



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 9, 1999

S. 746

Regulatory Improvement Act of 1999

As ordered reported by the Senate Committee on Governmental Affairs on May 20, 1999

SUMMARY

CBO estimates that implementing S. 746 would, on average, cost about \$6 million a year, assuming appropriation of the necessary amounts. Enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on the budgets of state, local, or tribal governments.

S. 746 would amend chapter 6 of title 5, U.S. Code, to require federal agencies to complete specific studies, including cost-benefit analyses and risk assessments, as part of the regulatory analysis performed before certain major rules are issued. The bill would define a major rule as a regulatory action expected to result in an annual impact on the economy of \$100 million or more in costs, or a rule designated as major by the Office of Management and Budget (OMB). The bill would exempt many rules from the new requirements, however, and would primarily apply to those agencies that issue major rules governing health, safety, and the environment. In cases where an agency issues a rule that is expected to have an annual impact on the economy of \$500 million or more in costs, the legislation would require that the agency submit the rule for peer review. For major rules covered by S. 746, agency compliance with the bill's regulatory analysis provisions would be subject to limited judicial review.

CBO expects that implementing S. 746 would have a small impact on the federal government's cost to perform regulatory analyses because the bill would: (1) codify much of existing practice, (2) generally not apply to so-called minor rules, (3) exempt most major rules from its review, and (4) allow agencies to opt out of its requirements in certain situations. Based on our review of the number and type of major rules issued in fiscal years 1997 and 1998 and on past costs of regulatory analyses, CBO estimates that, subject to appropriation of the necessary amounts, implementing S. 746 would increase the government's costs to perform regulatory analyses by around \$5 million annually. Such costs

would result from the additional documentation and analyses required by S. 746 and from requiring that independent agencies perform cost-benefit analyses for certain major rules.

In addition, the bill would require the Office of Information and Regulatory Affairs (OIRA) within OMB to write regulations, periodically evaluate training needs at agencies that perform regulatory analyses, contract for a pair of studies, submit an accounting statement to the Congress that contains an estimate of agencies' incremental costs in complying with the bill's regulatory analysis provisions, and review applicable major rules issued by independent agencies. The legislation also would direct agencies that regulate health, safety, and the environment to devise detailed guidelines for performing risk-assessment analyses. CBO estimates that implementing these administrative requirements would cost federal agencies an average of less than \$1 million a year over the 2000-2004 period.

Under some circumstances, S. 746 could result in additional costs to federal agencies beyond those in this estimate. OMB could require that agencies perform risk assessments according to the bill's detailed procedures for agency actions, other than major rules, that it anticipates could have an annual effect on the economy of \$100 million or more in costs. CBO assumes however, that the bill's procedures for conducting risk assessments would be applied only in the case of major rules. If OMB required agencies to apply the bill's risk assessment procedures to other agency actions that include an assessment of risk, the additional costs would likely be significant. The estimate also does not include costs that might be incurred as the result of additional judicial review because CBO has no basis for predicting how many regulatory actions might be challenged under this bill.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates implementing S. 746 would increase the costs of regulatory analysis at agencies that issue major rules governing health, safety, and the environment, as well as increase federal reporting and administrative costs. In total, implementing the bill would require appropriations of about \$6 million a year over the next five years.

Regulatory Analysis

Much of the regulatory analysis and review that would be required by S. 746 is already required by Executive Order 12866 ("Regulatory Planning and Review") and the accompanying best practices for performing economic analyses of significant regulatory actions ("Economic Analysis of Federal Regulations Under Executive Order 12866"), as well as title II of UMRA.

In addition, the bill would exempt many federal regulatory actions from its requirements, including rules that apply to or regulate:

- (1) military or foreign affairs,
- (2) federal agency management or personnel,
- (3) public property, loans, grants, benefits, or contracts,
- (4) governmental receipts,
- (5) certain commerce activities, including wages and prices, mergers and acquisitions, and accounting practices,
- (6) securities trading,
- (7) monetary and federal fiscal policy,
- (8) banking, and
- (9) the removal or introduction of products under the Federal Food, Drug, and Cosmetic Act.

In addition, the bill would exempt certain regulations of the Federal Election Commission and the Federal Communications Commission (FCC) and any rule that an agency must issue at least annually. Based on a review of the summaries provided by the General Accounting Office (GAO) of approximately 115 major rules issued by agencies during fiscal years 1997 and 1998 (GAO's list, which is required by Public Law 104-121, does not include all major rules issued over the two years), CBO estimates that at least two-thirds of major rules would be exempt from the bill's requirements.

In addition to the specified exemptions, agencies could exempt rules from the bill's provisions where the more detailed reviews are either not practical or contrary to an important public interest. In such cases, the bill would direct the agency to comply with its provisions as soon as possible after adopting the rule, unless OMB determines that such compliance would be unreasonable.

