



**Testimony of**

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***United States House of Representatives***  
***Committee on Small Business***

**Date:** January 7, 2026  
**Time:** 10:00 am  
**Location:** 2360 Rayburn House Office Building, Washington, DC  
**Topic:** A Voice for Small Business: How the SBA Office of Advocacy is Cutting Red Tape

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration is an independent voice for small business within the executive branch. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small businesses before Congress, the White House, federal agencies, federal courts, and state policy makers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional advocates and an office in Washington, DC, support the Chief Counsel's efforts.

For more information on the Office of Advocacy, visit <https://advocacy.sba.gov/>.

**Casey B. Mulligan**  
**Chief Counsel**  
**Office of Advocacy**  
**U.S. Small Business Administration**

Chair Williams, Ranking Member Velázquez, and Members of the Committee on Small Business: I am honored to be here today on behalf of the Office of Advocacy (Advocacy) to present testimony about Advocacy’s role in cutting red tape for small businesses. The views in my testimony do not necessarily reflect the views of the Administration or the Small Business Administration (SBA).

Today’s hearing is about cutting red tape, and that mission depends on getting the fundamentals right: regulators must honestly identify when rules will significantly affect small entities, analyze those effects, and consider less burdensome alternatives as Congress required in the Regulatory Flexibility Act (RFA). As the RFA watchdog, the Office of Advocacy is positioned to help ensure that agencies follow both the letter and the spirit of those statutory safeguards so that small businesses are not ambushed by avoidable paperwork, compliance costs, and enforcement risks.

This testimony draws on my recent report, “Unlawful Disregard for Small Business Regulatory Burdens,” which examines thousands of Biden-era final rules that agencies certified as having no significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b). The report evaluates the lawfulness and prevalence of certifications (not the merits or policy objectives of the underlying rules). It explains how unsupported or fictional certifications can impede oversight while leaving small entities to shoulder burdens that were never candidly analyzed. The report’s central relevance to cutting red tape is straightforward: when agencies evade or short-circuit the RFA’s small-business safeguards, red tape grows in the dark; when those safeguards are enforced, red tape is more likely to be identified early and reduced.

## **I. The Urgency of Cutting Red Tape**

According to a widely cited statistic, the Biden Administration made almost 1,200 new rules that cost the nation more than \$1.8 trillion combined.<sup>1</sup> But that does not count another 11,000 rules with zero acknowledged costs. A more accurate cost estimate would be almost

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<sup>1</sup> See Dan Goldbeck, Am. Action F., *The Biden Regulatory Record* (Jan. 29, 2025), <https://www.americanactionforum.org/insight/the-biden-regulatory-record/>, which tracks rules published in the Federal Register that include a quantified estimate of either net regulatory costs or paperwork burden.

\$6 trillion.<sup>2</sup> Many of these rules were put in place at the behest of big businesses and special interests to hold back competition from the small businesses that drive American innovation.

Against that backdrop, President Trump was elected to stop the “ever-expanding morass of complicated Federal regulation [that] imposes massive costs on the lives of millions of Americans, creates a substantial restraint on our economic growth and ability to build and innovate, and hampers our global competitiveness.”<sup>3</sup>

Red tape is not only a compliance problem. It is also a competition and cost-of-living problem. Regulations can raise the cost of living through channels the RFA itself highlights: reducing competition by giving large companies an artificial advantage, and discouraging innovation and productivity improvements that would otherwise lower prices and expand output. When regulation tilts markets toward incumbents and away from new entrants, it directly undermines the small businesses that drive American innovation and job creation.

These are not abstract concerns. They show up in practice. For years, small businesses burdened by regulations remained silent, fearing retaliation from regulators for speaking up. Today, they tell Advocacy that this administration is unlike any before. Now they are comfortable shining a light on unlawful, unnecessary, and unjust regulatory overreach. Many other small businesses say that this is the first time that the federal government has listened and understood. One even said that Advocacy “quite literally saved Christmas.”

The urgency is compounded when rulemaking shortcuts prevent small-business burdens from being identified and minimized in the first place. My recent certification report documents widespread use of certifications under 5 U.S.C. § 605(b) that lacked the factual basis the statute requires, including certifications that contradict agencies’ own cost or paperwork discussions elsewhere in the same rule. When agencies label major or otherwise consequential rules as having no significant impact on a substantial number of small entities, they reduce transparency for Congress and the White House and weaken the mechanisms that would otherwise force agencies to confront small entity impacts and consider less burdensome alternatives.

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<sup>2</sup> THE COUNCIL OF ECON. ADVISERS, THE ECONOMIC BENEFITS OF CURRENT DEREGULATORY EFFORTS (June 2025), <https://www.whitehouse.gov/research/2025/06/the-economic-benefits-of-current-deregulatory-efforts/>; CASEY B. MULLIGAN, COMM. TO UNLEASH PROSPERITY, BIDEN-HARRIS REGULATIONS COST THE AVERAGE FAMILY ALMOST \$50,000 (July 2024), [https://committeetounleashprosperity.com/wp-content/uploads/2024/07/240724\\_CTUP\\_BidenHarrisRegulations\\_Doc.pdf](https://committeetounleashprosperity.com/wp-content/uploads/2024/07/240724_CTUP_BidenHarrisRegulations_Doc.pdf).

<sup>3</sup> Exec. Order No. 14,192, Unleashing Prosperity Through Deregulation, 90 Fed. Reg. 9065 (Feb. 6, 2025).

This is also a moment of opportunity. The Trump administration has directed agencies to identify “regulations that impose undue burdens on small businesses and impede private enterprise and entrepreneurship.”<sup>4</sup> Small businesses are responding to that change in posture, and Advocacy's outreach shows that small businesses are now willing to share concrete examples of unlawful, unnecessary, or unjustified regulatory burdens.

For these reasons, cutting red tape is both urgent and achievable. The burdens are large, the mechanisms for relief already exist in law, and the administration and agencies are increasingly seeking practical, small-business-informed ways to implement regulatory relief.

## **II. Advocacy at the Regulatory Policy Table**

Advocacy brings unique capabilities to the administration's regulatory policy table: nationwide small business outreach, longstanding expertise resisting unnecessary small business regulatory burdens, modern analytic capacity (including AI review of rules), and economic research that helps quantify small business experiences. As Chief Counsel for Advocacy and the RFA watchdog, I apply those capabilities to a practical mission that is especially important in this administration: identifying existing regulations that impose undue burdens on small businesses.

This retrospective, burden-reduction work is grounded in what Advocacy is designed to do: serve as the independent voice for small business inside the executive branch, bringing real-world small business conditions into regulatory decision-making. Advocacy's regional outreach is central to this effort. Small businesses can often describe, with specificity, where legacy requirements have become outdated, duplicative, overly prescriptive, or effectively unworkable in the field, and that intelligence helps agencies prioritize what to fix first. It required scarcely more than 100 days to put in place the office's Regional Advocacy team. They have already visited at least 40 states, providing our office much of the intelligence we bring to interagency policymaking processes in Washington, DC.

Agencies and White House offices have increasingly come to Advocacy for input on regulatory policy and deregulatory priorities, reflecting a renewed seriousness about following the law and reducing unnecessary burdens on small businesses. Advocacy has flagged approximately 300 issues for this administration where deregulatory action would help small businesses. Many of these issues are rules which give large organizations an artificial

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<sup>4</sup> Exec. Order No. 14,219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, 90 Fed. Reg. 10583 (Feb. 2, 2025). See *also* THE COUNCIL OF ECON. ADVISERS, *supra* note 2, which lists several 2025 executive orders, presidential memoranda, and proclamations laying out a deregulatory agenda for the administration.

advantage over small ones. An example is the Outpatient Prospective Payment System that pays hospitals more for the same services than it pays independent physicians.<sup>5</sup> Others include the Department of Labor's 2013 Companion Care rule and the Department of War's 2024 Cybersecurity Maturity Model Certification.<sup>6</sup>

The Occupational Safety and Health Administration's proposed 2024 Heat rule illustrates how Advocacy's outreach brings real-world operational knowledge into the regulatory process.<sup>7</sup> During a meeting with Advocacy, an Arizona watermelon farmer understood the rule to require shade structures for workers even though harvesting takes place at night, when there is no sun to shade. In another scenario, asphalt or concrete arrives at a construction site and must be applied immediately, without mandatory breaks. Additionally, the rule could lead to situations where water is required to be introduced near industrial processes or chemical reactions, creating an explosion hazard.

Advocacy's outreach also helped cut foreign regulations that burden small businesses here at home. A family-operated firewood manufacturer in New Mexico secured a contract to export American-made piñon pine firewood to Canada. Despite the product being 100% legal, heat-treated, and pest-free, Canadian customs rejected four truckloads without a clear explanation. Through coordinated engagement spearheaded by our Regional Advocate, we worked with the Department of Agriculture, the U.S. Ambassador's office, the Department of State, and New Mexican Congressional staff to resolve the impasse. The manufacturer became the only U.S. company holding an export permit for packaged firewood to Canada, enabling shipments to resume for the first time in 26 months and creating immediate economic benefits for this small business.

