The Regulatory Budget as a Management Tool for Reforming Regulation

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Introduction

Regulation is one method by which the Federal government claims resources to achieve its goals. The share of the nation's resources claimed by regulation has grown rapidly in recent years. At present, there are only weak constraints on the government's use of resources through regulation, and there is no procedure for incorporating the full cost of regulation into government decision-making. A system for budgeting regulatory compliance costs has significant potential as a management tool for controlling and shaping the economic impact of Federal regulation.

Although on strictly legal grounds it might be possible to establish a regulatory budget system by administrative action, the political importance of such a system suggests that it should be established by legislation. There appear to be no constitutional barriers to including the so-called independent regulatory commissions in a regulatory budget system, along with the regulatory agencies in the executive branch. The organization and management of a regulatory budget system could be similar to that currently utilized for the fiscal budget. Enforcement of regulatory budget ceilings would pose no unusual problems. For start-up it would appear expedient to focus on the compliance costs of new and revised regulations. Coverage of existing regulations could be added subsequently.

Without estimates of the cost of regulation there could be no regulatory budget. While existing methods of cost estimation need improvement, the very existence of a regulatory budget system would stimulate new or improved methods. Use of a methodology recently developed by Arthur Andersen and Co. could at acceptable cost provide the precise, consistent, and transparent estimates of compliance costs that would be required for a workable regulatory budget.

The last several years have seen a marked increase in protests against regulation by the Federal government. One source of the protests is concern over the costs that regulation imposes on the private sector of the economy and on non-Federal governments. Those costs arise from efforts to comply with regulations, from lags or uncertainties in government procedures, and from distortions in the incentives of both regulators and regulatees.

In response to mounting political pressure, various attempts at reform have already been made. Thus far, however, those attempts have been tentative and piecemeal. Calls for more comprehensive reform measures have come from both inside and outside the Federal government.

One such reform measure is the regulatory budget. Secretary of Commerce Juanita Kreps suggested the idea in April 1978 in Congressional testimony. Senator Lloyd M. Bentsen of Texasintroduced a bill, S-3550, to establish a regulatory budget in the second session of the 95th Congress (1978), and a similar bill, S-51, in the first session of the 96th Congress. Professor Murray Weidenbaum urged inclusion of a regulatory budget in a comprehensive reform program outlined in the *New York Times* of December 17, 1978. In October 1978, interested parties from the Congress, the administration, business, labor, universities, and public interest groups discussed the regulatory budget as part of an all-day seminar on reforming regulation, sponsored by the Department of Commerce and chaired by Secretary Kreps.

The interest in a regulatory budget reflects the promise that it appears to hold as a tool of public management. With the promise, however, go a number of problems of design and execution. This study explores both the promise and the problems of a regulatory budget.

The purpose of this study is to analyze rather than to advocate; to explore rather than to conclude. The study does not address the question of whether the Federal government *should* adopt a regulatory budget. Rather, it considers how a regulatory budget could work, what the economic and other properties of a workable regulatory budget would be, and what difficulties would be encountered in trying to make the idea work.

Chapter 1: The Rationale for a Regulatory Budget

This chapter details the promise that a regulatory budget holds for reforming Federal regulation. The first section defines a regulatory budget for purposes of this study. The next section analyzes the current Federal regulatory process: how it operates, and why it has come n for so much valid criticism of late. Finally, the chapter suggests that a regulatory budget system would be an effective response to that criticism.A. Regulatory Budget Defined

It is essential at the outset to define certain terms used in this study:

- A *regulatory budget* would set limits for a given period on the *compliance costs* that the executive branch of the Federal government could impose, through *regulation*, on the private sector or on other governmental units.

- *Compliance costs* refer to the increase in outlays necessary to bring products or procedures into line with the requirements of Federal regulations. Examples of compliance costs include outlays for filing mandatory forms, hiring extra production workers to meet safe-manning rules, and adding new plant or equipment to comply with emissions standards

- The term *regulation* refers to executive actions, other than general taxes or subsidies, that are intended to alter specific private or non-Federal government decisions. Examples include mandatory specifications for goods and services; ceiling or floor prices in particular markets; outright bans on specific goods or activities; and charges on effluents from production or consumption.

The budgeting of compliance costs is the meaning of a regulatory budget as it has been proposed in recent legislation and in most recent writings on reforming Federal regulation. But the term *regulatory budget* has also been used in a broader sense that would explicitly incorporate into the budget process the full social costs, or even both the costs and benefits, of regulation. The full social costs of regulation include, in addition to compliance costs, government administrative expense and indirect costs in the form of reductions in the valued of social output. The benefits of regulation consist of increases in the value of social output and thus are generically similar to the indirect costs.[1]
The analysis of a regulatory budget in this study is confined to the narrower definition, encompassing only compliance costs. The discussion, below in Section C.4.a, p.10, explains why the other costs and the benefits of regulation are better excluded from a regulatory budget system.

B. Regulation as an Economic and Political Activity

Regulation is one method that the Federal government uses to claim the economic resources that it devotes to its programs and operations. Other methods include taxation, the creation of new money, tax credits or deductions, and loan guarantees. The methods may differ mechanically (e.g., in whether the resources enter and leave the Treasury), but in all cases the Federal government in effect acquires the means with which to pursue its goals. In so doing it alters the allocation of resources and the distribution of income. With some approximation, the government's claims to economic resources can be measured and stated in common (dollar) terms, regardless of which method is used.
The amount of resources claimed by the Federal government in a given period is mainly the result of the political, not the market process. Public disputes over taxes, spending, the national debt, the money supply, so-called tax expenditures, and (recently) regulation reflect this fact. Because resources are scarce, at the heart of such disputes is a set of allocation questions: How many resources should the Federal government claim? How should the total of resources claimed be divided among the various agencies and programs? How should the government manage the resources it claims in order to use them most effectively?
Until well into the 20th century, the Federal fiscal budget was run almost informally (from an organizational standpoint) out of the Executive Office of the President. The Bureau of the Budget and its successor, the Office of Management and Budget, are relatively recent developments, as are the now-elaborate procedures used to gather accurate, reliable fiscal data for use by the executive branch.

The present movement to reform Federal regulation may also be usefully viewed in historical perspective. Since the mid-1960s, Federal government regulatory activity has expanded rapidly and on a wide front. Economists explain the burst of activity as the result of increased demands for Federal regulation by people or organizations who stand to benefit from it. Now, however, the costs of regulation have reached the point where those bearing them find it worthwhile to spend time and money opposing new regulations and lobbying for the repeal or revision of existing ones. In short, just as there are demands for regulation, so there are now demands for regulatory reform.

Current efforts to reform Federal regulation are not without precedent:

- In 1971, the Office of Management and Budget established what became known as the "Quality of Life Review." The purpose was to allow affected Federal agencies to comment on proposed regulations that were intended to enhance the quality of life. Although the review was supposed to apply broadly to all Federal agencies dealing with public health and safety, it was applied almost exclusively to regulations proposed by the U.S. Environmental Protection Agency.

- President Ford instituted an "Inflation Impact Statement" program in November 1974. This program provided for an evaluation of the anticipated impact of all major new regulations upon prices, productivity, and competition.

- The Ford program was supplanted in March 1978 by President Carter's more ambitious "Improving Government Regulations" program. Under that program, executive agencies were required to publish semiannual agendas of contemplated regulations, and to prepare "regulatory analyses" of all regulations having "an annual effect on the economy of $100 million or more."[2] Those analyses were to include “a succinct statement of the problem; a description of the major alternative ways of dealing with the problems that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others."[3]

- President's Carter's program also included the establishment of the Regulatory Analysis Review Group (RARG), chaired by the Council of Economic Advisors (CEA), and including representatives of each of the principal economic and regulatory agencies of the Executive Branch. Analytical staff support to RARG is provided by the Council on Wage and Price Stability. RARG each year makes a detailed review of ten to twenty regulatory analyses. Upon completion of

such a review, the Chairman of CEA decides whether to file written comments on the regulatory proposal, meet with the head of the agency involved, or submit a report to the President.

- In October 1978, President Carter directed the creation of a Regulatory Council,[4]composed of thirty-five departments and agencies, to help coordinate Federal regulatory activities. The Council is required to publish a semi-annual calendar of proposed regulatory activities and—to the extent that they have been estimated by the initiating agency—their anticipated costs. The first such calendar was published on February 28, 1979.

No doubt the past efforts at regulatory reform have had some influence. That influence has been largely due to better information generated by the new procedures or to the persuasiveness of particular individuals participating in those procedures. On the whole, however, the past efforts have not systematically brought economic constraints to bear on the regulatory process. For that reason, they have had at best a limited effect on inducing Federal decision makers to husband the economic resources claimed through regulation.

C. The Case for Budget Control of Regulatory Compliance Costs

A regulatory budget system would introduce economy into the Federal use of regulation to claim resources. In that context, it might be tempting to think of a regulatory budget simply as a way to reduce Federal regulation. The temptation, however, should be resisted. The true role of a regulatory budget would be as a tool for managing Federal regulation.

1. The Regulatory Budget as an Element of Regulatory Reform

Regulatory reform is an imprecise term that means different things to different people. One dimension of reform concerns the personal stakes that individuals or groups have in the regulatory process. At one extreme of this dimension are the government officials who pledge to reform regulation by cleaning their own houses. At the other extreme are the business leaders who equate reform with the dismantling of the entire regulatory apparatus.

A different dimension of regulatory reform concerns the management of the process of promulgating Federal regulations. This dimension has to do with how the regulatory process operates rather than with who stands to benefit from it. Proposals for the operational reform of regulation are in the tradition of the fiscal reforms in the executive branch (1960s) and in the Congress (1970s).
The idea of a regulatory budget belongs on the management dimension of reforming Federal regulation:

- The regulatory budget system would be a management tool for use by politically-responsible officials.

- Under such a system regulatory officials could be left free to make detailed decisions on how best to implement the broad provisions

of laws passed by the Congress; however, they would also be limited in the compliance costs they could thereby impose.

- A regulatory budget would provide no guarantee that the result would be fewer or less sever regulations. It should not be viewed as part of an anti-regulatory strategy. Rather, it would be a tool for better managing the regulatory process that has over time become so large a component of our national economic life.

2. The Need for More Effective Management of the Regulatory Process

Proposals to reform the management of the Federal regulatory process presume a diagnosis that there is a problem needing correction. The diagnosis in this study focuses on the incentives that the Federal government faces in passing laws and in promulgating the regulations to put the laws into effect. The crux of the diagnosis is that, under the existing system, there are at best weak incentives to consider the full costs of Federal regulation. As a result, there are effective incentives both to over-regulate and to choose particular forms of regulation that may be excessively costly.

As noted earlier, regulation claims scarce resources for government use. Sound management practice would require that decisions on regulation take into account all resources so claimed. This would help set a limit on the total amount of resources used and induce decision makers to allocate the total to the most effective uses. It would further cause regulatory officials to consider costs in selecting specific targets of regulation and discipline them to choose the least-cost ways of attaining given regulatory objectives.
Under the present arrangement, however, the Congress and the executive branch are held accountable for only a small fraction—the administrative costs, which are included in the fiscal budget—of the total resources claimed by Federal regulation. This provides little incentive for regulatory officials to consider compliance costs or possible reductions in social output when decisions involving regulation are made.

In effect, the present Federal regulatory process contains what in the study of market allocation is called an "externality": pertinent information is omitted from decision making, with the result that the full cost of regulation exceeds the cost as perceived by decision makers. As a consequence, there is probably more regulation, and its composition is different, under the existing arrangement than if Federal decision makers were held accountable for all the resources claimed by regulation.

The incentives just outlined operate at two distinct levels of the Federal government. At the policy making level—that is, in the Congress and at the top echelons of the administration where legislative proposals are initiated—the benefits and costs of programs involving the use of regulation will be weighed with only a partial accounting of the full costs. It is even possible that there is a

positive incentive to resort to regulation, in preference to other government methods of claiming resources that are subject to fuller accountability. For example, current efforts to compel a balanced fiscal budget might have little impact on the true economic scope of government, as opposed to the mere size of expenditures, unless attention is also paid to the compliance costs being imposed by regulation.[5]

The second level of the Federal government at which the above incentives operate is policy execution. Typically, the laws as passed by the Congress state policy goals only in broad, idealized terms. It is left to the writers of the regulations in the bureaucracy to provide the details of implementation. This means that regulatory officials have considerable latitude in choosing both the particular regulatory targets and the specific kinds of regulatory methods for assuring compliance. In the existing regulatory process, these officials have only weak incentives—through fiscal-budget control of administrative costs—to choose targets and methods that would achieve the congressionally-mandated goals at minimum incremental cost. They have much greater incentive to select targets and methods that—regardless of the cost of complying with the resulting regulatory requirements—minimize the risk of failure to achieve the assigned social goal, and thus minimize the risk of personal criticism for having failed to achieve their goals.

A related point concerns the life histories of individual regulations pertaining to a given law. The broad, idealized tasks embodied in a law are inherently unattainable in practice. Thus, even an ambitious, mission-oriented set of initial regulations will not achieve all the possible objectives. As the initial program approaches success, however, the agency will turn its attention to other, as yet unmet objectives—of which there is an inexhaustible supply. Moreover, the agency has little if any incentive under the present system to retire existing regulations. The result is that the number and scope of regulations under a given law tends to grow steadily with time.[6]

3. A Regulatory Budget as a Management Tool

The preceding diagnosis suggests that a serious defect of the present Federal regulatory process is that it produces excessive, and excessively costly, regulation. The source of the problem is that the current process does not take into account the full costs of regulation. There are a number of possible methods for restructuring regulatory incentives to make decision makers aware of the full costs and to force them to incorporate them into their decisions. The method examined in this study is the familiar management tool of the budget.
One student of the Federal fiscal process has characterized a budget as a "series of goals with price tags attached" and (because resources are limited) as a "mechanism for making choices among alternative expenditures."[7] A regulatory budget would put price tags (in the form of compliance costs) on the pursuit of Federal goals through regulation. It would also place limits on the total of compliance costs that may be imposed on the national economy, and on their

allocation among individual agencies.

Under a regulatory budget system, the President and the Congress would have to decide, explicitly and in advance, what the total Federal regulatory burden would be for a given period. They would also have to determine the relative importance of regulation in different areas in order to allocate the individual agency budgets. The Federal officials who actually write regulations would be given an effective incentive to design new regulations so as to economize on the limited resources assigned to them. It would be possible to encourage the timely removal of marginally effective or obsolete existing regulations, by providing agencies with regulatory budget credits for the resulting cost reductions.[8]
The regulatory budget can thus be seen as a tool for establishing management control over the economic impact of regulation. Control is used here in its generic sense. The word, which is derived from the accounting profession, refers to a higher level of abstraction against which subordinate matters can be evaluated without having to examine them in detail.[9]

It is the lack of such a higher level of abstraction that has limited the effectiveness of previous efforts to control the economic impact of Federal regulation. Instead, those efforts have been based on two mistaken assumptions:

- that government officials outside an agency proposing a regulation can know enough details about the specific issue at stake to prevail in a debate with the far more knowledgeable proponent—agency officials; and

- that the outside officials will be as determined and persistent as the proponent agency.

That is why the Quality of Life Reviews and the Inflation Impact Statements frequently amounted to little more than annoying ankle-pecking of the proponent agencies. In the end, the proponent agencies usually prevailed, even if after significant delays.

The regulatory budget would make it possible to do away with fruitless and enervating second-guessing of the judgments of politically responsible agency heads. So long as an agency remained within its budget allocation, higher levels of government would not have to worry about its regulatory requirements causing unacceptably large adverse, economic impacts. Agency heads who failed to get the most out of their, regulatory budget allocations (in terms of their assigned goals) would be disciplined through normal political channels: pressure from the interest groups that support the goals in question. Indeed, the tightened constraint of a regulatory budget to husband compliance costs would give such groups even more incentive to apply pressure than the peak constraint of current procedures.

4. Coverage of a Regulatory Budget

Two related aspects of what a regulatory budget would cover require attention. The first aspect is the inclusion of compliance costs and the exclusion of benefits and indirect costs. The second aspect is the range of Federal agencies whose regulations would be subject to budget limits.

a. Compliance Costs vs. Benefits and Indirect Costs

As noted at the outset, the regulatory budget analyzed in this study would cover only the direct costs of complying with Federal regulations. A possible objection to a regulatory budget so defined is that it would exclude two important economic effects of Federal regulation —namely, benefits and indirect costs (i.e., output losses).[10] This would appear to violate the goal for a regulatory budget suggested in Section C.2, above: to make the Federal government more accountable for the overall economic consequences of its regulatory decisions. There is some merit in this objection. The weighing of costs and benefits in government decision making can certainly stand improvement. In spite of all the efforts that have been devoted to benefit-cost analysis and similar techniques, Federal decision making remains highly imprecise and qualitative—one could even say impressionistic—when it comes to assessing the impacts, positive and negative, of Federal programs on the economy.

A regulatory budget system, however, would not be the right vehicle for attempting to introduce the needed improvement, except where compliance costs are concerned. The reason is not the desirability but the difficulty of estimating the benefits and indirect costs of Federal regulation on a sufficient scale and with enough reliability to be practical. The immense task of analysis, data collection, and computation would be prohibitively costly even if it were possible to reach consensus on the quantified results. Thus, under a regulatory budget, consensus on benefits and on indirect costs would have to be reached as it is now under the fiscal budget: implicitly through the political process.

The exclusion of benefits and indirect costs from the formal regulatory budget process would not prevent the useful application of benefit-cost analysis to individual problems. For instance, benefit-cost analysis could be used to decide whether regulation of a specific product or activity was worthwhile, or to choose between alternative forms of regulation. Neither would the exclusion mean that benefits and indirect costs could not be weighed in the political and legislative debates on particular regulatory programs. All it would mean is that the data used directly to control the economic impact of regulation would be limited to the direct costs of compliance.

A comparison with the fiscal budget is useful here. Benefits and indirect costs are not specifically included in the fiscal budget, either. But they are incorporated implicitly, most often in qualitative or conjectural form, in the political debates that precede decisions to raise or spend funds. While quantitative benefit-cost analyses are frequently conducted to support or oppose specific projects or

programs, the only data that actually enter the fiscal budget are revenue and expenditure estimates.

b. Agency Coverage

The question of which Federal agencies to cover in a regulatory budget could be answered in terms of the common distinction that is drawn between social and economic regulation. Social regulation, which covers such broad areas as health, safety, and welfare, is said to impose mainly compliance costs on the economy. In contrast, economic regulation, which applies to prices and quantities in specific markets, is said to impose mainly indirect costs on the economy. One could therefore argue that the budgeting of compliance costs should be confined to social regulation and not applied to economic regulation.

There is increasing evidence, however, that this common distinction between social and economic regulation is blurred. The indirect costs of social regulation—for example, in workplace and product safety, environmental quality, and drugs—are now viewed as substantial and growing. By the same token, the compliance costs associated with economic regulation—for example, in trucking, agriculture, crude oil, and natural gas—are widely recognized as imposing heavy burdens on business firms. It would be difficult, on grounds of compliance vs. indirect costs, to classify the auto fuel economy standards of the Department of Transportation as either solely social or solely economic.

A different criterion for settling the question of agency coverage is provided by the very logic of a regulatory budget developed in this study. Unless all agencies' regulations were included in the budget, Federal policy makers would have an incentive to evade budget limits by shifting programs to agencies left outside the system. The avoidance of opportunities to evade budget discipline would be central to the proper functioning of a regulatory budget. By this criterion, agency coverage should be total, not partial.

[1] Expressing indirect costs and benefits in terms of the value of social output does not presume that either magnitude must be measured solely in monetary or other quantifiable form.

[2] Executive order 12044, March 23, 1978.

[3] Ibid.

[4] Memorandum for the Heads of Executive Departments and Agencies, The White House,Washington, October 31, 1978.

[5] For example, with some ingenuity, the government could probably establish a comprehensive national health insurance program entirely through regulation, with scant effect on the public budget.

[6] This analysis assumes normal human self-interest on the part of loyal government employees, and does not impute to them any venality or vindictiveness. Recent work by Niskanen, Tullock and others has shown that the bureaucratic counterpart of market competition is that officials who fail to serve their own self-interest will end up being replaced by ones who do.

[7] Aaron Wildavsky, The Politics of the Budgetary Process, 2nd edition (Boston: Little, Brown, 1974), p. 2.

[8] At present, there are few incentives for agencies to remove old regulations from the books. Hence regulatory requirements may remain in effect long after they have ceased to be necessary or useful.

[9] When banking first began, the proprietor of a counting house in the Italian city-states maintained a*contra rolus* against which the subordinate accounts (maintained by assistants who might not be trustworthy) had to balance. In that way the proprietor was able to tell—without having to review every detailed transaction—whether his assistants were stealing from him and to pin-point areas that required his managerial attention. Over the centuries the word was anglicized to *counter roll*, and subsequently contracted into *countrol* and eventually *control*.

[10] Administrative expenses would also be excluded. However, they are now covered by the fiscal budget, and there would be little point in transferring them to a regulatory budget. Moreover, administrative expenses account for such a minor fraction of the total costs of Federal regulation that it would scarcely be worth complicating the regulatory budget by including them.

Chapter 2: Legal and Political Aspects of a Regulatory Budget

The two most basic practical problems in implementing a regulatory budget system concern politics and legality. The first problem has to do with whether a regulatory budget could, or should, be established administratively rather than through legislation. The second problem concerns the authority of the President to enforce the constraints of a regulatory budget system.

A. Administrative vs. Legislative Establishment of a Regulatory Budget

A question frequently asked by those in the Federal government (especially the executive branch) who are interested in the idea of a regulatory budget is whether it could be adopted administratively without new legislation.

There appear to be two principal reasons for the interest in an administrative regulatory budget. First, as noted in Chapter 1, the budgeting of regulatory compliance costs is viewed as a logical next step in the evolution of the reform efforts that began with the "Quality of Life Review" under President Nixon and evolved into President Ford's “Inflation Impact Statement" program and

President Carter's "Improving Government Regulations" program. All of those efforts were instituted by executive action without legislation.

Second, the legislative politics of enacting a regulatory budget into law appear daunting. The budgeting process would affect programs under the supervision of virtually every committee of the Congress. It could also affect the division of political authority between the executive and legislative branches.

On strictly legal grounds, a strong brief could be written for the position that the President has the constitutional authority to institute a regulatory budget by executive action. While the matter might ultimately have to be settled in the courts, the regulatory budget as outlined in Chapter 1 would pertain to procedures and practices that are well within the scope of executing the laws passed by the Congress—traditionally, the exclusive preserve of the executive branch of the Federal government.

On closer scrutiny, however, an administrative regulatory budget would suffer from a defect so grave as to render it not worth the effort. It would ignore the crucial political function of the regulatory budget—that of compelling general agreement on an overall limit to Federal regulatory activities, quite apart from the merits or demerits of particular regulatory actions. Such a political function must perforce include the Congress in a systematic manner. By extension, a workable regulatory budget system would have to be developed jointly by the administration and the Congress, and then enacted into law. Thus, the legislative politics of a regulatory budget, however daunting, would have to be confronted.

The late 1970s have been a time of retrenchment in American politics, characterized by efforts to consolidate the activities of government after the boom years of the 1960s and 1970s. During the past decade many of the traditional institutions and ideas that had limited the role of government in American life—for example, the congressional seniority system; the coalition of Republicans and southern Democrats; and the dominance of the political parties in selecting and promoting public officials—were greatly weakened or collapsed altogether. There is today little or no disposition either to revive the discarded political institutions or to repeal the legislation that followed their demise. Nevertheless, the current era is one of searching for new—and more formal—institutions of political discipline.

The most conspicuous and controversial attempts to establish new forms of political discipline have been directed at fiscal limitation. An early instance, in 1973-74, was President Nixon's policy of selective impoundment: of congressional appropriations. The policy provoked furious opposition in the Congress and elsewhere, and it fared poorly in the courts. Even .so, it did spur Congress to take major steps, such as the establishment of budget committees and a Congressional Budget Office, to exert more control over legislative appropriations.

More recently, there have been numerous attempts to place explicit institutional

restrictions on the size and scope of government. A number of referendums and proposed Constitutional amendments to limit state taxing or spending have passed, such as California's Proposition 13. Currently there are efforts to amend the U.S. Constitution to tie Federal expenditures to economic growth, or to require a balanced fiscal budget.

The regulatory reform movement is perhaps less controversial than the fiscal limitation movement, but it is motivated by the same quest for new forms of governmental restraint. Efforts to reform the Federal regulatory process reflect a desire to consolidate and better manage the enormous growth of regulation since the late 1960s. There is also a concern to reduce the impact of regulation on the U.S.economy.

Thus, regulatory reform is the policy complement of fiscal limitation. Regulation differs from fiscal action in that it promotes policy objectives not by the spending of public funds, but rather by causing private funds to be spent differently than they otherwise would have been. As the Federal government's direct administrative expense on regulation is relatively small, and as at present the other costs of regulation are not accounted for in government decision making, the Federal government has a built-in incentive to increase its reliance on regulation for the pursuit of social goals. Success in imposing fiscal limitation (such as the proposed constitutional amendments currently being debated) would serve to sharpen that incentive. Thus, the efforts to tighten fiscal discipline in the absence of a corresponding effort to tighten regulatory discipline could give the paradoxical result of reducing rather than increasing the political accountability of government.

One need not, however, favor tighter fiscal discipline to favor regulatory reform in general, or a regulatory budget in particular. A regulatory budget would be a counterpart of the fiscal budget. Both are means of working toward agreement on the overall size of the public (Federal) sector, and on the allocation of expenditures to particular uses or programs.

As noted earlier, a system of budgeting regulatory compliance costs is in one sense an outgrowth of the current regulatory review program in the executive branch. However, it would have fundamentally different purposes: (a) accounting for publicly mandated expenditures resulting from Federal regulations; (b) requiring agreement on an overall ceiling (more or less flexible, as in the case of the fiscal budget) on such expenditures; and (c) allocating regulatory expenditures among programs in accordance with prevailing views about the relative social benefits of the programs.

It is important to recognize that the second and third functions of a regulatory budget would be a supplement to—not a substitute for—the benefit-cost analyses of individual regulatory decisions that the current regulatory review program calls for. Regulatory budgeting would implicitly acknowledge the impossibility of measuring precisely the benefits of Federal regulatory programs, and would thus

leave the decision on relative benefits to be made in an explicitly political way, through the allocation of the agreed-upon total regulatory expenditures.

The balancing of competing social demands in that manner is not simply an executive management function. Neither is it just a matter of deciding whether a particular regulatory proposal is necessary, unnecessary, or excessive under a particular statutory directive. Rather, it is a matter of deciding how much of the nation's resources to devote, in the aggregate, to the pursuit of all of the legislatively-mandated social goals, as well as how much of the total to devote to each of the particular goals set forth in legislation (e.g., environmental quality or occupational safety).

The closest functional analogy to a regulatory budget is not the current regulatory review program, but rather the fiscal revenue and appropriations process. Thus the Congress must be involved in regulatory budgeting not because of any particular line of legal precedent, but because it is a policymaking process which under our Constitution is performed jointly by the executive and legislative branches. This is the basic reason why it is pointless to debate whether the President could legally impose a regulatory budget without congressional authorization.

B. The Legal Aspects of a Regulatory Budget System

An effective regulatory budget system—one that would motivate regulatory officials to set clear priorities and to choose cost-effective measures in particular cases—would have to be enforceable. As a practical matter this means that the President would have to have unambiguous executive authority to dismiss regulatory officials who failed to live within their regulatory budgets or who otherwise refused to cooperate in the budgeting process. For the program to be complete, the President's authority would have to extend to the independent regulatory commissions as well as to the executive branch agencies.

For political if not for strictly legal reasons, the President probably could not unilaterally assert such authority over either type of regulatory agency. However, the President plainly could, as a Constitutional matter, exercise such authority according to statutory mandate, and he could do so in a way that would not compromise any independence that the Congress might wish to maintain in the independent agencies.

To illustrate, suppose that a President were to go beyond the occasional reconciliation of regulatory disputes within the Executive Branch (as in President Carter's action in the cotton dust dispute), and embark upon a systematic policy of ordering substantial reductions (or increases!) in proposed regulatory actions. Immediate congressional complaints and court challenges would be a certainty. A legal and political precedent here would be President Nixon's executive fiscal impoundment program, mentioned earlier. The courts, in cases such as *Train, Administrator, EPA v. City of New York*, 420 U.S. 35 (1974), *State*

Highway Commissioner of Missouri v. Volpe, 479 F.2d 1099 (8th Cir. 1973),*American Federation of Government Employees v. Phillips*, 358 F. Supp. 60 (1973), and*Gnadamuz v. Ash*, 368 F. Supp. 60 (1973), held that the President was without authority to impound funds appropriated by Congress to be spent for particular purposes. This was so even if in the President's judgment a lower level of spending was required for purposes transcending those of the statutes involved (such as reducing inflation).

It could be argued that those cases should be distinguished from regulatory impoundment. Not only did they involve appropriated Federal funds rather than revision of executive branch decisions, but also the impounded funds were grants to specific private groups rather than funds for general management and enforcement activities. However, the Congress' statutory reaction to the fiscal impoundment challenge suggests that it would react similarly to any systematic Presidential intervention in specific regulatory decisions.[1]

It would be possible to resolve this issue through a statute explicitly authorizing the President or his subordinates to take part, on a case-by-case basis, in final decisions on formal rule-making or informal regulatory proposals. Indeed, the Exposure Draft of the American Bar Association's current study of the regulatory process proposes "enactment of a statute authorizing the President to direct certain regulatory agencies to take up, decide, or reconsider, critical regulatory issues within a specified period of time, and thereafter to modify or reverse certain agency actions relating to such issues."[2]

It is doubtful, however, that regular participation in detailed regulatory decisions (as envisioned by the ABA Exposure Draft) would be a useful expenditure of the President's time, or that any President would wish to have such formal authority.[3]

The legal precedent is quite thin regarding the President's authority to govern the activities of independent and executive-branch regulatory officials, either directly as proposed by the American Bar Association or indirectly through a regulatory budget process. The two most important decisions, both of which concern the President's authority to dismiss Federal officials, are *Myers v. United States*, 272 U.S. 52 (1926), and *Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

In *Myers*, the President unilaterally removed a postmaster before the expiration of his term, although the postal statute stipulated that removals required the advice and consent of the Senate. The postmaster's administratrix sued to collect her husband's salary for the balance of his term, arguing that the President had exceeded his executive powers under the statute. She lost, the Court holding that the statute itself violated the President's constitutional authority as chief executive officer. The court noted that (272 U.S. at 135):

the ordinary duties of officers prescribed by statute some under the general administrative control of the President by virtue of the general grant to him of the

executive power *and he may properly supervise and guide their construction of the statutes under which they act* in order to secure that unitary and uniform execution of the laws which Article 2 of the Constitution evidently contemplates in vesting general executive power in the President alone. (Emphasis supplied.)

The executive power (including the power to remove as well as to supervise and guide) being a constitutional one, it could not be compromised by congressional action. The court noted, however, that the President's authority over Federal officials was not unlimited (id.):

Of course, there may be duties so peculiarly and specifically committed to the discretion of a particular officer as to raise a question whether the President may overrule or revise the officer's interpretation of his statutory duty in a particular instance. Then there may be duties of a quasi-judicial character imposed on executive officers and members of executive tribunals whose decisions after heaping affect interests of individuals, the discharge of which the President cannot in a particular case properly influence or control.

The *Humphrey's Executor* case was similar to *Myers* in almost every respect except that the official involved was a Commissioner of the Federal Trade Commission rather than a postmaster. The Commissioner, a Hoover appointee with several years left in his statutory term, was removed by President Roosevelt on grounds of political incompatibility. The Commissioner's executor later sued to collect his pay for the remainder of his term. The executor won, on grounds that the FTC, being "predominantly quasi-judicial and quasi-legislative...occupies no place in the executive department and...exercises no part of the executive powers vested by the Constitution in the President" (295 U.S.at 624). In other words, the President's executive authority under the Constitution did not extend to officers whose functions were more judicial or legislative than executive. As to such officers, the Court held that "no removal can be made during the prescribed term for which the officer is appointed, except for one or more of the causes named in the applicable statute." (The FTC statute provided for removal by the President only in cases of "inefficiency, neglect of duty or malfeasance.")

Taken together, the *Myers* and *Humphrey's Executor* cases establish the following distinction: On the one hand, the President may unilaterally remove appointees whose functions are purely executive—who serve as an arm of the President in his role of chief executive officer. On the other hand, the President may not remove appointees whose functions are essentially legislative or judicial—who serve to render their judgments based on the merits of particular claims. Under those cases, the President's exclusive power to remove executive officers is grounded in the Constitution, so that Congress may not compromise it by contrary statutory provisions governing removal. It is important to note, however, that the President's lack of power to remove quasi-judicial officers is not a constitutional requirement. Rather, it is based upon (a) judicial assessment of legislative intent regarding removal of quasi-judicial officers, combined with (b) judicial opinion that the President does not have the power, on constitutional

grounds, to remove Federal officials whose functions are non-executive.

Legislative intent may be clear when the Congress provides by statute that officials may be removed by the President only for "inefficiency, neglect of duty or malfeasance," as it has in the case of most of the independent regulatory commissions. But where the Congress fails to specify the nature of the removal authority, the courts will decide the matter according to the statutory function of the official involved. In *Weiner v. United States*, 357 U.S. 349 (1959), the Supreme Court held that the President lacked the power to remove a hold-over appointee whose function was quasi-judicial (he was a member of the War Claims Commission, even though the law in question (the War Claims Act) did not restrict the removal power in any way.

Thus, the issue of the President's ability to enforce a regulatory budget cuts across the regulatory programs of both the independent commissions and the executive branch agencies. As the *Myers*decision noted, even within the executive branch the President's constitutional authority to "supervise and guide" Federal officials is limited. It may not include the authority to (a) "overrule or revise" interpretations of statutory duties "peculiarly and specifically committed to the discretion of the particular officer," or (b) "influence or control" duties of a "quasi-judicial character" —those involving "decisions after hearing [that] affect interests of individuals." Again, however, there is no*constitutional* barrier to the broader Presidential authority if statutes so provide; for. example, the President is authorized by statute to intervene in the award of international airline routes.

While a regulatory budget system would certainly affect agencies both in establishing priorities and in deciding particular cases, it would do so largely indirectly, through the allocation of budget ceilings, rather than through direct Presidential involvement in particular cases. As a legal matter, the regulatory budget would be preferable to the case-by-case Presidential involvement in the regulatory process as proposed by the American Bar Association. A statute authorizing the President to intervene in particular regulatory decisions would raise acute problems of judicial review that would be difficult to resolve in advance by statute. In every case where a proposed regulation was modified by the President and then, after final publication, challenged in court, the court would have to decide not only whether the responsible official had correctly interpreted the requirements of the statute in the first instance, but whether the President himself had correctly interpreted the requirements of both the statute and the regulatory-review statute.

A regulatory budget would avoid these problems while achieving the same goal of placing overall discipline on the regulatory process. The discretion of regulatory officials in interpreting their statutory duties would not be constrained in particular cases (at least not by the budget process itself), but such officials would be obliged to live within a compliance-cost budget formulated by the President and Congress, just as they must at present remain within their appropriations. The President would not be pressured more, and could well be pressured less,

than he is at present to take action in particular regulatory controversies. Challenges to regulations would not be complicated by judicial review of Presidential decisions that weighed the requirements of a regulatory statute in a particular case against, say, inflation or other countervailing considerations permitted by a regulatory-review statute.

As under any management control system, difficult decisions would have to be made under a regulatory budget system. Consider the case of a regulatory agency charged with enforcing a statute that gave it little or no discretion in a specified factual situation (for example, the Delaney Clause requiring FDA prohibition of food additives found to cause cancer). The agency might be forced to take action that would cause it to exceed its regulatory budget for a given period. Cases such as this, however, could be handled by supplemental authorizations of authority to impose compliance costs, analogous to the supplemental appropriation used in the: fiscal budget. It does not appear that adding an economizing restraint to the regulatory process would have legal implications different from those of the current fiscal budget process.

The *Myers* and *Humphrey's Executor* decisions suggest that the independence of the so-called independent regulatory commissions is a matter of congressional determination rather than constitutional requirement. Presumably this extends not only to the President's authority to remove officials, but also to his authority to oversee their conduct while they remain in office. If Congress may constitutionally permit the President wide rather than narrow discretion in removing members of the regulatory commissions, *a fortiori* it may permit him to "supervise and guide their construction of the statutes under which they act" just as closely as is his prerogative, according to *Myers*, in the case of executive officials.

Indeed, there is good reason to doubt that *Humphrey's Executor*, standing alone, obliges the President to show as much deference to the independent commissions as is common (viz., President Carter's exclusion of the commissions from his "Improving Government Regulations" program).*Humphrey's Executor* was concerned with back-pay. It did not present the Supreme Court with the more difficult practical issue of whether a commission member could continue to exercise authority against the opposition of the President—much less the issue of whether the President may direct the commissions' general management and procedures apart from deciding particular cases. It should be noted in this connection that the *Humphrey's Executor* decision was one of statutory interpretation, and that the statutes under which the independent commissions operate nowhere prohibit the President from influencing their general policies.

The *Exposure Draft* of the American Bar Association's report on regulatory reform has this to say concerning the legal applicability of executive branch regulatory review to the operations of the independent commissions (p. 108):

As originally proposed, the Carter Order (Executive Order 12044) would have

imposed its discipline on independent agencies as well as executive branch agencies. The final Order, however, leaves the "independent" agencies untouched. A majority of the Commission regrets this omission. In the Commission's views, the President has constitutional power, in the present absence of any statute to the contrary, to prescribe housekeeping or procedural requirements for an independent Federal agency that leave intact the policy-making and adjudicatory authority of the agency. Should the contrary point of view on this issue prevail, the Commission supports enactment of a statute expressly authorizing the President to impose such disciplines on the independent agencies.

Nevertheless, the legal necessity of the President's deference toward the independent commissions is certainly less important than its roots in political custom. President Carter, it should be noted, excluded the independent commissions from his regulation-review program not on the advice of lawyers, but after being strongly admonished to do so by numerous members of the Congress. It seems safe to assume that, if the President attempted on his own to include the independent commissions in a regulatory budget system, the result would be an intense political controversy and prompt court challenge that would seriously compromise the success of the system from the start. The important point, then, is not only that a management tool such as a regulatory budget *may* be extended to the independent commissions by statute, but that doing so would put an end to the current bifurcated nature of regulation-review under President Carter's administrative program.

In summary, if the Congress elected to establish a regulatory budget system, it could give the President the legal authority to require full adherence to the constraints of such a system. In contrast, a Presidential attempt to impose a regulatory budget without a legislative mandate would encounter enormous political obstacles and strenuous legal challenges.

[1] The Congressional Budget and Impoundment Control Act of 1974 required the President to follow specific procedures whenever impounding funds and provided for a swift legislative veto.

[2] American Bar Association, Federal Regulation: Roads to Reform, 1978, p. 101. The final report will be issued in the summer of 1979.

[3] President Carter recently said in defense of his regulation-review program, "I have not interfered in [the regulatory] process. I have a statutory responsibility and right to do so, but I think it would be a very rare occasion whenever I would want to do so." (Press Conference, February 27, 1979.)

Chapter 3: Organization and Management for a Regulatory Budget

The next practical problem in implementing a regulatory budget system is how such a system would actually operate. This chapter examines the organizations that would be involved in operating a regulatory budget, and how a budget could

be workably formulated and executed. The chapter concludes with a discussion of the special problem of initially setting up a regulatory budget.
system.

A. Organization for a Regulatory Budget

A central administrative body would be required to manage the overall regulatory budget system. For convenience, that body is referred to in this study as the *Office Regulatory Budget* (ORB).

The role of ORB would be broadly analogous to that of the Office of Management and Budget (OMB) in the fiscal budget process. It would be the responsibility of ORB to develop and administer the detailed procedures needed to operate a regulatory budget, and to manage the formulation and execution of the budget. While the functions of ORB could be performed by some other entity of the Executive Office of the President of comparable rank with OMB, the similarity in responsibilities would argue for establishing ORB as a part of OMB.
A key decision would be whether to merge the regulatory budget operations into the existing fiscal estimates group of OMB. The fiscal estimates staffs possess a wealth of knowledge about the regulatory responsibilities of the agencies that they supervise, and are experienced in bringing to bear on the activities of those agencies the point of view of the Executive Office of the President. Hence the Fiscal estimates groups could significantly enhance the effectiveness of a regulatory budget process, especially at the outset.

Opposing considerations, however, might make it preferable to establish ORB as a separate element within OMB. Dispersing regulatory budget operations among the various fiscal estimates groups would relegate ORB to the role of a central staff providing mainly procedural guidance. Especially in the initial stages of the regulatory budget, such a role could impede the prompt revision of procedures as experience was gained, and could hamper the dissemination of the revised procedures to the regulatory agencies. Also, dispersion of budget operations would make it more difficult to achieve consistency of treatment among regulatory agencies.

Furthermore, the fiscal estimates groups already have a large and demanding workload that is tied to the inexorable demands of the fiscal budget calendar. Thus, there would be a risk that a new function such as regulatory budgeting would not be able to compete effectively for managerial and staff attention if it was merged into the fiscal estimate divisions. Finally, regulatory agencies would not necessarily deal with a regulatory budget process through their fiscal budget offices, with which OMB's fiscal estimates groups customarily deal. If so, the existing lines of communication between OMB's fiscal estimates groups and their client agencies would not be the same as the lines of communication needed for the regulatory budgeting process.

On balance, it would appear to be preferable to establish ORB as a separate

element of OMB, with responsibility and authority to deal directly with the agencies in the formulation and execution of the regulatory budget. When the regulatory budget system had been operating long enough to have settled down, consideration could be given to integrating the operation of the system into the fiscal estimate groups, retaining for ORB the role of specialized staff to deal with across-the-board procedures and with the aggregation of annual agency authorizations.

B. The Regulatory Budget Process

For ease of exposition, the discussion of the regulatory budget process follows the budget cycle for a single period, from formulation through execution. In practice, of course, the cycles for successive periods would overlap just as they do for the fiscal budget. In broad outline, the regulatory budget process described here parallels the existing Federal fiscal budget process. The regulatory budget period is assumed to be the traditional Federal fiscal year,[1] which begins on October 1 of the preceding calendar year and ends on September 30 of the current calendar year.

1. Formulation of, a Regulatory Budget

ORB would initiate the regulatory budget cycle about 21 months before the fiscal year for that budget began. The cycle would start with the issuance to regulatory agencies of detailed procedural guidelines for submitting their requests for compliance-cost budgetary authority. Those guidelines would include tentative ceilings for total agency requests. [2]

The responses of the agencies would be due at ORB about 4 months before the applicable fiscal year began. The agencies' requests would describe the proposed new regulations and the estimated costs of complying with all the regulations that would be in effect during that fiscal year.[3] The expected benefits of the agencies' regulations would also be included in their submissions to ORB, in support of their requests for budget authorizations. However, as discussed in Chapter 1, the benefits of regulations would *not* enter explicitly into the regulatory budget process.

ORB would review the agencies' requests and recommend modifications to conform with government policy on the total amount and the composition of regulatory activity. The modifications would almost certainly be downward, as most agencies would submit requests for above-ceiling compliance-cost authorizations. About eleven months before the beginning of the applicable fiscal year, ORB would submit to the President its recommendations on both aggregated, government-wide budget totals, and on the agency-by-agency dollar amounts of authorized compliance costs.

The President, aided by his staff, would review ORB's recommendations prior to making the final decision on his proposal to the Congress for the next year's

regulatory budget. As part of the review, individual agencies could appeal ORB's modifications of their requests for budget authorization to the President himself, as happens occasionally in the fiscal budget process.

The results of the President's decision would be communicated by ORB to the agencies, which would then prepare detailed submissions to send to the Congress. Early in the new congressional session, the President's regulatory budget for compliance-cost authorizations for the next fiscal year, both total and agency-by-agency, would be forwarded to the Congress. Shortly thereafter, the individual agencies would submit their detailed budget requests to the Congress.

The formulation of a regulatory budget would end with the enactment into law of the President's proposals as modified by the Congress. More detailed discussion of congressional involvement in the regulatory budget process is presented in Section D below.

2. Execution of a Regulatory Budget

Once the fiscal year had begun, the regulatory activities of Federal agencies would be constrained by the compliance-cost ceilings set in the budget for that year. The constraints would need to be sufficiently flexible to permit the agencies to adapt to changing circumstances in a timely manner. Thus, a regulatory agency would not be limited to the promulgation of only those regulations that were specifically included in its original request to ORB, nor would the agency be required to issue every regulation that was included in its request.[4] Also, if an agency revoked some of its existing regulatory requirements, it could be allowed to increase its regulatory budget authorization by the amount of compliance costs thereby saved. The procedures for proposing and promulgating new or revised regulations under a regulatory budget (or for revoking current regulatory requirements) would resemble the existing procedures, but it would expand on them in significant ways:

- At the time of proposal, an agency would publish a draft economic impact statement, much as it is required to do now. The draft statement would include a preliminary estimate of the anticipated cost of complying with the new or revised regulations. The comments received on the proposal would aid in preparing the subsequent comprehensive estimate of compliance costs.

- When the agency formally promulgated the new or revised regulation, it would be required to publish its final economic impact analysis. That analysis would contain a comprehensive estimate of the additional compliance costs that would result from the regulations.

- The final economic impact analysis would be open to public comments for a period of 90 days. The comments would be

submitted to ORB, with a copy to the promulgating agency.[5]

- After the comment period ended, ORB would resolve differences between the agency's estimated compliance costs and those in the comments received. ORB would reach a final decision on the compliance cost figures to be charged to the agency's regulatory budget authorization within 90 days of the close of the comment period (six months after promulgation of the regulations). That decision would be the official estimate of compliance costs and would be so certified by ORB.[6]

- The certified estimate would be charged against the promulgating agency's regulatory budget authorization.

C. Enforcing a Regulatory Budget

The existence of a regulatory budget would impose a new constraint on Federal agencies that would not be welcomed by regulatory officials. Efforts to avoid the constraint should therefore be anticipated.

Three principal problems in enforcing a regulatory budget merit attention: (1) an incentive to overstate compliance-cost estimates during budget formulation; (2) an incentive to understate those estimates in promulgating regulations[7]; and (3) preventing the overspending of regulatory budget allocations. These three problems are discussed in order.

1. Overstatement of Compliance-Cost Estimates during Budget Formulation

In preparing their requests to ORB in the early part of the budget cycle, Federal agencies would have an incentive to overstate their estimates of the compliance costs of new or revised regulations in order to secure the largest possible budget authorizations.

ORB's ability to identify overstatements at this stage of the regulatory budget process would be limited. The reason is that even the agencies would rarely know so far in advance how the subjects of a proposed new requirement would actually respond to it. Only after the agencies had further developed their regulations and received comments on them would they possess the data to support more reliable estimates.

Overstatement of estimated compliance costs during budget formulation would not, however, be a fatal defect in a regulatory budget system. ORB's recommendation to the President for allocations of budget authority would depend only in part on preliminary estimates of compliance costs by the agencies. Also important would be high-level policy guidance given to ORB examiners on how much in additional national resources could be devoted to the various social

goals represented by the regulatory agencies' missions. In addition, the agencies themselves would not want to make outrageous initial requests, lest they weaken their subsequent credibility with ORB.

2. Understatement of Compliance-Cost Estimates during Promulgation

In promulgating regulations, it would be in an agency's interest to understate estimated compliance costs, in order to minimize the share of the available authorization devoted to any one regulation. During promulgation, however, ORB would be in a much better position than during budget formulation to evaluate the agencies' estimates. For one thing, ORB would have available the supporting data in the detailed economic impact analyses, as well as the data submitted as part of the public comments.

Secondly, agencies would have an offsetting incentive not to understate their compliance-cost estimates. By systematically understating the costs of all new regulations for a given period, the agency would run the risk that ORB would systematically certify estimates greater than the agency's figures. This would increase the agency's chances of exceeding the regulatory budget authorization for that period. The resulting deficit would prompt sanctions (as discussed below), or would at least be deducted from the agency's budget authorization for the next fiscal year, which would already have been established. An agency would presumably have difficulty justifying supplemental allocations to cover deficits caused by its own poor compliance-cost estimates.

