CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

August 1, 2013

H.R. 2122
Regulatory Accountability Act of 2013

As ordered reported by the House Committee on the Judiciary on July 24, 2013

SUMMARY

H.R. 2122 would amend the Administrative Procedures Act (APA), which is the law that governs how federal agencies propose and establish regulations. Enacting this legislation would codify many practices aimed at increasing regulatory transparency and accountability that are currently required under several executive orders. However, this legislation also would impose some new requirements on federal agencies related to the rulemaking process and would extend some of the current requirements under the executive orders to additional federal agencies. Except for changes permitting judicial review for compliance with the Information Quality Act (enacted as part of the Consolidated Appropriations Acts, 2001 [Public Law 106-554]), the changes contained in this legislation would not apply to any rulemaking pending or completed on the date of enactment.

CBO estimates that implementing H.R. 2122 would cost about $70 million over the 2014-2018 period, assuming appropriation of the necessary funds. Such funding would cover the governmentwide costs of additional personnel, contractor costs, and other administrative expenses associated with meeting the new requirements under the legislation.

CBO also expects that enacting H.R. 2122 could delay the issuance of some final rules each year. As a result, CBO and the staff of the Joint Committee on Taxation (JCT) expect that enacting H.R. 2122 could have effects on both direct spending and revenues. Therefore, pay-as-you-go procedures apply to the legislation. However, given the large number of major rules issued each year and the extent to which rules vary in their nature and scope, we cannot determine the level of costs or savings stemming from delaying the effective date of some rules. In addition, while enacting the bill could affect direct spending and revenues if agencies not funded through annual appropriations incur additional costs, CBO estimates that any net increase in spending or change in revenues for those agencies would not be significant.

CBO expects that H.R. 2122 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2122 on discretionary spending is shown in the following table. The costs of this legislation fall within all budget functions that include agencies that issue regulations.

	By Fiscal Year, in Millions of Dollars					
	2014	2015	2016	2017	2018	2014-2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	5	10	15	20	20	70
Estimated Outlays	4	9	14	20	20	67

Enacting H.R. 2122 also would affect direct spending and revenues, but CBO and JCT cannot determine the extent or sign of those effects.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the legislation will be enacted near the end of 2013, that the necessary amounts will be appropriated near the start of each fiscal year, and that spending will follow historical patterns for regulatory analysis activities.

Background

CBO is unaware of any comprehensive information on current spending for regulatory activities governmentwide. However, according to the Congressional Research Service, federal agencies issue 3,000 to 4,000 final rules each year. Most are promulgated by the Departments of Transportation, Homeland Security, and Commerce, and the Environmental Protection Agency (EPA). Agencies that issue the most major rules (those with an estimated economic impact on the economy of more than $100 million per year) include the Department of Health and Human Services, the Department of Agriculture, and EPA.

H.R. 2122 would amend the APA to codify certain practices currently required under several executive orders, including Executive Orders 12866, 13563, and 13422. (Those instructions require agencies in the executive branch to analyze the impacts of regulations (including costs and benefits), to coordinate with the Office of Information and Regulatory Affairs (OIRA) during the rulemaking, and to perform other activities and analyses related to the rulemaking process.) The legislation would add several definitions to the APA, including **major rule**, **major guidance**, and **high-impact** rule.

A major rule would be defined as any rule, as determined by OIRA, likely to impose:

- An annual cost on the economy of $100 million or more, adjusted annually for inflation;

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

- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

- Significant impacts on multiple sectors of the economy.

This definition of a major rule differs from the one contained in the Congressional Review Act (CRA) of 1996, which defines a major rule as one having an annual *effect* on the economy instead of an annual *cost* as defined in H.R. 2122.

The legislation would define the term major guidance issued by federal agencies using the same criteria as that used for a major rule. A high-impact rule would be defined as any rule that OIRA determines is likely to impose an annual cost on the economy of $1 billion or more. That threshold would be adjusted annually for inflation.

Enacting H.R. 2122 also would add several new requirements that would broadly change the current rulemaking process. For all major and high-impact rules as well as rules that involve “novel legal or policy issues,” agencies would be required to publish an advance notice of proposed rulemaking (ANPRM) in the Federal Register 90 days prior to publishing a Notice of Proposed Rulemaking (NPRM). The legislation specifies minimum requirements for the ANPRM, including a period of not less than 60 days during which interested parties may submit data, views, or argument to the agency. A pre-proposal process occurs on a voluntary basis for some rules under current law, as guided by Executive Order 13563.

The NPRM process, as defined in the APA, would be amended to codify certain requirements in place under Executive Orders 12866 and 13563. While many agencies subject to the executive orders may already be implementing those practices for certain rules, some independent agencies outside the purview of executive orders may face an increase in workload with respect to the rulemaking process. For all agencies, H.R. 2122 would increase requirements for documenting cost-benefit analyses as well as placing other supporting documentation in the docket for the proposed rule. Furthermore, the legislation would incorporate into the rulemaking process a remedy for members of the public to petition for a hearing to determine if any information used by the agency in developing the proposed rule violates the Information Quality Act.

The legislation would require agencies to hold a hearing for all high-impact rules. The hearing would occur after comments have been received on the proposed rule and after any hearings were held under the NPRM process but before adoption of the rule. The hearing could be waived if all participants—not including the agency—agree.

Spending Subject to Appropriation

Based on information from several federal agencies, CBO estimates that more resources would be needed for federal agencies to produce additional guidance documents and cost-benefit analyses, support judicial reviews and hearings, and perform other administrative tasks related to the rulemaking process. Eventually, CBO estimates that federal agencies would spend about $20 million annually to meet the requirements under this legislation. We expect that it would take about three years to reach that level of effort.

Direct Spending

CBO expects that enacting H.R. 2122 would delay a number of major and high-impact rules from taking effect each year. Therefore, in assessing the budgetary effects of H.R. 2122, CBO considered the costs and savings that would be realized if anticipated major and high-impact rules were delayed. Delaying the issuance of some major or high-impact rules, which would delay when they take effect, could result in costs, while delaying others could result in savings. CBO expects that the rules with the largest effects on federal spending would be those related to federal health programs, particularly Medicare; thus, enacting H.R. 2122 could significantly affect Medicare spending relative to current law.

CBO cannot determine the level of costs or savings in direct spending over the 2014-2023 period. However, we expect that such budgetary effects would largely be driven by delaying annual updates to payment schedules for providing Medicare services and other routine revisions to aspects of other government programs.

Revenues

Enacting H.R. 2122 also would affect revenues by changing the way the Internal Revenue Service could issue its nonregulatory guidance and by slowing down rulemaking generally. JCT expects those delays would reduce revenue collections in some cases and increase them in others. However, JCT cannot determine the level of costs or savings of those possible effects.

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. 2122 because enacting the legislation would affect direct spending and revenues. CBO and JCT cannot determine the level of costs or savings associated with those effects.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

CBO expects that H.R. 2122 would impose no intergovernmental or private-sector mandates as defined in UMRA. By potentially delaying federal rules, the bill could affect public or private entities in a number of other ways, for example, by slowing reimbursements or delaying the implementation of regulatory requirements. While the costs and savings associated with such effects could be significant, because we cannot predict the nature or number of regulations that could be delayed, CBO has no basis for estimating the level of costs or savings that would result.

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