

Box 3. Unmeasured Costs of the Administrative State

I. Unmeasured Costs of Shortcomings in Administrative Procedure Act Oversight

A. Rule Cost Categories Prone to Escaping Measurement and Disclosure³⁷²

- Costs of rules not deemed economically significant by agencies that in fact are
- Costs of independent agency regulations
- Costs of unfunded mandates on states and localities
- Costs of interpretive rules and guidance documents
- Indirect costs
- Job costs of regulation

B. Process/Oversight Shortcomings Generating Unknown Financial and Societal Costs³⁷³

- Costs of abandonment of formal rulemaking
- Costs of agencies' failure to issue a notice of proposed rulemaking for a significant portion of rules
- Costs of agency-gamed notice-and-comment processes
- Costs of agencies' undermining the Congressional Review Act by failing to submit final rules to Congress and to the Government Accountability Office for consideration
- Costs of baked-in pro-regulatory bias
- Costs of economically disruptive policy uncertainty
- Costs of regulation by sue-and-settle agreements
- Costs of regulatory accumulation
- Costs of differential effects of rules on businesses

II. Unmeasured Costs of the Loss of Liberty³⁷⁴

- Costs of regulatory takings and property value destruction³⁷⁵
- Costs of abandoning negative rights for a positive rights framework that entails unequal treatment of citizens under the law³⁷⁶
- Costs of delegation of lawmaking power to the executive branch and to unelected administrators³⁷⁷
- Costs of lack of agency accountability to Congress through agency self-funding³⁷⁸
- Costs of normalization of dependency
- Costs of imposing regulation based on secret or creatively leveraged data³⁷⁹
- Costs of abandoned federalism³⁸⁰
- Costs of overcriminalization³⁸¹
- Costs of loss of anonymity due to state surveillance³⁸²

III. Costs of Spending and Legislative Programs with Sweeping Regulatory Effect

- Costs of top-down national plans, agendas, and treaties³⁸³
- Costs of distortions created by "ordinary" federal spending, subsidies, and stimulus³⁸⁴
- Costs of deadweight effects of federal spending³⁸⁵
- Costs of government spending to steer investment in science and technology

IV. Costs of the Derailment of Market Institutions

- Costs of the presumption of agency expertise³⁸⁶
- Costs of disregard of government failure
- Costs of interference with price, distribution, and access mechanisms
- Costs of antitrust regulation and the institutionalization of raising competitors' costs³⁸⁷
- Costs of blurring corporate and government roles with government-sponsored enterprises and public-private partnerships³⁸⁸
- Costs of government steering by direct ownership or control of resources³⁸⁹
- Costs of eroded property rights
- Costs of regulatory public utility, siloed-infrastructure models
- Costs of top-down approaches to environmental amenities and concerns³⁹⁰
- Costs of permission-seeking and excessive occupational licensing
- Costs of cronyism through rent-seeking³⁹¹
- Costs of permanent bureaucracy³⁹²

V. Costs of Lethality

- Costs of the precautionary principle and the derailment of normal evolutionary risk-management innovation
- Costs of selective expression of benefits
- Costs of wealth and health loss induced by regulation
- Health costs of rent-seeking
- Costs of undermining markets in information