CBO expects that enacting S. 746 would have a small impact on the cost to perform regulatory analyses for agencies that issue major rules governing health, safety, and the environment, such as the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration, and the Departments of Health and Human Services, Energy,

Transportation, and Agriculture, as well as certain independent agencies that are excluded from the requirements of Executive Order 12866.

Based on our review of the type and number of major rules issued during fiscal years 1997 and 1998, we expect the bill's provisions would apply to about 20 rules a year, although the volume of regulatory activity can fluctuate depending on the demands on regulatory agencies. On average, we expect that the EPA would issue about one-third of the major rules covered by S. 746.

In 1997, CBO published a paper that examined the costs of 85 regulatory impact analyses (RIAs) conducted by selected agencies (*Regulatory Impact Analysis: Costs at Selected Agencies and Implications for the Legislative Process*, March 1997). The cost of these RIAs ranged from \$14,000 to \$6 million, with the time required to complete them ranging from six weeks to more than 12 years. (Because the paper did not attempt to obtain a representative sample of RIAs, it does not indicate the cost of a typical or average RIA.) Based on our review of the number and type of rules that would likely be affected by the provisions of S. 746, the bill's requirements for conducting regulatory analyses, and our analysis of the costs of RIAs, CBO estimates that implementing S. 746 would, on average, increase regulatory analysis costs for agencies that issue rules governing health, safety, and the environment by around \$5 million a year. That estimated increase would cover the costs for health, safety, and environmental agencies to conduct additional analyses, including assessments of comparative risks and analysis of substitution risks, as well as to provide additional documentation of the agencies' assumptions, models, findings, public comments, and conclusions. On average, we estimate that the provisions of S. 746 would add a few hundred thousand dollars to the cost of such rules, although the amount per rule could vary greatly.

Independent agencies, which currently are not required to prepare cost-benefit analyses for major rules, would also need to begin preparing such analyses for a handful of rules each year. This requirement would predominantly affect the FCC, although it also would occasionally affect rules issued by the Nuclear Regulatory Commission (NRC). While implementing the cost-benefit analysis provisions of S. 746 would increase regulatory costs at both agencies, particularly the FCC, both the FCC and NRC are authorized to collect fees to offset the cost of their regulatory programs. Thus, CBO estimates that implementing S. 746 would result in no significant net budgetary effect for independent agencies.

Finally, S. 746 would require that agencies submit for peer review any cost-benefit analysis or risk assessment developed for a rule that is covered by the bill's provisions and is reasonably expected to have an annual impact on the economy of \$500 million or more in costs. The bill would require that the peer review panel represent all points of view and that agencies respond in writing to all significant comments from peer review. With the

concurrence of OMB, an agency could certify that a cost-benefit analysis or risk assessment has received adequate peer review outside of the bill's procedures. Based on our review of GAO's summaries of major rules for fiscal years 1997 and 1998, the bill's requirement for peer review would appear to have applied to only four of those rules—all issued by EPA, which already submits its rules for formal peer review. Although the provisions would, at times, apply to rules issued by other agencies, most or all of which do not currently submit their rules for peer review, CBO expects that implementing this provision would result in only a negligible increase in the annual cost for agencies to issue major rules.

Reporting, Oversight, and Implementation

S. 746 would impose several reporting and oversight requirements, which would be performed mostly by OIRA. Specifically, the bill would require that OIRA:

- (1) issue guidelines for cost-benefit analyses, risk assessments, and peer reviews and periodically evaluate agency efforts in implementing these guidelines;
- (2) develop a strategy to meet agency needs for research and training in performing regulatory-impact analyses,
- (3) contract with accredited scientific institutions to study the use of risk assessments and comparative-risk analysis in performing regulatory analyses;
- (4) prepare and submit to the Congress by February 5, 2002, an estimate of the total annual incremental costs and administrative benefits for each agency of complying with the bill's provisions; and
- (5) review the regulatory analyses of certain major rules issued by independent agencies.

The bill would require that the results of the research on risk assessments be forwarded to OMB and the Congress within two years of enactment and that the results of the research on comparative-risk analyses be forwarded within three years. In addition, the bill would require agencies that issue health, safety, and environmental regulations to adopt within 18 months detailed guidelines for performing risk assessments as part of their regulatory impact analyses. In total, CBO estimates that the bill's reporting, oversight, and implementation requirements would cost agencies an average of less than \$1 million a year over the 2000-2004 period. Such costs would be about \$1 million for each of the next three years, but would fall below \$500,000 in subsequent years.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 746 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on the budgets of state, local, or tribal governments.

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