Another indicator of agencies' unprecedented engagement with Advocacy is compliance with the RFA's agenda-sharing requirement in 5 U.S.C. § 602(b), under which agencies are to share their regulatory flexibility agendas with the Chief Counsel for comment. With only one or two exceptions, agencies in the prior Administration failed to comply with this requirement, limiting Advocacy's ability to provide timely input on the rules agencies planned to develop. In contrast, during my first five months as Chief Counsel, more than sixty agencies have

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<sup>5</sup> U.S. Small Bus. Admin, Off. of Advoc., Comments on Medicare and Medicaid Programs; CY 2026 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; and Medicare Prescription Drug Inflation Rebate Program (Sept. 11, 2025) <https://advocacy.sba.gov/wp-content/uploads/2025/09/Comment-Letter-CMS25-CY-2026-PFS-NPRM-Final.pdf>.

<sup>6</sup> Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60454 (Oct. 1, 2013); Cybersecurity Maturity Model Certification (CMMC) Program, 89 Fed. Reg. 83092 (Oct. 15, 2024).

<sup>7</sup> Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70698 (Aug. 30, 2024).

sought Advocacy input on their upcoming regulatory agendas. This is an increase in § 602(b) compliance of at least 3,000 percent. More importantly, the agencies seek Advocacy's input for the proper reason. They do not want to overlook opportunities to cut unnecessary and burdensome regulations.

### **III. Certification Abuse is an Obstacle to Regulatory Review**

That renewed engagement is essential because, as my recent certification review documents, a recurring practice in the prior administration was to label rules as having “no significant economic impact on a substantial number of small entities” (a “certification” under 5 U.S.C. § 605(b)) without the factual basis Congress required. This short-circuits the very safeguards that help prevent red tape. My report, “Unlawful Disregard for Small Business Regulatory Burdens: A Comprehensive Review of Biden Administration Rulemaking,” examines thousands of these certifications and evaluates their lawfulness and prevalence, not the merits or policy objectives of the underlying regulations.

The report's key conclusion is straightforward: fictional certifications are both prevalent and unlawful. Congress amended 5 U.S.C. § 605(b) in 1996 to require agencies to publish a statement providing the factual basis for a certification. Certifications that contradict a rule's own analysis, ignore quantified costs, or provide no supporting facts fail this statutory requirement. Regulators routinely published certifications that were unsupported or inconsistent with the agency's own findings.

This finding matters for at least two reasons—one prospective and one retrospective. Prospectively, much more is at stake than technical compliance with procedures. Regulatory flexibility analyses are essential to the goals of the RFA and the Small Business Regulatory Enforcement Fairness Act (SBREFA) because they help the White House and Congress stay apprised of the costs of new federal regulations for small entities and assess obstacles to competition and innovation. Moreover, a 5 U.S.C. § 605(b) certified final rule is not required to publish a final regulatory flexibility analysis and therefore is not required to publish a small entity compliance guide explaining the actions a small entity is required to take to comply. This leaves small entities on their own to become aware of their obligations and determine how to comply.

Retrospectively, accurate identification of small entity burdens facilitates the regulatory review processes that Congress codified at 5 U.S.C. § 610 and §§ 801-808. When agencies issue fictional or improper certifications, they not only evade the RFA's front-end safeguards. They also leave the impression that the rule is not one of those that need subsequent review by the executive branch (under § 610) or by Congress under the Congressional Review Act.

Fictional certifications are therefore a target-rich environment for identifying rules that impose substantial burdens on small entities and are ripe for retrospective review. Advocacy estimates that rules unlawfully certified by the Biden administration would by themselves have imposed between \$200 billion and \$600 billion in net-present-value regulatory costs on small entities, mitigated only by deregulatory actions taken since January 20, 2025.

Unlawful certifications were widespread even among the most important rules. Among rules disapproved by Congress under the Congressional Review Act, 75 percent were certified or were claimed to be exempt from the RFA.<sup>8</sup> Among all major rules, nearly two-thirds fell into this category, despite major rules being economically significant.

To make the problem concrete, the report identifies five recurring genres of fictional certifications:

- (1) ignoring direct compliance costs and enforcement or liability risks;
- (2) treating product bans, facility closures, or firm exit as economically insignificant;
- (3) dismissing millions of hours of paperwork acknowledged elsewhere in the same rule;
- (4) applying arbitrary below-threshold tests that ignore cumulative burdens (“death by a thousand cuts”) and the smallest of small businesses; and
- (5) excluding large, foreseeable indirect effects that are quantified and relied upon in regulatory impact analyses.

In short, the certification report is not merely a critique of past process failures. It is a practical roadmap for finding and fixing red tape that is already on the books. It identifies rules where the statutorily required factual basis was missing or fictional, and where small-business burdens were therefore more likely to be hidden from both oversight and review. That diagnosis supports the Action Agenda below: concrete steps for preventing recurrence and for accelerating the identification and reform of existing rules that impose undue burdens on America’s small businesses.

#### **IV. Action Agenda**

President Trump's cabinet goes to great lengths to hear from Advocacy, but he will not always be our president. Small businesses will continue to be vital to the U.S. economy even when a future president is less supportive. This committee might consider legislation that

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<sup>8</sup> The denominator is 16 rules. It does not include the six Bureau of Land Management rules disapproved in December 2025, which had no RFA commentary because they were originally published in the Federal Register as a “notice of availability,” or not published in the Federal Register at all.



encourages compliance with the RFA and strengthens the voice of small businesses in federal policymaking. Policy options include:

- **Reconsidering the role of the Government Accountability Office (GAO) in the process of Congressional review of agency rules.** GAO published hundreds of “RFA compliance” reports with conclusions opposite to my report and opposite to the May 2024 report of the House Committee on Small Business.<sup>9</sup> GAO’s methodology is misleading due to several fundamental flaws identified in my October 2025 letter to GAO and Congressional Committees.<sup>10</sup> GAO's methods fail to stop certification abuse and likely promote it.
- **Prohibiting certification of major rules**, except in specific situations requiring the approval of the Chief Counsel for Advocacy.
- **Limiting allowable sanctions against small entities** for violations of rules that were certified as not significantly affecting them.
- **Starting the timeframe for regulatory review under the Congressional Review Act** only when the rulemaking agency has published either a certification with a factual basis, or a Final Regulatory Flexibility Analysis.
- **Pursuing legislative options such as the PROVE IT Act of 2025.**<sup>11</sup>
- Allowing the Chief Counsel for Advocacy to **add agencies to the list of covered agencies** as defined in 5 U.S.C. § 609. Covered agencies are subject to additional requirements to engage small businesses in their rulemaking.
- **Clarifying perceived ambiguities** in the Regulatory Flexibility Act, such as the meaning of “economically significant,” “factual basis,” and transmitting regulatory flexibility agendas to the Chief Counsel for comment.
- **Supporting President Trump’s budget**, which significantly increases the budget of the Office of Advocacy in support of its missing to be the voice of small business in federal policymaking.
- Giving the Office of Advocacy a more official role in **trade policy**.

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<sup>9</sup> HOUSE COMM. ON SMALL BUS., REGULATORY FLEXIBILITY ACT (RFA) REPORT: AGENCIES’ NONCOMPLIANCE WITH THE RFA (2024), [https://smallbusiness.house.gov/uploadedfiles/05.22.2024 - house committee on small business\\_rfa\\_report.pdf](https://smallbusiness.house.gov/uploadedfiles/05.22.2024_-_house_committee_on_small_business_rfa_report.pdf).

<sup>10</sup> Letter from Casey B. Mulligan, Chief Counsel, Off. of Advoc., U.S. Small Bus. Admin., to Chairmen Paul, Comer, Ernst & Williams et al. (Oct. 7, 2025), <https://advocacy.sba.gov/wp-content/uploads/2025/10/FINAL-10-7-2025-Advocacy-Statement-of-Actions-Letter-in-re-GAO-25-106950.pdf>.

<sup>11</sup> Prove It Act of 2025, S. 495, 119th Cong. (2025); Prove It Act of 2025, H.R. 1163, 119th Cong. (2025).

## **V. Conclusion**

Thank you for the opportunity to testify today. Advocacy looks forward to continuing to work with you and other Members of Congress to be the voice for small businesses in the federal regulatory process and work with agencies to reduce small businesses' regulatory burdens. I would be happy to answer any questions you may have.

## **Appendix. About The Office of Advocacy**

Congress recognized the importance of small businesses to our nation's economy. The Office of Advocacy was created by Congress in 1976 to be an independent voice for small business within the executive branch. Title II of Public Law 94-305 and the Regulatory Flexibility Act confer responsibilities and authorities on Advocacy. Both laws are standing, non-expiring legislation and have been amended since passage.

An important theme leading to Public Law 94-305 was the need for an advocate within the federal government to represent the interests of small business. The law provides that the Chief Counsel is to be appointed from civilian life by the President with the advice and consent of the Senate, and Advocacy employees serve at the pleasure of the Chief Counsel. Further, the law authorized the Chief Counsel to prepare and publish reports as deemed appropriate. The reports "shall not be submitted to the Office of Management and Budget (OMB) or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President."<sup>12</sup> For this reason, Advocacy does not circulate its work for clearance with the SBA Administrator, OMB, or any other federal agency prior to publication. Since 2010, Advocacy has also had its own budget authority.<sup>13</sup>

That said, Advocacy is a relatively small office and continues to rely on SBA for a variety of administrative support services, including office space, equipment, IT, communications support, human resources support, and acquisitions, which are outlined in a Memorandum of Understanding between SBA and Advocacy. Advocacy's administrative support staff utilize SBA's administrative and computer systems to keep Advocacy functioning at a high level of productivity.

