CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 17, 2013

H.R. 367
Regulations From the Executive in Need of Scrutiny Act of 2013

As ordered reported by the House Committee on the Judiciary on April 11, 2013

SUMMARY

Under current law, the Congress can prevent a rule from taking effect by enacting a joint resolution of *disapproval*. In contrast, H.R. 367 would require enactment of a joint resolution of *approval* prior to any major rule taking effect. Therefore, H.R. 367 would make the implementation of new major regulations dependent on future legislation. Because CBO does not assume enactment of subsequent legislation in estimating a bill's effect on direct spending and revenues, this estimate addresses the costs and savings that would be realized if anticipated major rules do not take effect.

About 85 major rules have been issued per year, on average, over the past five years. Major rules vary greatly in their nature and scope. CBO and the staff of the Joint Committee on Taxation (JCT) cannot determine the budgetary effects of preventing all future major rules from going into effect, but we expect that enacting H.R. 367 would have significant effects on both direct spending and revenues. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO expects that implementing H.R. 367 also could have a significant impact on spending subject to appropriation, although we cannot determine the magnitude of that effect.

CBO expects that H.R. 367 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Background

The Congressional Review Act (CRA) of 1996 requires federal agencies to submit final rules to the Congress and the Comptroller General before they may take effect. Final

rules may be annulled by the Congress if a joint resolution of disapproval is enacted into law. H.R. 367 would amend current law by requiring the Congress to enact a joint resolution of approval before any major rule may take effect, thereby making implementation of major rules contingent on future Congressional action.
The definition of a major rule, which was originally set by the CRA and would be unchanged by H.R. 367, is any rule that the Office of Management and Budget (OMB) finds has resulted in or is likely to result in:

- An annual effect on the economy of $100,000,000 or more;

- A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.[1]

H.R. 367 specifies special Congressional procedures and explicit timelines for enacting a joint resolution of approval for major rules. Under H.R. 367, if a joint resolution of approval is not enacted within 70 legislative (or session) days of receiving the major rule and accompanying report from a federal agency, the rule could not take effect. Further, the Congress could not reconsider a joint resolution of approval relating to that rule in the same Congress. However, a major rule could take effect for one 90-calendar-day period without Congressional approval if the President determines, via an executive order, that the major rule was necessary for one of four reasons: (1) to respond to an imminent threat to health or safety, (2) to enforce criminal laws, (3) to protect national security, or (4) to implement an international trade agreement.

Historical data show that federal agencies published 68 major rules in 2012, and 85 major rules, on average, over the past five full calendar years.[2] Major rules published in recent years include, for example, rules that required warnings for cigarette packages and advertisements, set Medicare payment rates for inpatient psychiatric facilities, and established national emission standards for hazardous air pollutants from industrial, commercial and institutional boilers. However, looking to recent major rules as a way to estimate the number of future major rules that would be affected by H.R. 367 may not be a good guide to what would happen under the bill because agencies might change course if it was enacted.

Because major rules are issued to implement current law, the budgetary effects of anticipated rules are reflected in CBO's baseline projections, which are governed by

---

1. See 5 USC § 804(2).
2. GAO Federal Rules Database, http://www.gao.gov/legal/congressact/fedrule.html.

section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Deficit Control Act). For example, routine annual rules establish new payment rates for a variety of Medicare services. Such updated payment rates reflect changes in the price indices specified to be used for those services by current law; the result is often an increase in payment rates and thus an increase in spending.

Under the Deficit Control Act, actions that are contingent on future Congressional action are generally not included in CBO's baseline projections. However, H.R. 367 would amend the Deficit Control Act to require that CBO, in its baseline projections, continue to assume that any planned major rule will go into effect, unless the rule has already been promulgated and the Congress has not enacted a resolution of approval within the 70-day period that would be established under the bill. (Without that provision amending the Deficit Control Act, H.R. 367 would result in baseline projections that would no longer reflect the budgetary impact of major rules.)

As a result, CBO's baseline projections would retain the budgetary impact of major rules even though future Congressional action would be necessary (under the bill) to approve such rules. For example, if H.R. 367 is enacted, baseline projections would continue to reflect the assumption that payment rates for Medicare providers would rise over time even though raising those rates would require future Congressional action. Accordingly, a Congressional resolution of approval for a major rule raising such rates would be estimated as having no cost relative to CBO's baseline projections. (If the Congress does not pass a joint resolution of approval, then CBO's subsequent baseline projections would be updated to exclude the budgetary impact of the proposed rule.)

Impact on Direct Spending

H.R. 367 would prevent all major rules from taking effect unless subsequent legislation is enacted. Because CBO does not assume enactment of future legislation in estimating effects on direct spending and revenues, in assessing the budgetary effects of H.R. 367, CBO considered the costs and savings that would be realized if anticipated major rules do not take effect. The budgetary consequences of preventing major rules from taking effect would vary tremendously because the budgetary impact of different rules varies considerably. For example, of the three rules mentioned above, only one—which set Medicare payment rates for inpatient psychiatric facilities—has a significant federal budgetary impact.

Preventing some major rules from taking effect would result in costs to the federal government, while preventing others would result in savings. On net, CBO estimates that enacting H.R. 367 would have a significant effect on direct spending, but we cannot determine the magnitude or sign of those changes for any year or period of years. Short-term effects would largely result from: (1) preventing annual updates to payment schedules for certain Medicare services and other routine revisions to aspects of certain government programs, including payment rate reductions scheduled to take place under the Medicare physician fee schedule, and (2) altering the implementation of new federal programs with substantial budget effects.

Routine Updates to Government Programs. Many major rules that occur routinely are related to the government's health care programs and in particular pertain to Medicare. Some examples include rules that establish annual updates to payment rates for services provided by hospitals, physicians, and other Medicare providers. Enacting H.R. 367 would freeze payment structures for those providers at current levels pending future Congressional actions. Similarly, payment rates (such as the annual benefit amount for each individual) under some other federal programs might also be frozen under the bill in the absence of future Congressional actions. CBO cannot estimate the net impact of all such changes.

Implementation of New Federal Programs. Enacting H.R. 367 could also affect the implementation of significant legislation for which major rules have not been issued. For example, enacting H.R. 367 could delay the implementation of new initiatives aimed at making more electromagnetic spectrum available for wireless services. As required by title VI of the Middle Class Tax Relief and Job Creation Act of 2012, the Federal Communications Commission (FCC) is developing proposed rules for what are known as "incentive auctions," for private firms to voluntarily relinquish some or all of their existing spectrum rights in exchange for a payment from the FCC. That spectrum would then be available for new licensed uses. Provisions in that act regarding the use of spectrum by federal agencies and the development of a wireless network for public safety users are being implemented through rulemaking by the Department of Commerce. Making implementation of those programs contingent on future legislation would increase net direct spending (by reducing auction receipts expected without further Congressional actions) by several billion dollars over the 2014-2023 period, relative to current law.

Impact on Revenues

Enacting H.R. 367 would also affect tax revenues, and JCT expects that preventing regulations from going into effect could reduce collections of revenues in some cases and increase collections in other cases. JCT cannot determine the sign or magnitude of the possible effects on revenues.

Impact on Spending Subject to Appropriation

H.R. 367 also would affect programs for which spending is subject to the annual appropriation process. However, CBO cannot determine the magnitude of that effect. For example, if the major rules issued by the Environmental Protection Agency were prevented from taking effect, there could be reductions in spending for the agency, subject to appropriation action. A second example involves annual calculations made by the Department of Housing and Urban Development (HUD) of the fair-market rents that it uses to determine rental subsidies for low-income individuals. We expect that the bill would prohibit those calculations from being implemented, which would prevent the rental subsidy from being adjusted for changes in market conditions. Any increase in rents would be paid for by the tenant and not by HUD, and if tenants were unable to pay the increased rent, some landlords would probably leave the program.

The legislation also would require the Government Accountability Office (GAO) to prepare a study on the rules and their economic cost. Based on information from agencies and on similar GAO reports, CBO estimates that completing the study would cost less than $500,000 over the next few years.

Impact on Future Legislation

If H.R. 367 was enacted, the budgetary effects of planned major rules would continue to be reflected in baseline projections, unless a rule had already been promulgated and a joint resolution of approval had not been enacted. Therefore, a cost estimate for a joint resolution of approval for a major rule would not include any direct spending and revenue effects of implementing that rule. Further, for future legislation whose implementation would be contingent upon the promulgation of major rules, CBO would estimate the budgetary effects assuming those major rules would take effect. However, if a joint resolution of approval is not enacted, and CBO's baseline projections are subsequently updated to reflect that inaction, the costs or savings associated with that major rule would be counted for budget enforcement purposes if a joint resolution of approval is considered in a subsequent session of Congress.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Pay-as-you-go procedures apply to H.R. 367 because enacting the legislation would affect direct spending and revenues. CBO and JCT cannot determine the sign or magnitude of those effects.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

CBO expects that H.R. 367 would impose no intergovernmental or private-sector mandates as defined in UMRA. By requiring major rules to be approved by a joint resolution of Congress and potentially delaying or halting the implementation of those rules, the bill could affect public or private entities in a number of ways, including slowing reimbursements and eliminating or changing regulatory requirements. Although the costs and savings tied to those individual effects could be significant, CBO has no basis for estimating either the overall direction or magnitude of those effects on public or private entities because of uncertainty about the nature and number of regulations affected.

ESTIMATE PREPARED BY:

Federal Costs: Sarah Masi
Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle
Impact on the Private Sector: Paige Piper-Bach

ESTIMATE APPROVED BY:

Holly Harvey
Deputy Assistant Director for Budget Analysis