3. Controlling Overspending of Regulatory Budget Allocations

Enforcing the budget ceilings of regulatory agencies would require both appropriate bookkeeping procedures and sanctions that could be imposed when a budget ceiling was exceeded.

a. Bookkeeping

The bookkeeping procedures for a regulatory budget would be conceptually similar in form to those for the fiscal budget, but would be simpler and less costly to carry out:

- Authorized expenditure limits and (certified) compliance costs saved by retiring old regulations would be entered as credits on the agencies' ledgers. Compliance costs spent on new or revised regulations would be entered as debits.

- The scale of bookkeeping needed for a regulatory budget would be far smaller than for the fiscal budget. The huge number of individual fiscal transactions each year would dwarf the sum total of the separate regulatory actions taken each year by Federal agencies.

b. Sanctions

It would not be possible under a regulatory budget to impose sanctions for overspending parallel to those used under the fiscal budget. Thus, new kinds of sanctions would have to be devised to make a regulatory budget work. The authority to commit appropriated fiscal funds is extensively delegated to relatively low administrative levels. That is necessary because of the vast number of individual transactions involved. The traditional enforcement tool is to hold individual certifying officers personally liable, financially, for funds committed in excess of their allocations. The threat of personal financial liability has proven widely effective in achieving observance of fiscal budget limits.[8] In addition, modern management information systems have made possible secondary cross-checks of whether fiscal obligations exceed authorizations.

It has been suggested that a serious defect in a regulatory budget system would arise from the inability to hold anyone personally liable, financially, for exceeding authorized compliance cost allocations. The implication is that a regulatory budget could not be effective because it would deal only with funny-money, not the real money with which the fiscal budget deals.[9]

In fact, the so-called funny-money problem is more apparent than real. The heart of the issue of controlling the overspending of any budget authority is the level at which the discipline takes place. Under the fiscal budget, as already noted, obligating authority is delegated to low administrative levels. In contrast, the regulatory budget equivalent of fiscal obligating authority would not be nearly so widely dispersed. The reason is that most regulations are promulgated over the names and by the authority of Presidentially-appointed heads of Federal agencies.[10]

Thus, enforcing regulatory budget ceilings would be primarily a political, not an administrative, problem. Without exception, the officials who would authorize regulatory-budget expenditures—by promulgating regulations—would be at politically responsible levels. Regulatory budget discipline would have to be imposed through the political process.

In starkest terms, to prevent the overspending of regulatory-budget allocations, the President would have to stand ready to dismiss an agency head who failed to stay within his or her budget authorization. Since most officials who promulgate regulations serve at the pleasure of the President, regulatory-budget discipline should pose no problem for a President who was determined to obtain it.[11]

D. Congress and a Regulatory Budget

A regulatory budget would be a major change in Federal policy towards regulation. For that reason, it was argued in Chapter 2 that the President should not attempt to establish a regulatory budget system unilaterally, by executive order, even though constitutionally it probably could be done. Rather, such a

system should be set up under the authority of a law passed by the Congress.[12]

Beyond merely authorizing a regulatory budget, the Congress would need to participate regularly in the budgeting process itself. This would require that the Congress be kept informed of three key decisions regarding the regulatory budget: (a) the aggregate compliance-cost authority proposed for the budget year; (b) the proposed budget allocations to individual agencies (which the Congress would review, modify, and approve); and (c) proposed increases during the current year in specific agencies' budget allotments.

How the Congress organized itself to deal with the President's regulatory budget proposals would be vitally important. The primary purpose of the regulatory budget system would be to set overall limits on the compliance costs resulting from regulatory requirements. The purpose would *not* be to improve decision making on individual regulations. To accomplish the primary purpose, the Congress in its action on the regulatory budget would need to take an overview of the broad economic impact of regulation and avoid being distracted by individual regulatory requirements.

It would be important, therefore, that the Congress deal with the President's budget proposals on a unified basis—for example, through its Budget Committees or the Joint Economic Committee. While the other, more specialized congressional committees could advise on specific matters, it would not be appropriate for those committees to set the regulatory budget authorizations for their client agencies. As the originators of legislation giving rise to regulations, the specialized committees could not reasonably be expected to be any more objective than the regulatory agencies about the overall limits of total compliance costs in the areas of their particular interest.

To the extent that the Congress elected to become involved in individual regulatory issues, it could do so through its existing substantive, appropriations, and oversight committees. But the regulatory budget could not be successful as a management tool if the Congress were to inject itself into substantive regulatory details when it acted on the President's requests for authority to impose compliance costs.

E. Public Participation in the Regulatory Budget Process

Providing an opportunity for public participation in government decision processes has in the past several years become a matter of major concern and effort. Thus the issue of public participation in the regulatory budget process needs consideration. As before, it is useful to distinguish between the formulation and execution stages of that process.

1. In the Formulation Process

There would be no more reason to have the public participate in the formulation

of a regulatory budget, prior to its submission to the Congress, than in the formulation of the fiscal budget. Traditionally, the fiscal budget has been kept confidential until the President submits it to the Congress. Members of the public then have their say during the congressional deliberations on the final form of the budget.

A regulatory budget would best be handled in the same manner. Until summary data were available on the compliance costs to be imposed on the economy during a future fiscal year, there could be little useful public discussion of whether the relative and absolute levels of those costs were appropriate. Such data would be available for the first time when the President's regulatory budget proposals were sent to the Congress. The public could then submit comments at the hearings that the Congress would hold on the proposed regulatory budget.

2. In the Execution Process

Public participation in the execution of a regulatory budget would involve two key issues:

- which regulations would be acted upon when the budget limit forced a choice; and
- whether the compliance-cost estimates for the proposed or promulgated regulations were valid.

The choice among competing new regulations would be as amenable to public participation under a regulatory budget system as it is currently without it. Public interest groups already have ample ways to communicate their concerns on new regulations to politically responsible regulatory officials. Thus, no special further procedures for public participation would seem necessary here.

Public comments on the validity of compliance cost estimates, in contrast, would involve at least new forms, if not new channels, of public participation. Under a budget for regulatory compliance costs, various segments of the public would have a stake in the cost estimates finally certified by ORB. The Federal agencies' own estimates would tend to appear, on the one hand, too low to those likely to bear the costs and, on the other hand, too high to those advocating more stringent regulation.

There is a possible problem of equity in public access to government under a regulatory budget. Most of the public comments on the compliance-cost estimates would come from groups with relatively large stakes in the certified cost figures. Groups with smaller stakes—for instance, small businesses or widely dispersed groups such as consumers or the poor—might be discouraged from participating by the costs of submitting comments.

This is not the place to debate the validity of the foregoing argument.[13] It is

pertinent to note, however, that the same problem exists under the present system of government regulation. The existence of a regulatory budget would add a dimension to the problem, in that compliance-test estimates would play a larger role in determining what is regulated and what is not. But having a regulatory budget could also reduce the costs of access to the public decision-making process by providing a formal structure where now only informal procedures are used.

F. Special Problems of Introducing a Regulator Budget System

Three special, interrelated problems would be encountered in starting up a regulatory budget system:

- How should a regulatory budget be phased in?
- Which agencies should be included in the introductory phases?
- Should a regulatory budget initially cover only the compliance costs of new and revised regulations, or the total costs of complying with all regulations?

1. Phase-In

A regulatory budget could not be installed overnight. A large amount of preparatory work would be needed to make even a skeleton regulatory budget viable. Lead time would be required to build staffs and train operating personnel in both ORB and the agencies. ORB would need staff to develop the budget procedures, without which the budget formulation process could not begin. The agencies would need to acquire and train staff to develop the estimates of compliance costs.

The lead time required before agencies could be subjected to regulatory budget constraints would be at least two years—none too generous an amount of time to allow ORB to be formed and initially staffed, and then to develop guidelines for the agencies on how to prepare their budget requests. To illustrate: If the final decision (represented, for example, by enabling legislation) to proceed with a regulatory budget was made in July 1980, the first period during which the new constraint applied would be fiscal year 1983 (October 1, 1982 - September 30, 1983). The agencies would send their initial requests for regulatory budget authorizations to ORB in the summer of 1981. The first budget allocations would be issued to the agencies in about September 1982, to take effect beginning October 1, 1982.

Once an initial schedule was adopted, interim procedures would be needed to head off agency attempts to promulgate as many regulations as possible before the regulatory budget went into effect. One procedure would be to count the compliance costs of regulations promulgated during the lead-time period against

the budget allocation for the year of operation. In the above illustration, a1l regulations issued after October 1980 would be charged to an agency's fiscal 1983 budget authorization.

2. Initial Agency Coverage

The philosophy that it is easier to start something new by trying it out first on a limited scale would argue for beginning a regulatory budget with only a few agencies. Its coverage could be expanded later, once some experience had been gained.

It would be several years, however, before any experience with regulatory budgeting could be analyzed and lessons drawn from it. Considering the lead times required, it would be six or seven years after the initial decision to try regulatory budgeting before additional agencies would be included (two years to implement the initial trial; two or three years of operating experience and evaluation; and two years to implement the expansion itself).

Starting small, moreover, could lend an air of experiment that would encourage the agencies initially covered to do everything in their power to see that the system failed. In addition, officials in the trial agencies would feel discriminated against; the resulting resentment would further motivate them to sabotage the system.[14] Finally, partial initial coverage would provide an opportunity for both legislative and executive policy makers to shift regulatory actions to the exempt agencies. On balance, therefore, it would appear preferable to apply a regulatory budget simultaneously to all regulatory agencies right from the start.

3. New and Revised vs. Total Compliance Costs

As discussed in Chapter 1, a regulatory budget operating at full scale would deal with the total compliance costs imposed by Federal regulations. However, the magnitude of the task of estimating the total continuing compliance cost of all regulatory requirements would make it impractical to cover them in the first few years of regulatory budget operation.

A workable compromise would be to begin regulatory budgeting with only the compliance costs of new and revised regulations, and to shift to a total compliance-cost base after a period of a few years. The cost data for new and revised regulations that would be generated during the first few years of budget operation would ease the eventual shift to total compliance-cost budgeting.