It is also important to note the other ways in which Advocacy and SBA interact. Advocacy's economic research team's work is widely used by SBA offices. For example, the number of small businesses in the United States is a common statistic used by SBA and other agencies but is calculated by Advocacy's research team.<sup>14</sup> Additionally, Advocacy's press team works

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<sup>12</sup> § 206, Public L. No. 94-305, 15 U.S.C. § 634f.

<sup>13</sup> The Small Business Jobs Act of 2010 established a separate appropriations account for Advocacy, in addition to a requirement that SBA provide operating support for Advocacy. Advocacy's funds are to remain available until expended. Pub. L. No. 111-240, title I, § 1601(b) (Sept. 27, 2010), 124 Stat. 2551, 15 U.S.C. § 634g. These provisions became operational with Advocacy's budget request for Fiscal Year 2012. Since then, Advocacy's annual Congressional Budget Justification and its accompanying Annual Performance Report have appeared in a separate budget appendix following the main SBA budget request.

<sup>14</sup> There are 36.2 million small businesses in the United States. U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY, 2025 SMALL BUSINESS PROFILE: UNITED STATES 1 (2025), [https://advocacy.sba.gov/wp-content/uploads/2025/06/United\\_States\\_](https://advocacy.sba.gov/wp-content/uploads/2025/06/United_States_)

with SBA's Office of Communications and Public Liaison to field media requests regarding small business data. Advocacy also works closely with the SBA Ombudsman and prides itself on the level of cooperation and assistance that its professionals provide to all SBA program and policy staff.

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[2025-State-Profile.pdf](#). Advocacy calculates small business statistics using the most recent data available from government sources.

# **Unlawful Disregard for Small Business Regulatory Burdens: A Comprehensive Review of Biden Administration Rulemaking**

by

**Dr. Casey B. Mulligan**

**Chief Counsel for Advocacy**

**U.S. Small Business Administration Office of Advocacy**





January 5, 2026

**VIA ELECTRONIC SUBMISSION**

The Honorable Donald J. Trump  
President of the United States  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

The Honorable Edward Markey  
Ranking Member  
Committee on Small Business &  
Entrepreneurship  
United States Senate  
428A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Joni Ernst  
Chair  
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428A Russell Senate Office Building  
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The Honorable Roger Williams  
Chairman  
Committee on Small Business  
United States House of Representatives  
2361 Rayburn House Office Building  
Washington, DC 20515

The Honorable Nydia Velázquez  
Ranking Member  
Committee on Small Business  
United States House of Representatives  
2069 Rayburn House Office Building  
Washington, D.C. 20510

Dear President Trump, Chair Ernst, Ranking Member Markey, Chairman Williams, and Ranking Member Velázquez:

Competition and innovation in the U.S. economy were undermined in significant part because the Biden administration imposed unnecessary regulatory burdens on small businesses through actions that violated both the letter and spirit of the Regulatory Flexibility Act (RFA). The RFA requires federal agencies to analyze and minimize the effects of new rules on small entities, with the Chief Counsel for Advocacy serving as the RFA watchdog.

## **Scope of this Report**

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate.<sup>1</sup> This report examines thousands of rules that the Biden administration asserted would have no significant economic impact on a substantial number of small entities, otherwise known as “certifying” the rule under 5 U.S.C. § 605(b). The report identifies patterns in, and assesses the prevalence of, unlawful certifications, not the merits or policy objectives of the underlying regulations. This information significantly overlaps with information requested by President Trump’s Executive Order 14219 regarding “regulations that are based on anything other than the best reading of the underlying statutory authority...” and “regulations that impose undue burdens on small business....”

## **Next Steps**

This report concludes with policy options for preventing unlawful certifications. I look forward to working with President Trump’s cabinet and Congress to fully realize, on behalf of America’s small businesses, the aspirations of the RFA.

Sincerely,

/s

Casey B. Mulligan

Chief Counsel

Office of Advocacy

U.S. Small Business Administration

cc: Heads of the 71 Agencies listed in Appendix B  
The Government Accountability Office

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<sup>1</sup> 15 U.S.C. § 634(f).

# Unlawful Disregard for Small Business Regulatory Burdens: A Comprehensive Review of Biden Administration Rulemaking

## Executive Summary

Federal agencies have routinely certified new regulations as not having “a significant economic impact on a substantial number of small entities” without the “factual basis” that the law requires. Important rules promulgated by the Biden administration either contradicted their own economic findings or supplied no quantitative evidence at all. This practice impedes congressional and executive oversight while undermining competition and innovation in the U.S. economy.

Many certifications were fictional. The agency acknowledged major or economy-wide effects yet asserted that small entities would be unaffected. Examples include Environmental Protection Agency rules mandating rapid transitions to electric vehicles, Department of Health and Human Services rules imposing staffing mandates on nursing homes, and National Labor Relations Board rules expanding joint-employer liability. Each of these rules cites substantial costs or disruption while simultaneously claiming that small entities will experience no significant impact.

Thousands of other certifications are baseless, providing no numerical estimates of either (1) the number of affected small entities or (2) the typical impact per entity. Many consist solely of boilerplate language such as “the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities,” without any accompanying data or explanation.

The report’s **key findings** are:

- **Fictional certifications are unlawful.** Congress amended 5 U.S.C. § 605(b) in 1996 to require agencies to publish a *statement providing the factual basis* for a certification. Certifications that contradict a rule’s own analysis, ignore quantified costs, or provide no supporting facts fail this statutory requirement.
- **Unlawful certifications were widespread.** Agencies routinely published certifications that were unsupported or inconsistent with the agency’s own findings. Falsely certified rules would by themselves have imposed **\$200 billion - \$600 billion** in



regulatory costs on small entities, mitigated only by deregulatory actions taken since January 20, 2025.

- **Unlawful certifications were widespread even among the most important rules.**

Among rules disapproved by Congress under the Congressional Review Act, 75 percent were certified as having no significant small entity impact or were claimed to be exempt from the Regulatory Flexibility Act (RFA). Among all major rules, nearly two-thirds fell into this category despite major rules being economically significant.

- **Five recurring patterns characterize many fictional certifications:**

1. Ignoring direct compliance costs and enforcement or liability risks.
2. Treating product bans, facility closures, or firm exit as economically insignificant.
3. Dismissing millions of hours of paperwork acknowledged elsewhere in the same rule.
4. Applying arbitrary “below-threshold” tests that ignore cumulative burdens (“death by a thousand cuts”) and the smallest of small businesses.
5. Excluding large, foreseeable “indirect” effects that are quantified and relied upon in regulatory impact analyses.

These practices have rendered the RFA’s small-business safeguards largely illusory. When agencies declare major, economically significant rules to have no small-entity impact, they bypass the analyses, consultations, and compliance guides that the law requires. The result is a body of federal regulation built, in many cases, on fiction rather than fact. Falsely-certified rules from the Biden administration impose costs on millions of small entities without disclosure or consideration. They also expose small entities to capricious enforcement actions.

This report thoroughly documents the extent of improper and fictional certifications. Drawing on machine-assisted classification of every Biden-era final rule published in the Federal Register, it identifies both the frequency and character of fictional and baseless certifications. Each identified certification fails to meet the statutory standard of a “factual basis.” Dozens of examples illustrate how the plain language and purpose of the RFA have been disregarded—an Orwellian reversal in which agencies describe major burdens on small businesses as having “no significant economic impact” on them.

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## Introduction

This report begins with a brief explanation of the serious consequences that flow from fictional certifications. Section II then explains why fictional certifications are unlawful under the Regulatory Flexibility Act (RFA).

Sections III and IV conduct the comprehensive review of Biden administration rulemaking. For that purpose, I assembled a dataset of all Biden administration final rules available from FederalRegister.gov. Each rule with a RFA section, or at least a sentence pertaining to the RFA, was examined and classified using artificial-intelligence methods that were explained more fully in my previous report.<sup>2</sup> Among other things, the classification identified rules that were certified under 5 U.S.C. § 605(b). Every certified rule is listed in Appendix B of that report, organized by agency and selected categories of the Code of Federal Regulations.

Section III documents concrete examples of certification abuse across five recurring patterns, aided in its investigation by several additional rule-level variables: identifiers for major rules, identifiers for disapproval by Congress, agency assessments of paperwork as recorded by the American Action Forum, and measures of page views on the Federal Register website. Section IV presents population-wide evidence on the frequency and scale of unlawful certifications using machine-assisted classification of all Biden-era final rules. Section V presents policy options for preventing unlawful certifications. Appendices A and B supply the detailed agency breakdowns and additional examples that underpin the report's quantitative and qualitative assessments.

### I. Fictional Certifications have Serious Consequences

Much more is at stake than technical compliance with procedures. Regulatory flexibility analyses published in the Federal Register are essential for achieving the goals set forth by the RFA and the Small Business Regulatory Enforcement Fairness Act. Accurate analyses would help the White House and Congress stay apprised of the costs of new federal regulations for small entities and thereby assess obstacles to competition and innovation in

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<sup>2</sup> U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., BIDEN ADMINISTRATION RULES CERTIFIED UNDER THE REGULATORY FLEXIBILITY ACT (Aug. 5, 2025), [https://advocacy.sba.gov/wp-content/uploads/2025/08/Biden-Administration-Rules-Certified-Under-the-RFA\\_080525.pdf](https://advocacy.sba.gov/wp-content/uploads/2025/08/Biden-Administration-Rules-Certified-Under-the-RFA_080525.pdf).

the U.S. economy. They also facilitate the regulatory review processes codified at 5 U.S.C. § 610 and §§ 801-808.

