CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 18, 2011

S. 839
Combating Designer Drugs Act of 2011

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

CBO estimates that implementing S. 839 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. 839 would expand the list of substances regulated by the Drug Enforcement Administration (DEA) to include nine new chemicals. 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. 839 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. 839 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. 839 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 839 would impose private-sector mandates, as defined in UMRA, on manufacturers, sellers, consumers, and researchers of certain synthetic stimulants. CBO estimates that the cost of complying with those mandates would probably exceed the annual threshold established in UMRA for private-sector mandates in the first year after enactment ($142 million in 2011, adjusted annually for inflation).

By adding selected 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, and the wholesale value 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 the profits generated by the sale of products containing such synthetic chemicals amount to billions of dollars annually.

To the extent that manufacturers are able to replace the banned stimulants with new, unregulated compounds, the cost of the mandate to sellers would be less than the forgone profits for sale of existing products. Industry data and information provided by law enforcement officials suggest that the markets for synthetic stimulants have adjusted very quickly in the past to bans on particular chemical compounds (typically imposed at the state level), but would take longer to find substitutes for the broad class of stimulants banned under S. 839. In response to bans imposed in several states and in anticipation of a federal ban, several markets have already started to replace the stimulants listed in the bill with other chemicals. However, given the estimated magnitude of industry profits, even a 5 percent decrease in net profits as a result of the ban would exceed the annual threshold for private-sector mandates. The majority of those costs would be incurred within the first year of enactment.

The bill also would impose a mandate by prohibiting the unregistered possession of the banned stimulants, requiring individuals and facilities that wish to use or handle the chemicals to register with Drug Enforcement Administration. Individuals who cannot obtain DEA approval would have to dispose of the banned chemicals in their possession. CBO expects the cost to those individuals would be small. 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 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 Michael Levin (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.