[1] Consideration was given to possible alternative periods for regulatory budgeting. However, no persuasive arguments for a different period were found, and the potential for confusion from non-aligned fiscal and regulatory budgetary periods would be great. One possible problem—that a regulation would not be ready for promulgation in the period planned—could be handled by making regulatory budget authority the equivalent of so-called no-year fiscal

appropriations that can be carried forward until used.

[2] For the first several regulatory budget cycles, tentative ceilings might not be possible because of a lack of data on compliance costs.

[3] As discussed later in this chapter, the compliance-cost estimate for all regulations could not be required initially. Such estimates could be added to the system only after baseline data had been developed.

[4] The agency would, however, have to achieve a reasonable correlation between the regulations specified in its submission to ORB and those in fact acted upon, if it wished to retain credibility for future budget cycles.

[5] Some potential inequities in the public-comment process are discussed in Section E.

[6] Where ORB would acquire the expertise for reviewing comments and revising compliance cost estimates—from its own staff or from outside consultants—is an empirical question that cannot be answered definitively in this study. It is likely that both sources would be used, with the mix varying from case to case.

[7] An agency's incentives for estimating compliance costs for regulations to be removed would be just the opposite of the incentives for new or revised regulations.

[8] The discipline of personal financial liability can, of course, break down if it loses credibility—e.g., if the sums get larger than an individual could possibly pay. A rule of thumb among bureaucrats is to over-obligate big if one is going to over-obligate at all.

[9] It is possible to devise schemes that would use personal financial liability to control the overspending of regulatory budget allocations. However, such schemes appear to hold little promise of being either operational or effective.

[10] In cases in which promulgating authority is delegated, invariably it is only to a few high-level officials.

[11] It is frequently commented that imposing budget discipline on the independent regulatory commissions (such as the Federal Trade Commission or the Consumer Product Safety Commission) would pose problems for the President. As noted in Chapter 2, however, such need not be the case.

[12] The authors are aware that legislation to establish a regulatory budget system has been introduced into the Congress. As the purpose of this paper is to present a comprehensive analysis of the entire regulatory budget approach, no effort has been made to make the discussion consistent with particular provisions in any draft legislation. Nor are specific comparisons made between the draft

legislation and the ideas set forth in this paper.

[13] There are various ways in which groups whose individual members cannot represent their own interests effectively can nevertheless be heard in government decision making processes. Virtually every industrial and business group has an association that can prepare and submit comments on behalf of its members. In some cases, the government itself subsidizes the comments—for example, through intervention by the Small Business Administration.

[14] The effects of such resentment were illustrated by President Nixon's Quality of Life Review. The review was intended to apply to regulations proposed by all health and safety regulatory agencies. In fact, it was applied almost exclusively to regulations proposed by the Environmental Protection Agency (EPA). EPA officials and their clientele continually railed at what they perceived to be discrimination. Early in 1977 the acting Administrator unilaterally refused to continue to subject EPA to the review.

Chapter 4: Measuring Compliance Costs for a Regulatory Budget

Without estimates of the costs of regulation there could be no regulatory budget. Yet the art of estimating regulatory costs is not fully developed. The existing detailed cost studies encompass only a handful of agencies, and the cost estimates in those studies apply only to a specific industry or group of industries. There is as yet no generally accepted convention regarding the cost elements to be included or excluded, nor is there a single methodology for cost calculation which has been generally applied.Nevertheless, the budgeting of regulatory compliance costs would be possible within the present state of the art. The history of the Federal fiscal budgeting process demonstrates that budgetary control can be achieved with far less sophisticated techniques than are being used today. The very existence of a regulatory budget would, of course, provide an incentive to develop better procedures for estimating the costs of regulation.

This chapter examines the measurement of regulatory compliance costs.[1] The concept of compliance costs is defined, and the desirable criteria for evaluating measures of compliance costs are discussed. Then the estimation of compliance costs for existing vs. proposed regulations and the assignment of compliance costs to appropriate fiscal years are explored. The chapter concludes with a survey of the current state of the art of estimating regulatory costs.

A. Definition of Compliance Costs

Compliance costs consist of expenditures made expressly to meet the requirements of Federal regulations. The expenditures may be made by the private sector, by state and local governments, or by other Federal agencies. In principle, only incremental costs due to regulation—that is, costs in excess of what would have been spent without regulation—should be counted in compliance costs. As noted below, in practice the precise isolation of incremental

costs is difficult.

Both capital and operating costs may be incurred in complying with regulations. Examples of capital costs of compliance include outlays for extra construction or new equipment. Examples of operating costs of compliance include expenditures on added research-and-development, extra variable inputs (such as labor and raw materials), additional supporting services, and further administration (such as paperwork).

Weidenbaum and De Fina have estimated that, in 1976, total compliance costs in U.S. industry were some twenty times greater than Federal administrative costs. For some regulations specific to certain industries, the estimated ratio was greater than 50:1.[2] To date, no estimates have been made of the corresponding ratio of compliance to indirect costs.

Determining exactly what to include in the compliance costs to be charged against agencies' regulatory budgets would not be a straightforward matter. To illustrate the difficulty:

- Capital outlays on girls' locker rooms under Title IX and the expense of seeing that truck drivers keep proper time logs for the Interstate Commerce Commission should obviously be counted as compliance costs.

- Less clear would be the cost of employing extra workers as counterparts of Federal inspectors, as the oil companies claim they must do to comply with crude-oil price-control rules.

- Controllable expenses like lobbying in the Congress or maintaining an office in Washingtonto monitor the regulatory agencies most probably would not be allowed as compliance costs.

B. Criteria for Evaluating Measures of Compliance Costs

A regulatory budget would play an important role in the policy making process. For that reason, the quality of the measures of compliance costs used in the budget would not be a matter of indifference.

What is acceptable quality is ultimately a political matter that cannot be resolved in this study. It is useful, however, to suggest certain criteria that would affect the quality of compliance-cost measures and that would therefore provide points of reference against which to evaluate particular measures and the methods used in obtaining them.

The following list of criteria also indicates possible directions for further work on the methodology of measuring compliance costs.

1. Precision

A workable regulatory budget would have to employ point estimates of specific compliance costs. The closer those point estimates were to actual costs, the greater the success in husbanding the resources claimed by Federal regulation—the very purpose of a regulatory budget. In part, precision would be a function of time: more precision would be possible the longer a given regulation had been in effect. Perfect precision, of course, would be unattainable; put differently, perfect precision would be far too costly to strive for. Note, however, that even the easily quantifiable dollar magnitudes in the fiscal budget, after years of evolution, are not precise: estimating errors of millions of dollars are common.

2. Consistency

In a workable regulatory budget, individual compliance costs would have to aggregate into totals (by agency, sector, or total budget) that reflected the resources claimed by efforts to conform with regulatory requirements. In other words, a million dollars' worth of costs should represent the same claim on economic resources in one agency or sector as in the next. If that were not the case, the incentives created by a regulatory budget would be distorted, and the rationale for such a budget would be weakened.
The methodology used to estimate compliance costs would have to be consistent across different regulations and across the various regulated sectors of the economy. Note that striving for greater consistency might lead to a loss of coverage incompliance-cost estimates if one element of costs could be measured in some areas but not in others.

3. Transparency

An important quality of compliance-cost measures would be that anyone, using the same data and methodology, could duplicate the estimates used in a regulatory budget. To permit duplication, both the data and the methodology would have to be transparent to all parties concerned. The procedures and assumptions of the methodology would need to be visible and well documented.[3] The data, once decided upon, would have to be readily available and subject to outside, independent audit. Note that the audit requirement could pose problems of privacy, particularly for business firms.

4. The Cost of Making the Estimates Themselves

The very process of obtaining measures of compliance costs would itself entail costs. Data collection, processing, analysis, and dissemination all require the use of scarce resources. If the cost estimation itself was judged burdensome (a matter for political judgment), it would constitute a powerful argument against adopting a regulatory budget. Obtaining compliance cost measures would probably be most burdensome when a regulatory budget process was first introduced.
The cost of making the estimates would not, of course, be independent of the

degree of precision or consistency required of measures of compliance costs. For example, it might be necessary to sacrifice some precision in order to reduce the burden of making the cost estimates.

C. Compliance Costs of Existing vs. Proposed Regulations

The logic of a regulatory budget would require measures of the compliance costs of both existing and proposed (new or revised) regulations. Only with both existing and proposed regulations covered would the discipline of the budget cover the total costs of complying with Federal regulation. It is important to recognize that the decision to leave an existing regulation in place for another budget period has the same cost impact as the decision to introduce a new regulation with equal compliance costs. Also, the costs of complying with existing regulations would have to be known if agencies were to receive budget credits for regulations that they removed (as was suggested in Chapters 1 and 3).

It was noted earlier, however, that obtaining compliance-cost measures for all the regulations promulgated prior to the adoption of a regulatory budget would be a formidable task. It would be impossibly costly to achieve in the first few years of operation, at least with any degree of precision, consistency, and transparency. Thus, a gradual approach would be required—perhaps one that attempted estimates only for broad categories such as major existing programs, or even entire agencies, in the first few years after adoption. With time, however, more detailed measures of the compliance costs of existing regulations could be developed. Once acceptable base-cost measures had been obtained, annual updates would be relatively straightforward.[4]

Measuring the compliance costs of proposed (new or revised) regulations would pose much less of a problem than existing regulations, in terms of the volume of information and computation involved. Proposed regulations would, however, have estimation problems of their own. Unlike existing regulations, for which empirical track records could (given enough effort) be compiled, the costs of complying with proposed regulations would by definition have to be estimated on the basis of few hard data.[5]

Preparing estimates of the compliance costs of proposed regulations would require two distinct steps. First, it would be necessary to forecast the probable methods of compliance. Second, constructive cost estimates would need to be prepared for those methods. Of the two steps, the first would appear by far the more challenging and difficult. It would probably require some active involvement by the parties affected by the regulations. Such involvement could take the form of voluntary comments on the agencies' preliminary forecasts, or of more formal analysis or audit.