Regulatory flexibility analyses are also a mechanism for small entities to be aware that new rules apply to them and that compliance will meaningfully affect their operations. Furthermore, a § 605(b) certified final rule is not required to publish a final regulatory flexibility analysis and therefore is not required to publish a small entity compliance guide that would “explain the actions a small entity is required to take to comply with a rule or group of rules.”<sup>3</sup> Unless the agency publishes a regulatory flexibility analysis and a small entity compliance guide, small entities are left on their own to become aware of their obligations and determine how to comply. Certifications also bypass opportunities for small-entity feedback that improves the rules.

## **II. Why So Many Certifications Were Unlawful**

The RFA requires federal agencies to assess how their regulations affect small entities, including small businesses, small organizations, and small governmental jurisdictions. When a rule is expected to have a significant economic impact on a substantial number of small entities, the RFA requires the agency to prepare and publish regulatory flexibility analyses describing those effects and considering less burdensome alternatives.

Given the variety of rules, Congress did not intend every rule to include analysis of small-entity effects. The RFA includes a section for “avoidance of duplicative or unnecessary analyses” that provides for a certification path in which the head of the agency indicates that he or she does not expect the rule, if promulgated, to have a “significant economic impact on a substantial number of small entities.”

To lawfully certify a rule, however, the agency must publish a “factual basis” for its determination. Certification is therefore not a conclusory or discretionary label; it must be grounded in facts demonstrating that the rule does not significantly affect small entities.<sup>4</sup>

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<sup>3</sup> Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104-121 § 212, 110 Stat. 857, 858 (1996) (codified at 5 U.S.C. § 601 note).

<sup>4</sup> Congress amended 5 U.S.C. § 605(b) in 1996 to require agencies to publish a “factual basis” for certification, replacing the prior requirement of a mere statement of reasons. See Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121. An interpretation under which an agency may satisfy this requirement with mere assertions or statements contradicted elsewhere in the rulemaking record would deprive the

Fictional certifications are unlawful. They were also prevalent. The Biden administration routinely published fictional bases, or no basis at all. Unlawfully certified rules would by themselves have imposed between \$200 billion and \$600 billion in net-present-value regulatory costs on small entities.<sup>5</sup>

When a rule is highly important for economy-wide purposes, it hardly can be economically insignificant for small entities. Highly important rules include major rules—those expected to have an annual economic effect of \$100 million or more, among other statutory criteria.<sup>6</sup> This designation is given to less than four percent of all final rules. Even fewer rules – less than 0.5 percent of those finalized by the Biden administration – are costly and conspicuous enough to garner disapproval from Congress under the Congressional Review Act (CRA). Although neither of these is synonymous with economic significance under the RFA, as a matter of principle they ought to be closely related. After all, small businesses contribute almost half of the economy’s production and employ almost half of its workforce.<sup>7</sup>

This report shows that, for 75 percent of Biden rules disapproved under the CRA, regulators either certified as having no significant economic impact on a substantial number of small entities or claimed an exemption from the RFA.<sup>8</sup> Among all the Biden administration’s major rules, almost two-thirds were in this category. These are red flags that certification abuse was rampant during the Biden administration.

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amendment of independent operative effect. The requirement of a “factual basis” therefore demands that certifications be supported by facts that are coherent with the agency’s own findings and the record as a whole.

<sup>5</sup> Many of these costs will likely be avoided due to subsequent deregulatory actions taken by Congress and the Trump administration.

<sup>6</sup> Under 5 U.S.C. § 804(2), a “major rule” is one that OIRA determines has resulted in or is likely to result in: (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete. The vast majority of major-rule designations are based on criterion (A). Anticipated interest under the Congressional Review Act is also a factor in some designations.

<sup>7</sup> Kathryn Kobe & Richard Schwinn, SMALL BUSINESS GDP 1998-2014, U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., (Dec. 2018), <https://advocacy.sba.gov/wp-content/uploads/2018/12/Small-Business-GDP-1998-2014.pdf>; U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., 2025 SMALL BUSINESS PROFILE: UNITED STATES (2025), [https://advocacy.sba.gov/wp-content/uploads/2025/06/United\\_States\\_2025-State-Profile.pdf](https://advocacy.sba.gov/wp-content/uploads/2025/06/United_States_2025-State-Profile.pdf).

<sup>8</sup> The denominator is 16 rules. It does not include the six Bureau of Land Management rules disapproved in December 2025, which had no RFA commentary because they were originally published in the *Federal Register* as a “notice of availability,” or not published in the *Federal Register* at all.



A prevalent genre of certification fiction consists of rules that explicitly acknowledge imposing heavy paperwork and administrative burdens on regulated entities, including small businesses. Another genre consists of rules that recognize their threat to the very existence of a category of small businesses, such as through product bans. A third genre consists of rules containing detailed estimates of substantial “indirect” costs. In all three, the rule is certified with an RFA section that dismisses or ignores those burdens.

These three are examples of the five patterns used to identify and organize the concrete examples of fictional certifications provided in Section III of this report.<sup>9</sup> Section IV then demonstrates that unlawful certifications are not isolated failures but systematic practice, using machine-assisted classification of every Biden-era final rule to measure the frequency and scale of certification abuse. Appendices A and B provide an agency-by-agency breakdown and supply dozens of additional examples of fictional certifications.

### **III. Prime Examples of Certification Abuse**

Appendices A and B of this report tabulate compliance with 5 U.S.C. § 605(b) for each of the 85 agency and CFR categories with certified rules during the Biden administration. This section, together with Appendix B, select 50 final rules from the Biden administration – many of them major – and provide a detailed explanation of why their certification is Orwellian, absurd, and unlawful. Throughout this report, the set of 50 is referred to as “Prime Examples of Certification Abuse.”<sup>10</sup> The examples reveal clear and recurring patterns in the character of fictional certifications, several of which are highlighted below.

One genre of fictional certification is the outright disregard of direct regulatory costs or the significance of sanctions imposed on small entities that fail to comply. Another is the

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<sup>9</sup> All the report’s examples are regulatory rather than deregulatory. Although § 605(b) requires a factual basis for any certification, the RFA is less explicit about the form and depth of analysis appropriate for rules that reduce compliance burdens rather than impose them. Congress’s focus in §§ 603-604 on minimizing burdens suggests that the statute’s analytical requirements may be oriented toward adverse economic impacts. While Advocacy believes that clear guidance regarding analyses of deregulatory actions can be understood from a holistic view of RFA, it appreciates that this is a more involved legal and economic reasoning process than we have for rules that increase costs.

<sup>10</sup> Additional examples of certification abuse are available in HOUSE COMM. ON SMALL BUS., REGULATORY FLEXIBILITY ACT (RFA) REPORT: AGENCIES’ NONCOMPLIANCE WITH THE RFA (2024), [https://smallbusiness.house.gov/uploadedfiles/05.22.2024 - house\\_committee\\_on\\_small\\_business\\_rfa\\_report.pdf](https://smallbusiness.house.gov/uploadedfiles/05.22.2024_-_house_committee_on_small_business_rfa_report.pdf).

treatment of a rule's threat to the very existence of a category of small businesses, such as through a product ban, as not significant. A third genre is for agencies to acknowledge large paperwork burdens in the Paperwork Reduction Act section of a rule while ignoring those same burdens in the RFA section, even though paperwork costs disproportionately affect small entities. A fourth genre is a logically flawed application of arbitrary thresholds that harms the smallest of small entities and clears a path for "death by a thousand cuts." A fifth genre is the estimation of massive indirect costs in the rule that are ignored in the RFA section.

### **III.A. Direct costs and sanction threats are outright ignored**

The following examples illustrate a recurring pattern in which agencies certify rules as economically insignificant for small entities while ignoring direct compliance costs, enforcement exposure, or liability risks, many of which are acknowledged in the rule itself. To be clear, this report evaluates the adequacy of certifications under 5 U.S.C. § 605(b) and does not assess the underlying policy objectives.<sup>11</sup>

The major rule "Implementation of the Pregnant Workers Fairness Act" (89 FR 29096) was certified by the Equal Employment Opportunity Commission, while failing to estimate acknowledged compliance obligations, cumulative effects, and enforcement risks. Compliance costs necessarily accumulate for businesses with multiple pregnant employees and for firms in female-dominated industries, where accommodations are more frequent. In addition, the rule requires small employers to update policies, conduct training, implement administrative tracking systems, and meet immediate response timeframes for accommodation requests, all of which impose fixed compliance burdens that cannot be spread across large workforces. The rule also exposes small entities to substantial liability risk, including uncapped back pay and equitable relief plus up to \$50,000 of compensatory and punitive damages per plaintiff for employers with 15-100 employees (up to \$200,000 with 201-500 employees). The certification provides no factual basis for concluding that their combined financial and operational effects are economically insignificant for small entities.

In its final rule on "Personal Protective Equipment in Construction" (89 FR 100321), the Occupational Safety and Health Administration certified that the rule would not have a

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<sup>11</sup> Indeed, each agency might have better supported its purposes by publishing a full final regulatory flexibility analysis, which necessarily includes a statement of the need for, and objectives of, the rule.

significant economic impact on a substantial number of small entities, a conclusion belied by facts about direct compliance costs and by the material risk created by the Occupational Safety and Health Administration penalty structure. The rule requires that protective equipment “must fit properly,” while noncompliance carries maximum penalties of roughly \$16,550 per serious violation and \$165,514 per willful or repeated violation—amounts that can be financially devastating for small construction contractors, which dominate the industry, if even a handful of citations are issued. The certification also disregards foreseeable costs arising from ambiguity about what documentation will demonstrate proper fit and how inspectors will apply the standard, increasing counseling, training, recordkeeping, and risk-avoidance expenses.<sup>12</sup>

The Department of Labor (DOL) certified the major rule “Tip Regulations Under the Fair Labor Standards Act; Partial Withdrawal” (86 FR 60114), even though an economically significant impact is evident from the rule’s own admissions regarding direct compliance costs and wage effects. The rule imposes specific, recurring compliance obligations on small businesses, including management costs per firm to track and limit non-tipped duties, along with initial regulatory familiarization and adjustment costs. The rule also acknowledges potential per-entity wage cost increases of up to \$1,557, which, when combined with other compliance costs, can exceed 1.3 percent of revenues for small businesses—an economically significant burden. Although the rule admits substantial aggregate wage transfer costs (up to \$733 million) as well as ongoing paperwork and monitoring burdens, it dismisses their significance by spreading those costs across all affected entities and excluding them from core RFA calculations. This approach ignores how fixed compliance tasks and enforcement risks fall disproportionately on small employers. These were all concerns raised by the Office of Advocacy and small-business commenters.

The DOL and the National Labor Relations Board (NLRB) certified major rules rescinding and redefining joint-employer status—Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule (86 FR 40939) and Standard for Determining Joint Employer Status (88 FR 73946), respectively. Although the rules assign minimal per-entity cost estimates, such as \$9 for regulatory familiarization under the Fair Labor Standards Act rescission and \$150 for small employers under the National Labor Relations Board rule, the rules themselves describe

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<sup>12</sup> This rule also illustrates one of the consequences of fictional certifications. Namely, the certification bypassed the Small Business Advocacy Review Panel process, which would have addressed these ambiguities and likely produced a more precise and less burdensome rule.

changes that materially expand joint-employer exposure.<sup>13</sup> The rules expressly abandoned clearer standards in favor of broader, fact-intensive tests that include reserved or indirect control. They acknowledged that these changes expand the circumstances under which businesses may be deemed joint employers. The rules also acknowledged increased legal uncertainty and the need for affected entities—particularly franchisees, subcontractors, staffing firms, and users of third-party labor—to evaluate their business relationships under the new standards.

These acknowledged changes have direct and foreseeable costs that contravene the certifications. Expanded and uncertain joint-employer liability predictably requires small businesses to review and often revise franchise agreements, subcontracting arrangements, and employment policies, and to incur ongoing legal, human-resources, and risk-management expenses to mitigate exposure to wage-and-hour liability, collective-bargaining obligations, and mutual liability for violations committed by affiliated firms. The rules provide no factual basis for concluding that the compliance, contracting, and litigation risks are economically insignificant for small entities.

Together, these five examples show that certification abuse often takes the form of ignoring direct costs and small entities' exposure to substantial enforcement and liability risks.

### **III.B Product bans and other existential threats**

In some cases, rules are certified even though they predictably force the closure of regulated facilities, eliminate entire product lines, or drive firms from the market altogether. When a small entity must exit a market or abandon a core product to comply with a rule, the economic impact is necessarily significant. Certifying such a rule is a categorical failure to apply the standard Congress set forth in the RFA because it treats business elimination as a negligible burden.

The Center for Medicare and Medicaid Services (CMS) certified its major rule establishing “Minimum Staffing Standards for Long-Term Care Facilities” (89 FR 40876), despite acknowledging effects that would predictably force facility closures. At a time of widespread shortages of qualified nurses and other caregiving staff, the rule requires more than 80 percent of nursing facilities to increase staffing levels beyond what labor markets can readily

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<sup>13</sup> The NLRB rule was subsequently disapproved by Congress with bipartisan support, underscoring the practical and economic significance of the rule's effects and the implausibility of the \$150 per-entity cost estimate.

supply. For many small and independently operated facilities, compliance would require incurring labor costs that cannot be absorbed or passed through to residents or payers, particularly in Medicaid-dependent markets.

The rule would be enforced with substantial penalties for noncompliance, making partial or delayed compliance financially untenable. Faced with infeasible hiring requirements and enforcement risk, many facilities would be forced to reduce services or cease operations altogether—an outcome the rule itself acknowledges as a realistic possibility. This rule became one of the most actively debated Biden-era regulations in Congress, reflecting concern about its economic and access implications for nursing facilities, including small and independently operated providers.

The Department of Energy certified the major rule “Energy Conservation Standards for Consumer Gas-Fired Instantaneous Water Heaters” (89 FR 105188), despite adopting standards that would effectively eliminate an entire class of products from the market.<sup>14</sup> The rule requires compliance with more stringent efficiency levels that necessitate substantial redesign, testing, and certification, imposing high fixed costs. For small entities operating in this market, or dependent on it, the practical effect of the rule is not incremental compliance expense but the loss of the ability to sell or support covered products.

The certification rests in part on the agency’s assertion that there are currently no small domestic manufacturers of gas-fired instantaneous water heaters, a narrowing that excludes from consideration the many small U.S. businesses engaged in importing, distributing, installing, and servicing these products. For those firms, the rule predictably results in product unavailability, higher replacement costs, disrupted supply chains, and increased administrative burdens, all of which flow directly from the elimination of the covered product line.

The Environmental Protection Agency (EPA) certified its final rule revising “Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act” (89 FR 37028), despite adopting an approach that would predictably drive firms or product lines from the market. The rule fundamentally changes how EPA evaluates chemical risk by replacing use-by-use determinations with a single, aggregated finding for each chemical. Under this approach, EPA

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<sup>14</sup> This rule drew significant congressional attention and was the subject of a Congressional Review Act resolution, underscoring the significance of its effects.

may find a chemical to present an “unreasonable risk” based on certain consumer or high-exposure uses, even when other industrial or commercial uses are well controlled and pose minimal risk. The practical effect is to expose all uses of a chemical—and all firms that rely on it—to regulatory restriction or prohibition based on the most sensitive or least controlled application. The existential threats put the small entity costs in the billions of dollars.

Across these three examples, certification depends on treating facility closure, product elimination, or firm exit as analytically irrelevant, rather than as the most salient economic effect on small entities.

### **III.C. Regulatory Flexibility Act and Paperwork Reduction Act contradictions**

A number of rules certify under the RFA while acknowledging substantial administrative and paperwork burdens elsewhere in the same rule. Under the Paperwork Reduction Act (PRA) and related economic analyses, these rules quantify millions of hours of compliance activity. Yet in the RFA section, those same burdens are often dismissed or ignored, without explanation of how fixed compliance tasks can be absorbed by small entities with limited staff and resources. This internal inconsistency is illustrated by five major rules promulgated by the Biden administration.

The Department of Agriculture certified its major rule “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages” (89 FR 28488), despite acknowledging a substantial administrative burden concentrated overwhelmingly on small entities. The rule’s PRA section estimates at least 1,670,776 hours of compliance activity associated with new stocking, recordkeeping, and administrative requirements. Nearly 90 percent of affected WIC vendors are small entities, primarily small grocery stores, pharmacies, and independent retailers. The rule further acknowledges that small vendors may face difficulty complying with the new requirements and directly estimates that approximately 150 small vendors may exit the program as a result. More plausibly, a million-hour administrative burden and small-vendor attrition are economically significant for the very entities bearing those costs.

Similarly, the Department of Education certified its major rule “Eligibility to Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs” (86 FR 26608), even while acknowledging extensive paperwork and administrative obligations falling heavily on small institutions. The PRA analysis estimates approximately 1,306,588 hours of compliance activity, reflecting the need for institutions to establish

administrative processes, document eligibility determinations, track disbursements, and ensure ongoing compliance. Nonetheless, the RFA section dismisses these burdens. More plausibly, fixed administrative obligations of this scale are significant for small institutions with limited compliance infrastructure.

The Federal Trade Commission (FTC) certified its major rule “Combating Auto Retail Scams Trade Regulation Rule” (89 FR 590), despite acknowledging substantial paperwork and recordkeeping burdens that fall predominantly on small businesses. Under the PRA analysis, the rule estimates at least 1,595,085 hours of compliance activity associated with required disclosures, policy revisions, employee training, systems changes, and the retention of records for up to 24 months. The rule acknowledges compliance obligations that, based on the agency’s own estimates, require hundreds of hours per dealer—burdens that are especially difficult for firms lacking in-house compliance, legal, or information-technology staff. Nonetheless, the RFA section dismisses these same administrative burdens as not significant.<sup>15</sup>

CMS certified its major rule advancing interoperability and improving prior authorization processes (89 FR 8758), despite acknowledging an extraordinary paperwork and administrative burden concentrated in fixed compliance tasks. Under the PRA analysis, the rule estimates at least seven million hours of compliance activity associated with new data exchange standards, reporting, documentation, and process redesign requirements imposed on Medicare Advantage organizations, Medicaid managed care plans, providers, and related entities. These obligations require substantial investments in compliance staff, information systems, and ongoing administrative processes that small entities lack the scale and resources to absorb. CMS dismisses their significance by invoking indirect economic effects—such as payment flows, enrollee premiums, or market adjustments—that do not mitigate the compliance workload itself. By treating aggregate transfers as offsets to entity-level administrative costs, the certification fails to explain how small entities can absorb millions of hours of mandatory paperwork without experiencing a significant economic impact.<sup>16</sup>

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<sup>15</sup> To its credit, the Federal Trade Commission did publish a full final regulatory flexibility analysis alongside its certification. However, Advocacy is unaware of any publication of a small entity compliance guide, which would have been required if the rule had not been certified.

<sup>16</sup> Furthermore, CMS RFA analyses ordinarily assess direct compliance costs borne by regulated entities, without considering indirect payment or market equilibrium effects.

The Department of Health and Human Services (HHS) certified its major “HIPAA Privacy Rule to Support Reproductive Health Care Privacy” (89 FR 32976), even though the rule was classified by the Office of Management and Budget as economically significant based on nationwide compliance activities that are fundamentally administrative in nature. The rule requires covered entities and business associates to adopt new policies and procedures, revise notice-of-privacy-practices and authorization forms, implement new intake and attestation protocols, modify electronic health record and release-of-information systems, conduct workforce training, and establish documentation and audit mechanisms to demonstrate compliance. These obligations apply across essentially the entire universe of HIPAA-regulated entities and impose recurring compliance costs whose core components cannot be meaningfully scaled down for small entities with limited administrative staff.

Taken together, these paperwork examples reveal a distinct genre of fictional certifications. As a result, neither Congress nor the White House receives a coherent account of how small entities are affected by administrative and paperwork requirements.

### **III.D. Fallacy of the heap, otherwise known as death by a thousand cuts**

A common agency rationale for certifying rules is that each rule, considered in isolation, imposes small-entity effects that fall below an arbitrary threshold for “economic significance,” such as three percent of revenue. HHS routinely “uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.” (86 FR 36946) When the threshold rationale appears in major rules – such as the 2024 “Real Estate Transfers” rule from Treasury (89 FR 70258), EPA’s “Phasedown of Hydrofluorocarbons” (88 FR 73098), and the aforementioned CMS “Interoperability rule” – the threshold is revealed to be too high.

More important, the arbitrary-threshold approach is a logical fallacy – the fallacy of the heap – and contrary to the purpose of the RFA.<sup>17</sup> Incremental burdens that are individually below an agency’s chosen cutoff can nonetheless accumulate into an overwhelming total, also known as “death by a thousand cuts.” If a small entity were affected by only 50 rules (out of the thousands promulgated by an administration), each imposing costs equal to two percent of revenue, a three-percent threshold would preclude any regulatory flexibility analysis even

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<sup>17</sup> Failure to recognize this possibility is known in applied logic and decision theory as the “fallacy of the heap” (or “continuum fallacy”), in which incremental effects are treated as insignificant even when their accumulation produces a decisive outcome.



though the cumulative effect would equal 100 percent of revenue. The structure of the RFA provides no basis for assuming that rule-by-rule certification excuses agencies from considering cumulative effects on small entities. To the contrary, the RFA expressly permits a single analysis for a series of closely related rules, and Executive Orders 12866 and 13563 direct agencies to consider the cumulative costs of regulations.<sup>18</sup>

The RFA can also be undermined when agencies apply arbitrary significance thresholds at an aggregate or group level rather than at the level of individual firms. By averaging effects across heterogeneous entities, agencies can conclude that a rule has no significant impact on a substantial number of small entities even when it imposes severe burdens on identifiable subsets of small firms. For example, the aggregate costs may together be only two percent of total small-entity revenue even though a substantial subset of small entities bears compliance costs exceeding twenty percent of their own revenue.<sup>19</sup>

### **III.E. Massive “indirect” effects quantified elsewhere in the rule**

The Department of Transportation (DOT) certified its major rule “Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks” (87 FR 25710) by treating quantified cost analysis elsewhere in the rule as irrelevant. In particular, the Regulatory Impact Analysis section acknowledges that the rule would increase the average purchase price of light-duty vehicles by more than \$1,000. That price effect could—and should—have been addressed in the RFA section. With several million small entities owning or purchasing light-duty vehicles, the resulting costs borne by small entities alone amount to several billion dollars. Instead, the certification rests on fiction.

Vehicle price increases resulting from fuel-economy standards are not speculative or unforeseeable “indirect” effects. On the contrary, the agency analyzed them in detail and relied on them in its Regulatory Impact Analysis. By omitting these quantified effects from its small-entity analysis, DOT deprived Congress and the White House of a coherent account of

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<sup>18</sup> Section 605(c) of the RFA expressly permits an agency to prepare a single regulatory flexibility analysis for a series of related rules, confirming that Congress anticipated and authorized consideration of cumulative effects rather than rule-by-rule certification. Executive Orders 12866 and 13563 further direct agencies to “tak[e] into account, among other things, and to the extent practicable, the costs of cumulative regulations.”

<sup>19</sup> This reasoning reflects Simpson’s paradox, where conclusions based on aggregated data obscure materially different outcomes experienced by individual units.

how the rule affects small entities and foreclosed meaningful consideration of less costly regulatory alternatives.

The omission is particularly consequential because the rule attempts to justify its costs by asserting that reduced fuel consumption financially benefits consumers in addition to reducing emissions, based on the assumption that vehicle buyers systematically undervalue fuel savings. DOT recognizes, however, that this assumption is far less credible for business purchasers of vehicles. A full final regulatory flexibility analysis (FRFA) could have explored alternatives—such as differentiated standards or penalty structures for vehicles sold to business buyers—even if the agency ultimately concluded that statutory constraints required rejecting them. Such analysis would have informed Congress of the quantitative significance of those alternatives and enabled legislative consideration, including in Congress’s subsequent revisions to civil monetary penalties.

#### **IV. Metrics of Certification Abuse**

Plenty of examples demonstrate *how* agencies evade the RFA's factual-basis requirement—by ignoring direct costs, dismissing existential threats to business viability, contradicting their own paperwork analyses, applying arbitrary thresholds, and omitting quantified indirect effects. This section shifts from pattern recognition to systematic measurement, quantifying the *scale* of certification abuse across the entire Biden regulatory agenda.

This section’s metrics assess RFA compliance from multiple angles. First, they examine whether major rules—those with economy-wide significance—contradict themselves by simultaneously claiming economic importance and asserting no significant small-entity effects. Second, they weight rules by public attention rather than raw counts, revealing which regulations generated the greatest stakeholder concern. Third, they analyze Congressional disapproval patterns, showing that three-quarters of rules rejected under the CRA had been improperly certified or claimed RFA exemptions. Finally, they aggregate the regulatory costs imposed on small entities by unlawfully certified rules, demonstrating that between \$200 billion and \$600 billion in burdens escaped the analytical scrutiny that Congress mandated.

Government-wide metrics are estimated by counting each rule once, even when a rule is authored by multiple parent agencies. Agency-by-agency tabulations include the multi-author rules once for each author. For example, the 2022 major rule “Requirements Related to Surprise Billing” (87 FR 52618) was jointly promulgated by the Internal Revenue Service (IRS), DOL, and HHS. As such it would appear only once in government-wide tabulations. For

agency tabulations, it would appear in three rows (or tables): one for the IRS, a second for DOL, and a third for HHS.<sup>20</sup> Therefore, the sum across rows of agency tabulations will slightly exceed the corresponding entries in the government-wide tabulations.

Together, these metrics establish that certification abuse was not episodic or agency-specific, but systematic and government-wide. The pattern-based examples in Section III provide the “how.” The quantitative analysis that follows provides the “how much.”

#### **IV.A. Major rules are routinely self-contradictory regarding their economic significance**

Regulators designate rules as “major” based the magnitude of its economic effects as assessed by the Office of Information and Regulatory Affairs. Although economic significance to the economy (Executive Order 12866) and to small businesses (RFA) are not synonymous, as a matter of principle they ought to be closely related. A valuable metric of RFA compliance is therefore the degree of overlap between major rules and the rules that example small entity effects (SEEs).

On my first day as Chief Counsel for Advocacy, I submitted a report to President Trump and the U.S. Congress providing data on widespread abuse of certification under 5 U.S.C. § 605(b) that is well suited for calculating the amount of overlap.<sup>21</sup> Table 1 below summarizes the results of merging that data with the 419 Biden administration final rules shown on the web site of the Government Accountability Office as received from regulators as major rules under the CRA.<sup>22</sup>

At least sixty-five percent of major rules did *not* consider SEEs. 49 points of the 65 percent are rules with certifications under the RFA. Another 15 points claim an RFA exemption. A handful of major rules do not even bother mentioning the RFA. Moreover, even among the 35 percent that published FRFAs rather than certifying, some dismissed small-entity impacts as minimal

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<sup>20</sup> This report tracks IRS rules separately from the rest of Treasury.

<sup>21</sup> U.S. Small Bus. Admin., Off. of Advoc., *supra* note 2.

