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The Omnibus: “Stealth” Security Provision Is Unnecessary

James Jay Carafano, Ph.D.

Protecting the homeland is a difficult task. U.S. leaders must craft policies that simultaneously fight terrorism, allow the economy to grow and prosper, and safeguard the liberties of individual citizens. Keeping America safe, free, and prosperous is a challenge that can only be met through full and open debate by concerned and informed legislators. That is why the omnibus spending bill is a disservice to the American people. Thrown together in Congress’s rush to begin its Christmas holiday, the 3,565-page bill would undermine congressional policies that have been set after scores of hearings, testimonies, meetings, and votes.

Among its problematic provisions, the bill includes language that would add layers of unnecessary security regulations concerning the nation’s critical infrastructure. To protect the economy and the integrity of the lawmaking process, Congress should remove excessive regulations from the omnibus appropriations bill. If Congress refuses to correct the many problems with the bill, President Bush should veto it.

Risk-Based Security. In the wake of 9/11, Congress recognized the need to address terrorist threats against critical infrastructure, including the handful of major facilities where a release of hazardous materials could result in catastrophic threats to life and property. At the same time, Congress realized that chemical infrastructure is ubiquitous; it includes facilities for pumping gas, delivering home heating oil, refining gasoline, and manufacturing fertilizer. Establishing federal regulatory security standards for

every activity would be a massive and expensive undertaking, but a one-size-fits-all approach is no more attractive. Though terrorists might try to turn these instruments of everyday life into weapons, that is true for many things. Excessive regulation and unnecessary security would hamstring the economy without making the nation much safer.

Congress has recognized that homeland security efforts need to be prioritized based on risk. With regard to chemical security, that means focusing on two areas: dangers that local emergency responders and hazardous material teams cannot handle and threats against chemical infrastructure (like large-scale plants and storage facilities) where attacks would cause catastrophic damage threatening tens of thousands of lives and billions of dollars in property. For this top tier of threats, it was reasonable to require the Department of Homeland Security (DHS) to establish and enforce mandatory standards for preventing unauthorized access to facilities, securing critical areas, and responding to emergencies.

After years of debate and study, Congress passed in September 2006 a homeland security appropriations bill that required the department to propose “rules requiring high-risk chemical facilities to assess their

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security weaknesses and implement plans to address them.” The bill became law in October 2006. That law struck a reasonable balance between securing facilities and ensuring that the chemical industry remains a vital, competitive part of the American economy.

Hijacking Chemical Security. The 2006 law was not good enough for Senator Frank Lautenberg (D–NJ), who slipped into the omnibus bill a provision that would allow state and local governments to pass laws that go beyond federal rules in regulating security at chemical plants.

Activist groups have long sought to use “homeland security” regulations as a means to impose their agenda on the chemical industry. This measure would give them avenues to preempt reasonable national standards.

The 2006 law makes clear that the private sector’s job is to take reasonable measures to prevent malicious use of its facilities. Today, decisions about which chemicals are the most appropriate for indus-

trial uses are based on a number of factors, including safety, environmental and health risks, and customer needs. These are not matters that should be regulated under the guise of homeland security.

Conclusion. Excessive regulation of chemical plants would hamstring the economy without making the nation much safer. Furthermore, including this measure in the omnibus bill circumvents deliberation by Congress and the Administration, illustrating how “sledgehammer” legislating undermines the democratic process. This is just one example of the troubling policy riders that plague the bill. If Congress does not remove these riders, the earmarks, and the spending gimmicks, President Bush should veto the omnibus bill.

—James Jay Carafano, Ph.D., is Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation.