Nation's two largest and most effective nutrition programs -- Food Stamps and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The House should adopt the proposals to provide a responsible level of growth in WIC nutrition services and related administrative funding.

The Administration opposes section 736, which would make a permanent change in the authorizing statute to expand an activity in the Summer Food Service Program, which currently operates in 27 States, to include all States at a cost of $29 million over five years. The Administration does not support nationwide expansion of the activity through appropriations action and is concerned that only the FY 2008 costs of $5 million are scored against the bill.

The Administration also opposes section 737, which would provide $21 million to expand the Fruit and Vegetable Program nationwide. The Administration's Farm Bill includes a number of proposals to increase the availability of fresh fruits and vegetables through the school meal programs that make better use of existing purchase authorities and existing programs.

<u>Animal and Plant Health Inspection Service (APHIS)</u>

While the bill supports APHIS's efforts to eradicate the Emerald Ash Borer, it does not adequately fund other priority pest and disease eradication efforts, such as the Potato Cyst Nematode. Full funding for eradication programs should be provided through the annual appropriations, with mandatory funding used only for unanticipated needs.

In addition, the Administration is concerned that the Committee's decision to withhold funding for the National Animal Identification System will prevent the continuation of cooperative agreements with States, as well as premises (locations) registration and outreach activities.

The House should delete section 738, which would prohibit APHIS from carrying out all horse health monitoring and regulatory work -- not just that related to horse slaughter activities -- as well as prohibit the inspection of horses for import and export, as currently required.

<u>Rural Development</u>

The House should reconsider the Administration's proposals, which would allow USDA to more efficiently achieve its rural development goals and would save approximately $360 million.

<u>Commodity Futures Trading Commission (CFTC)</u>

The House is encouraged to join the Senate Appropriations Committee in matching the requested $116 million for the CFTC, which will allow more effective monitoring of the markets the Commission oversees and strengthen enforcement in cases where market abuses may have occurred. The House should also approve the proposed transaction fee on futures and options contracts, as recommended recently in a report by the Senate Homeland Security and Governmental Affairs' Permanent Subcommittee on Investigations. CFTC is the only Federal financial regulator that does not derive its funding from the specialized entities it regulates, and because its programs provide clear benefits to participants in these markets, it is appropriate for those participants to contribute toward their cost.

Competitive Sourcing and E-Government

The Administration strongly opposes section 727, which would prevent USDA from improving the management of rural development or farm loan programs through competitive sourcing. The Administration has adopted a reasoned and responsible approach for applying public-private competition to commercial activities. On a Government-wide basis, competitions conducted over the last four years are expected to produce nearly $7 billion in savings, with the majority of savings to be achieved in the next five to seven years.

The House should also fully fund the Financial Management Modernization Initiative, which is necessary for USDA to replace its outdated core financial management system.

Potential Amendments

The Administration is concerned that an amendment may be offered on the Floor that would weaken current sanctions against Cuba. The Administration believes that it is critical to maintain sanctions and travel restrictions to deny economic resources to the Castro regime. Lifting the sanctions now, or limiting our ability to enforce them, would provide assistance to a repressive regime at the expense of the Cuban people and extend its longevity. If the final version of the bill contained a provision that weakens current restrictions against Cuba, the President would veto the bill.

Constitutional Concerns

Section 711 purports to prohibit the use of funds to transmit to any non-USDA employee "questions or responses to questions that are a result of information requested for the appropriations hearing process." This section could impede communications within the Executive Branch, and could undercut the President's constitutional duty to "take care that the Laws be faithfully executed."

Section 714 purports to limit Executive Branch appropriations proposals to preclude those which assume revenues or reflect a reduction from the previous year due to user fee proposals that have not been enacted into law. This provision would violate the Recommendations Clause in that it purports to limit the President's constitutional authority to make such recommendations as he deems "necessary and expedient."

Section 733 purports to prohibit the Department's use of funds to implement a certain food inspection program until: (i) the USDA Office of Inspector General (OIG) provides the Food Safety and Inspection Service (FSIS) and the House and Senate Appropriations Committees with findings on the data used to support the development and design of the program; *and* (ii) FSIS "has addressed and resolved issues identified by OIG." To the extent these provisions purport to condition the obligation of appropriated funds on a determination by congressional Appropriations Committees that FSIS has "addressed and resolved" certain program issues, the provisions would contradict the Supreme Court's ruling in *INS v. Chadha*. To the extent these provisions purport to condition the obligation of funds on a determination by USDA OIG that FSIS has "addressed and resolved" certain program issues, the provisions are inconsistent with existing statutory limits on the OIG functions and with the President's authority to supervise the unitary Executive Branch and "to take care that the Laws be faithfully executed." To avoid these statutory and constitutional concerns, the House should delete the “address and resolve” requirements in section 733, or at the very least revise section 733 to clarify that the decision whether FSIS has “addressed and resolved issues identified by OIG” rests with the Secretary, not the Inspector General.

In addition, several provisions of the bill purport to require approval of the Committees prior to Executive Branch action, including the obligation of funds. These provisions include the last proviso under the heading, “Multifamily Housing Revitalization Program Account,” the last proviso under the heading, “Salaries and Expenses, Food and Drug Administration,” and sections 703 and 712 of the bill. Because these provisions would contradict the Supreme Court’s ruling in *INS v. Chadha*, these provisions should be modified to require only notification of Congress.

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