<sup>22</sup> The 419 major rules were designated as such during the Biden administration. This set excludes a handful of Biden administration rules that were later designated as major by the Trump administration, or were otherwise not shown on GAO’s major-rules website as of the end of the Biden administration.

despite acknowledging the overall economic significance of the rule—extending the pattern of fictional analysis beyond certified rules.<sup>23</sup>

**Table 1. Most Major Rules Do Not Consider Small-Entity Effects**

Rule category	Count	Percent
SEEs considered	145	35%
SEEs not considered	274	65%
RFA is not even mentioned	6	1%
Certified	204	49%
RFA exemption claimed	64	15%
All Major Rules	419	100%

Notes: The sample is all final rules published in the Federal Register during the Biden administration and deemed major for the purposes of the CRA, except "correction" rules. Three rules claiming RFA exemption and indicating no significant economic impact on a substantial number of small entities are counted as exempt but not certified.

Clearly many of these major rules are contradicting themselves. Especially, at least 204 rules acknowledge significance for the economy yet assert no significant impact on a substantial number of small entities.

Table 2 shows the dozen federal agencies certifying the most major private-sector rules during the Biden administration.<sup>24</sup> HHS is the leader in this regard, with 38 major rules certified by its CMS and 22 more certified by other parts of HHS. Seven of these rules are discussed in detail in Section III and Appendix B of this report. Even excluding its state implementation plans, EPA is also a leader, certifying 27 of its 33 rules. Biden's EPA failed to

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<sup>23</sup> An example is the 2024 major rule "Employee or Independent Contractor Classification Under the Fair Labor Standards Act" (89 FR 1638).

<sup>24</sup> Excluded from the table are 12 major rules certified by the Federal Housing Finance Agency because it tends to regulate government-sponsored enterprises (FANNIE and FREDDIE) and Federal Home Loan Banks; 8 major rules certified by the Veterans Affairs (VA) Department because they were primarily rules governing VA benefits administration, clinical operations, and employee conduct; and 5 rules from the Social Security Administration because it tends to govern individuals and states rather than small entities. As previously noted, any major rule jointly promulgated by agencies listed in Table 2 is counted once in each authoring agency's row.

publish a full FRFA until Fiscal Year 2024. Because EPA and the Consumer Financial Protection Bureau (CFPB) are two of the three agencies required to convene Small Business Advocacy Review Panels for rules with initial regulatory flexibility analyses, unlawful EPA and CFPB certifications are particularly problematic because, in effect, they usurp authority to waive panels.<sup>25</sup> They also miss opportunities for small-entity feedback that would have improved the rules.

**Table 2. Agencies with the Most Certified Major Rules**

Agency or CFR category	# Major	Fraction Certified	# Certified	Cert w/ FRFA
HHS/CMS	64	0.59	38	0
Environmental Protection Agency (w/o 40 CFR § 52)	33	0.82	27	1
Health and Human Services Department (w/o CMS)	29	0.76	22	2
Securities and Exchange Commission	26	0.46	12	3
Treasury/IRS	21	0.52	11	1
Labor Department (w/o OSHA)	23	0.39	9	1
Transportation Department (w/o 14 CFR 25, 39, 71, 97)	11	0.73	8	0
Consumer Financial Protection Bureau	9	0.89	8	1
Energy Department (w/o FERC)	17	0.41	7	0
Education Department	9	0.78	7	0
Treasury Department (w/o IRS)	9	0.67	6	0
Agriculture Department (w/o AMS)	7	0.71	5	0

Notes: The sample is all final rules published in the Federal Register during the Biden administration and deemed major for the purposes of the CRA, except "correction" rules and rules from FHFA, VA, or SSA.

<sup>25</sup> 5 U.S.C. § 609. The Panel must gather input from small entity representatives (SERs) and issue a report with findings and recommended regulatory alternatives for the agency's consideration. By law, only the Chief Counsel for Advocacy at the Small Business Administration has the authority to waive Small Business Advocacy Review panels, and only under the conditions specified in the statute.

When a rule has a significant economic impact on a substantial number of small entities, certifying it may have fewer adverse consequences if the rule also includes a FRFA. The final column of Table 2 shows that certified rules occasionally include or cite a FRFA or parts of a FRFA, but this is rare. For example, zero of the 38 certified CMS rules and only one of the 27 rules certified by EPA (excluding 40 CFR § 52) included or cited a FRFA.

#### **IV.B. Weighted by Page Views, 83 Percent of Rules Did Not Consider Small-Entity Effects**

Table 3 includes all 12,025 final rules promulgated by the Biden administration, regardless of whether they were designated as major rules. Like Table 1, any rule with multiple authors is nonetheless counted only once in Table 3. The table's first column shows that only 577, less than five percent of final rules, considered small-entity effects. In most cases, a regulatory flexibility analysis was omitted because the rule was certified. An additional 5,231 rules omitted the analysis by claiming an exemption from the RFA or failing to mention the RFA at all. The remaining columns of Table 3 assess these same rules when weighted by public attention, as discussed further on the following page.

**Table 3. Weighted by Page Views, 83 Percent of Rules**

Do Not Consider Small-Entity Effects

Rule category	Page views to rules in Category		
	Count	Millions	% of all rules
SEEs considered	577	3.1	17%
<b>SEEs not considered</b>	<b>11,448</b>	<b>14.9</b>	<b>83%</b>
RFA is not even mentioned	3,165	2.5	14%
Certified	6,217	7.8	43%
RFA exemption claimed	2,066	4.6	26%
All Rules	12,025	18.0	100%

Notes: the sample is all final rules published in the Federal Register during the Biden administration and deemed major for the purposes of the CRA, except "correction" rules. 48 rules claiming RFA exemption and indicating no significant economic impact on a substantial number of small entities are counted as exempt but not certified.

Standing alone, the raw five percent is not necessarily an indicator of certification abuse because the RFA does not require all rules to have regulatory flexibility analyses. Out of 12,025 final rules, undoubtedly many would genuinely have no meaningful effect on small businesses, small government jurisdictions, or small organizations. For those cases, the RFA provides the certification pathway to avoid “unnecessary analyses.”

Widespread certification of important rules provides stronger evidence of certification abuse. Table 1 already shows such a pattern when important rules are identified with major-rule status. Page views at [federalregister.gov](https://www.federalregister.gov) are another proxy for importance because they tend to be high when a rule captures public attention.<sup>26</sup> The second column of Table 3 therefore calculates the total number of page views for the various types of rules. Biden final rules were viewed 18 million times at the time I measured, 14.9 million (83 percent) of which were views of rules that did not consider small-entity effects.

#### **IV.C. Most Rules Disapproved by Congress Had Been Certified**

As of the time of this report’s publication, the 119<sup>th</sup> Congress had disapproved of 22 of the Biden administration’s final rules. Six of those were not published in the *Federal Register* as rules and did not include any RFA commentary. Of the remaining 16, only four (25 percent) of those had published FRFAs. The remaining 12 rules were either certified (9) or claimed exemption from the RFA (3). Table 4 lists the 16 disapproved rules containing RFA commentary.

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<sup>26</sup> Major rules receive ten times the page views than non-major rules (excluding the routine and voluminous DOT rules, which have even fewer page views). The number of public comments filed at [regulations.gov](https://www.regulations.gov) is another metric of public interest in a rule, but is only available for proposed rules. Many important final rules were not preceded by a proposed rule.

**Table 4. Biden Rules Disapproved by Congress**

**Certified**

CFPB's "Overdraft Lending: Very Large Financial Institutions" (89 FR 106768).

CFPB's "Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications" (89 FR 99582).

EPA's "Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions" (89 FR 91094).

EPA's "National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing" (89 FR 94886).

EPA's "Reclassification of Major Sources as Area Sources Under Clean Air Act §112" (89 FR 73293).

DOE's "Energy Conservation Program: Energy Conservation Standards for Consumer Gas-Fired Instantaneous Water Heaters" (89 FR 105188).

DOE's "Energy Conservation Program: Certification, Labeling, and Enforcement Provisions for Certain Consumer Products and Commercial Equipment" (89 FR 81994).

NPS's "Glen Canyon National Recreation Area; Motor Vehicles" (90 FR 2621).

OCC's "Business Combinations under the Bank Merger Act (2024)" (89 FR 78207).

**Published FRFA**

BOEM's "Protection of Marine Archaeological Resources" (89 FR 71160).

IRS's "Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales" (89 FR 106928).

DOE's "Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers" (89 FR 104616).

DOE's "Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers" (90 FR 7464).

<b>RFA exemption claimed:</b>	three EPA California State Motor Vehicle and Engine Pollution Control Standards
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Note: The table excludes 6 Bureau of Land Management rules with no RFA commentary.



#### **IV.D. Regulatory costs of between \$200 billion and \$600 billion were to be imposed by the Biden administration on small entities without acknowledgement by regulators of the magnitude of those costs**

Advocacy estimates about \$50 billion in small entity costs would have come from the combination of just four certified rules: the CFPB’s January 14, 2025 rule “Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information,”<sup>27</sup> the aforementioned 2024 CMS nursing-home staffing rule, the EPA’s 2023 Waters of the United States rule,<sup>28</sup> and the aforementioned 2024 EPA rule “Procedures for Chemical Risk Evaluation under the Toxic Substances Control Act.”

None of the four rules reasonably quantified the small-entity costs, despite the average cost among the four exceeding \$10 billion. Executive Order 12866 treats rules with roughly \$100 million in annual effects—about \$1 billion in net present value—as economically significant. Although economic significance under the RFA is not synonymous with this threshold, treating the RFA’s “significant economic impact” standard as more than ten times higher would be arbitrary, absurd, and contrary to the statutory rights of small entities.