In the case of larger business firms and governmental units, there is precedent for such involvement under the present system. For small businesses and governments, and for consumers, however, there is little precedent. The exact

nature of active involvement by fragmented, unorganized individuals is not easy to envision. Representation of consumers by public-interest groups would be one possibility; although it would be fraught with possible objections. And as suggested in Chapter 3, small business could be represented by trade associations.

D. Assigning Compliance Costs to Appropriate Fiscal Years

The costs of complying with a regulatory are requirement typically incurred over a number of years. Moreover, the time pattern in which compliance costs are incurred bears no simple relationship to the fiscal year in which the requirement is promulgated. Indeed, some costs (especially investments) may actually anticipate (and thus precede) promulgation of a new regulation. A successful regulatory budget system would have to include all compliance costs within its authorization limits regardless of when they were incurred. In theory, this could be accomplished with a system, which charged agencies with the compliance costs of all their regulations in force in the fiscal year in which the costs were incurred.

In practice, however, charging compliance costs as incurred could undermine the goal of using a regulatory budget system as a management tool. Politically-appointed heads of regulatory agencies—who can reasonably expect to be in their jobs for relatively short periods of time—would have little incentive to worry about the future budgetary claims from regulations that they take the credit for promulgating. This could lead to neglect of future compliance costs in decisions on new regulatory requirements.

An alternative to charging compliance costs only as incurred would be to charge an annualized compliance-cost value of each regulation that was in effect. At the time a regulation was promulgated, an agency would estimate the time-pattern of compliance costs, calculate its present discounted value, and convert that value to an annualized (i.e., annuity-equivalent) amount.[6] In that manner the regulatory budget process would better take into account the total compliance costs over the expected lifetime of a regulatory requirement.

The annualized cost approach would have the disadvantage of masking the economic impact of extraordinarily large costs incurred in one or two years (for example, automobile-industry retooling required for fuel economy and emission standards). By the same token, the failure to use annualized compliance costs would tend to discriminate against regulations that require very large outlays in one or two years, but provide benefits over long periods of time with relatively low additional costs.

A variant that would combine elements of both of the above approaches would be to require agencies to submit multi-year regulatory cost estimates along with their annual requests for compliance cost allocations. There is precedent for this variant in fiscal budgeting for costly programs extending over several years (e.g., weapons systems). The multi-year cost estimates would at least raise the issue of

future costs in the formulation of a given year's regulatory budget. It would, however, impose relatively weaker discipline on future costs than the annualized cost approach.

The present analysis suggests that the use of annualized compliance costs would be the best approach to capturing total costs over the lifetime of a regulatory requirement.[7] However, the issue merits further study, both of the defects of charging compliance costs as incurred and of the actual calculation of annualized costs.

E. The State of the Art in Estimating Regulatory Costs

It is useful to conclude the discussion of measuring compliance costs with a survey of existing cost of regulation. Some 70 studies have been examined. The methodologies used in those studies range from guesses to detailed, highly structured cost accounting. The existing studies address primarily administrative costs and certain elements of compliance costs. Although some of the studies comment on the existence of indirect costs, only a few quantitative estimates of indirect costs have been made.

Table 1 gives a breakdown of the studies examined, by affiliation of authors and time period analyzed (historical or future). A study that addresses both future and historical costs is counted in both columns. Independent investigators have been responsible for more than half of the historical studies, but this group has attempted almost no future estimates. This is not surprising in view of the previously-mentioned need to forecast the method of compliance before estimates of future costs can be made. Business firms are better able than independent investigators to make forecasts of compliance methods, and the government can require such forecasts from industry.

Table 1
Existing Regulatory Cost Studies

Affiliation of Author	Historical Costs	Future Costs
Government (or Contractor)	17	15
Industry (or Contractor)	6	5
Academic Institutions	27	2

There is a glaring lack of uniformity in the costs included in or excluded from these studies, as well as in the methods used to account for those costs. Hence it is difficult to draw comparisons. However, several pairs of studies conducted by the two opposing parties to a specific debate suggest the range of discrepancies that can occur. Here are three examples:

1 In 1978 the Consumer Product Safety Commission estimated the direct compliance cost of a proposed fabric flammability regulation

for the furniture industry at $57 to 87 million a year; the market impacts would be a two to three percent increase in the wholesale price of furniture and added consumer costs of $144 million per year. The American Textile Manufacturers Institute, in contrast, estimated direct compliance cost at $1.3 billion per year.

2 In 1978 the Environmental Protection Agency estimated the annual direct compliance costs of a proposed ambient air quality standard for ozone at $6.9 to 9.5 billion per year. The Council on Wage and Price Stability, using a different but equally logical methodology, estimated those direct compliance costs at $14.3 to 18.8 billion per year.

3 In February 1979, the Environmental Protection Agency estimated the costs of a proposed 1981 diesel engine particulate standard at a negative $160 per ton of particulates removed. The Council on Wage and Price Stability estimated this cost at a positive $4740. For a proposed 1983 standard the estimates per ton were $3200 and $7650, respectively.

There are two explanations for such wide discrepancies in estimated compliance costs. First, there are currently no generally accepted conventions for choosing the specific costs to be included or for the methodology of computing total compliance costs. Second, because each of the above examples concerned the impact of a proposed regulation, it was necessary to make assumptions about the methods to be used for compliance. The assumptions of the opposing parties were quite different in each case. The existing studies of historical costs, where the methods of compliance were known, show much smaller discrepancies. An important contribution to the literature on regulatory costs was made by the first issue of the *Regulatory Calendar*, which, appeared, in the *Federal Register,*February 28, 1979. The Calendar (which will be published semiannually by the Regulatory Council) listed 109 major rules being considered by twenty Federal departments; compliance cost estimates were included for about one third of the entries.

In a statement at the time of publication, Douglas Costle, the chairman of the Regulatory Council, acknowledged that "agencies presently calculate costs in different and sometimes conflicting ways," and he cautioned against attempting to aggregate the costs published in the calendar. He called for development of better cost-estimating methods and for dissemination of those methods among the agencies. Nevertheless, the work currently being done by the Council may help lay the groundwork for making the cost estimates than would be needed to implement a regulatory budget system.

Significant progress toward resolving the problems of estimating regulatory compliance costs, particularly settling upon a uniform methodology, was made in a study commissioned and recently released by the Business

Roundtable.[8] That study, conducted by Arthur Andersen and Company, estimated the costs incurred in 1977 by 48 cooperating companies in complying with all the regulations of six agencies or statutes:

1 Environmental Protection Agency

2 Occupational Safety and Health Administration

3 Equal Employment Opportunity Commission

4 Department of Energy

5 Employee Retirement Income Security Act

6 Federal Trade Commission

The 48 participating companies represented 23 two-digit SIC industry groups; each group contained a minimum sample of three company divisions or other operating units. While the numerical results of the Arthur Andersen study themselves are of interest, much the more interesting for present purposes is the methodology developed for the study. The procedures for consistently determining compliance costs across firms aid regulations, together with the supporting documentation from the companies, would provide the kinds of precise, consistent, and transparent cost estimates required for a workable regulatory budget. Of particular note is the assiduous care taken to determine the increment in company costs due solely to complying with regulations. The methodology has been criticized by some economists for failing to include indirect as well as compliance costs; for purposes of a regulatory budget, however, the criticism is beside the point, as argued in Chapter 1 of this study.
Arthur Andersen and Company estimated that the study itself cost 0.4 percent of the computed compliance costs. Subsequent studies made by the same participants would probably reduce that percentage because of the experience gained in the initial study.

The studies surveyed above illustrate a point made at the very outset of this chapter—namely, that the art of estimating regulatory costs is still undergoing development. At the same time, a handful of those studies—in particular, the Regulatory Calendar and the Arthur Andersen study for the Business Roundtable—also illustrate a second point made at the outset: a workable regulatory budget would be achievable within the present state of the art.

[1] Chapter 1 noted that, of the three components of regulatory costs (administrative, compliance, and indirect), only compliance costs could be included explicitly in a workable regulatory budget system. For that reason, this chapter discusses only the measurement of compliance costs.

[2] Murray L. Weidenbaum and Robert De Fina, The Cost of Federal Regulation

of Economic Activity, (Washington: American Enterprise Institute, Reprint Number 88, May 1978).

[3] Federal policy makers and others might want on occasion to examine regulatory compliance costs broken down by specific economic sector or geographic area; or divided into individual cost components. To permit this, it would be necessary to retain the detailed characteristics of the disaggregated compliance cost data that would be summed to get the agency and overall totals. This is because aggregation is an informationally irreversible operation. The precise degree of detail retained (e.g., 2 vs. 4-digit SIC codes, region vs. state, or capital vs. construction costs) would depend on the desired uses and could be periodically adjusted.

[4] The history of Federal fiscal budgeting is instructive here. Only after World War II was systematic attention paid to existing, or base, expenditures as well as to increments or decrements to that base. Even in the late 1970s, the full transition to zero-based budgeting, in which all of an agency's expenditures are in principle open to review, is not yet complete.

[5] Parallels in the fiscal budget are the estimates of outlays on new programs or of revenue from tax changes.

[6] By the principles discussed in Chapter 3, ORB would take into account public comments as well as the agency estimates when it certified the time-pattern of costs.

[7] Annualized cost also appears to be the best way to handle the phase-in of regulatory budgeting that is suggested in Chapter 3. In that approach only new and revised regulations would initially be subject to the constraint of a regulatory budget allocation, and the compliance costs imposed by regulations that were effective prior to the start of regulatory budgeting would become a formal part of the system only some years later.

[8] The Business Roundtable, Cost of Government Regulation Study, (New York, 1979).