CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 18, 2011

S. 409
Combating Dangerous Synthetic Stimulants Act of 2011

As reported by the Senate Committee on the Judiciary on July 28, 2011

CBO estimates that implementing S. 409 would have no significant costs to the federal government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

S. 409 would permanently expand the list of substances regulated by the Drug Enforcement Administration (DEA) to include two new synthetic drugs commonly known as bath salts. As a result, the government might be able to pursue cases involving drug use that it otherwise would not be able to prosecute. CBO expects that S. 409 would apply to a relatively small number of additional offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 409 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

S. 409 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local or tribal governments.

Under current law, DEA plans to control the two synthetic stimulants listed in the bill by adding them to schedule I temporarily under the agency's emergency scheduling authority. The temporary restrictions under schedule I could go into effect as early as mid-October 2011 and would expire one year later (with the possibility of a six-month extension). During this period, the Department of Health and Human Services (HHS) would conduct a formal rulemaking process to determine if the chemicals should be permanently controlled under schedule I.

If HHS does not make a determination to permanently control the chemicals, the bill would do so and would impose private-sector mandates as defined in UMRA. CBO estimates that the cost of complying with the mandates, if imposed, would probably exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation).

By adding the two synthetic stimulants to schedule I of the Controlled Substances Act, the bill would prohibit the manufacture, sale, or distribution of those chemicals. The cost of the prohibition would be the forgone profits from lost sales, including the wholesale cost of the inventory of the newly banned products held by sellers after enactment. Because of the nature of the market being regulated, the scope of sales affected is difficult to determine. Some industry experts estimate that the profits generated by the sale of products containing such synthetic chemicals amount to billions of dollars annually.

Industry data and information provided by law enforcement officials suggests that the markets for synthetic stimulants have adjusted very quickly in the past to replace chemicals or redirect sales in response to state-level bans on MDPV and Mephedrone and the chemicals remain widely available. However, given the estimated magnitude of industry profits, even a 5 percent decrease in industry profits as a result of the ban would probably exceed the annual threshold for private-sector mandates. Most of those costs would be incurred within the first two years the mandate is in effect.

The bill also would impose a mandate by prohibiting the unregistered possession of the two banned stimulants, requiring individuals and facilities that wish to use or handle the chemicals to register with the DEA. Individuals who cannot obtain DEA approval would be required to dispose of the banned chemicals in their possession. According to the DEA, once registrants have been approved to use or handle schedule I chemicals, they do not need to register again when the schedule is updated. Also, most individuals and facilities that would need to handle the chemicals listed in the bill have already registered. Therefore, CBO expects that the cost of this mandate to the private sector would be small.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs) and Marin Randall (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.