CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

March 12, 2009

S. 146
Railroad Antitrust Enforcement Act of 2009

As ordered reported by the Senate Committee on the Judiciary on March 5, 2009

S. 146 would expand the authority of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) to prosecute, under the Clayton Act, certain antitrust violations relating to railroads. Currently, the Surface Transportation Board (STB) has the primary authority to regulate mergers, acquisitions, rate-setting, and pooling arrangements under the Interstate Commerce Act. The roles of DOJ and FTC generally are limited to investigating potential antitrust violations and providing advice to the STB.

Based on information provided by DOJ, CBO estimates that implementing S. 146 would have no significant effect on the federal budget. CBO expects that DOJ would continue to perform investigations of railroads (investigations under current law are similar to those that would be performed under the bill), and that few of those investigations would result in enforcement actions. Accordingly, CBO expects that DOJ's workload would not increase substantially under the bill. CBO also expects that DOJ, rather than FTC, would handle antitrust enforcement matters specified under the bill; thus, we do not anticipate that FTC would incur significant additional enforcement costs. Anyone convicted of the antitrust violations specified in the bill would be subject to criminal fines, which are recorded as revenues, deposited in the Crime Victims Fund, and later spent. Thus, enacting S. 146 could increase revenues and direct spending, but CBO estimates that any such effects would be insignificant given the small number of cases that would likely be affected.

S. 146 would impose a private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), on railroads by eliminating their exemptions from certain antitrust laws. It is unclear how making railroads subject to the standards of those antitrust statutes would affect current business practices, if at all. The extent to which railroad carriers would have to forgo business opportunities and what the value of those lost opportunities are also uncertain. Because of those uncertainties, CBO has no basis for estimating the costs to railroad carriers or whether those costs would exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

S. 146 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are Leigh Angres (for federal costs) and Jacob Kuipers (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.