President Biden’s Environmental Protection Agency (EPA) certified three major “EV mandate” rules.<sup>29</sup> The rules would essentially require vehicle manufacturers to produce one electric vehicle for every internal-combustion engine (ICE) vehicle that they sold in the U.S., even in the heavy-duty truck category. The rules acknowledged that vehicle prices would ultimately increase by an average of more than \$2,000, and even more for the ICE vehicles that vehicle-buyers strongly prefer. With 14 million Schedule C businesses owning at least one vehicle, and most of those owning two or more,<sup>30</sup> the three rules would impose at least \$60 billion in costs on small businesses.

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<sup>27</sup> 90 Fed. Reg. 3276 (Jan. 14, 2025).

<sup>28</sup> Revised Definition of “Waters of the United States”; Conforming, 88 Fed. Reg. 61964 (Sept. 8, 2023).

<sup>29</sup> Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74434 (Dec. 30, 2021); Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 F. Reg. 27842 (Apr. 18, 2024); Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3, 89 Fed. Reg. 29440 (Apr. 22, 2024).

<sup>30</sup> U.S. Env’t. Prot. Agency, Draft Regulatory Impact Analysis for “Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards,” 24 (July 2025), <https://www.epa.gov/system/files/documents/2025-07/420d25003.pdf>.

The \$60 billion, however, only reflects additional manufacturing costs that are passed onto vehicle purchases. President Trump's EPA has acknowledged that restricting access to preferred vehicles also imposes opportunity costs: reduced productivity and lost sales when a needed ICE vehicle is unavailable or unaffordable. From this perspective, small businesses would bear a \$400 billion burden from the three rules.

The aforementioned rules rescinding and redefining joint-employer status were also certified, yet would be exceptionally costly if they went into effect. Using different approaches, the Council of Economic Advisers and the American Action Forum estimate *annual* costs of the rule on the order of \$10 billion.<sup>31</sup> Advocacy estimates that the small-entity share of their cost estimates would exceed \$100 billion in net present value. Taken together, these nine fictional certifications alone account for between \$200 billion and \$600 billion in present-value costs to small entities—none of which agencies analyzed as the RFA requires.

#### **IV.E. The prevalence of baseless certifications**

A basis for a certification—i.e., a confident conclusion of no significant economic impact on a substantial number of small entities—consists of a pair of quantitative estimates or ranges. One estimates the number of small entities expected to be affected by the rule. The other estimates the typical cost impact an affected small entity is expected to experience.<sup>32</sup> When both are grounded in truth, the certification has a factual basis; when either fails to be truthful, the certification is fictional. A certification is baseless when it omits at least one of these estimates, leaving no basis to evaluate as factual or fictional.

Artificial-intelligence methods were used to examine each one of the 6,265 final rules from the Biden administration that were certified with no RFA exemption asserted. Table 5 shows the results for all certified rules, and for the smaller sample limited to major rules. As with Tables 1, 3, and 4, any rule with multiple authors is nonetheless counted only once in Table 5.<sup>33</sup> The first two rows of Table 5 are the certified final rules, distinguished according to the publication of a basis. The final row tabulates uncertified final rules, which publish a final

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<sup>31</sup> WHITE HOUSE COUNCIL OF ECON. ADVISERS, ECONOMIC REPORT OF THE PRESIDENT (MAR. 2019), <https://www.govinfo.gov/content/pkg/ERP-2019/pdf/ERP-2019.pdf>.

<sup>32</sup> The typical impact would be null if zero small entities are expected to be affected.

<sup>33</sup> Table 5 third column shows 204 certified major rules from the Biden administration, which corresponds to the certified entry in Table 1. Due to Table 5's CFR-reference restriction, it shows one less major rule with a FRFA than Table 1 does.

regulatory flexibility analysis. The first two columns limit the sample to rules published during fiscal year 2024, whereas the last two include Biden administration rules regardless of publication date. Appendix B has the same breakdown agency-by-agency alongside the prime examples of certification abuse.

**Table 5. Number of Certifications, Bases, and FRFAs**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	63	310	144	1,169
Certified without a Basis	16	626	60	2,687
Published a FRFA	66	124	144	428
Total	145	1,060	348	4,284

Notes: 14 CFR §§ 25, 39, 71, and 97 (DOT airspace rules, airworthiness directives, and air instrument rules) are excluded due to their high volume and routine nature. They are included in Appendix tables that report results separately by agency and CFR-code categories. Certifications with FRFAs are not counted in the FRFA row.

Seventy-one percent (144) of the 204 certified major rules at least had a basis: quantitative estimates of the number of affected small entities and the typical impact. The remaining failed to provide a basis, either factual or fictional. Excluding the high-volume and routine rules from the DOT, as Table 5 does, more than two-thirds (2,687 of 3,856) of nonmajor rules lacked a basis.

## V. Policy Options to Reduce Certification Abuse

I look forward to working with President Trump’s cabinet and Congress to fully realize, on behalf of America’s small businesses, the aspirations of the RFA. To this end, either President Trump or Congress might:

- **Reconsider the role of the Government Accountability Office (GAO) in the process of Congressional review of agency rules.** GAO published hundreds of “RFA compliance” reports with conclusions opposite to this report and opposite to the May

2024 report of the House Committee on Small Business.<sup>34</sup> GAO's methodology is misleading due to several fundamental flaws identified in my October 2025 letter to GAO and Congressional Committees.<sup>35</sup> GAO's methods fail to stop certification abuse and likely promote it.

- **Prohibit certification of major rules**, except in specific situations requiring the approval of the Chief Counsel for Advocacy at the Small Business Administration.
- **Limit allowable sanctions against small entities** for violations of rules that were certified as not significantly affecting them.
- **Start the timeframe for regulatory review under the Congressional Review Act** only when the rulemaking agency has published either a certification with a factual basis, or a Final Regulatory Flexibility Analysis.
- Consider the PROVE IT Act of 2025.<sup>36</sup>
- Allow the Chief Counsel for Advocacy at the Small Business Administration to **add agencies to the list of covered agencies** as defined in 5 U.S.C. § 609. Covered agencies are subject to additional requirements to engage small businesses in their rulemaking.

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<sup>34</sup> House Comm. on Small Bus., *supra* note 10.

<sup>35</sup> Letter from Casey B. Mulligan, Chief Counsel, Off. of Advoc., U.S. Small Bus. Admin., to Chairmen Paul, Comer, Ernst & Williams et al. (Oct. 7, 2025), <https://advocacy.sba.gov/wp-content/uploads/2025/10/FINAL-10-7-2025-Advocacy-Statement-of-Actions-Letter-in-re-GAO-25-106950.pdf>.

<sup>36</sup> Prove It Act of 2025, S. 495, 119th Cong. (2025); Prove It Act of 2025, H.R. 1163, 119th Cong. (2025).

## Appendix A: Certifications without a Basis: Interagency Comparisons

A basis for a certification—i.e., a confident conclusion of no significant economic impact on a substantial number of small entities—consists of a pair of quantitative estimates or ranges. One estimates the number of small entities expected to be affected by the rule. The other estimates the typical cost impact an affected small entity is expected to experience.<sup>37</sup> Advocacy notes that rules with a factual basis are a subset of rules with a basis.

Table A.1 shows the six agencies and CFR categories with the most major rules lacking a basis.

**Table A.1. Top 6 agencies with major-rule certifications lacking a basis (factual or fictional)**

Agency or CFR category	# Certified	Lacking a basis	
		Fraction	Number
HHS/CMS	38	0.37	14
Treasury/IRS	11	0.64	7
Health and Human Services Department (w/o CMS)	22	0.27	6
Transportation Department (w/o 14 CFR §§ 25, 39, 71, 97)	8	0.62	5
Veterans Affairs Department	8	0.38	3
Agriculture Department (w/o AMS)	5	0.6	3

Note: A certification has a basis if it has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity. A factual basis is a basis grounded in truth.

Table A.2 shows the twelve agencies and CFR categories with the most non-major rules lacking a basis. Table A.2 reveals the high volume of DOT airspace and air instrument rules.<sup>38</sup> Both tables reformat the same statistics reported agency by agency in Appendix B of this

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<sup>37</sup> The typical impact would be null if zero small entities are expected to be affected.

<sup>38</sup> Airworthiness directives (14 CFR § 25 or 14 CFR § 39) also have high volume and are certified. They typically lack a dedicated RFA section but contain quantitative information about small entities near their certification statements.

report. A rule appears in multiple rows of Table A.1 or Table A.2 if the rule is authored by multiple agencies.

**Table A.2. Top 12 agencies with non-major-rule certifications lacking a basis (factual or fictional)**

Agency or CFR category	# Certified	Lacking a basis	
		Fraction	Number
DOT/FAA Airspace rules (14 CFR § 71)	767	1	767
DHS/USCG Safety Zones (33 CFR § 165)	725	1.00	722
EPA Implementation Plans (40 CFR § 52)	729	0.89	646
DOT/FAA Standard Instrument Procedures (14 CFR § 97)	208	1	208
Commerce/NOAA	197	0.84	165
Transportation Department (w/o 14 CFR §§ 25, 39, 71, 97)	177	0.66	116
DHS/USCG water safety rules (33 CFR § 100)	106	1	106
Environmental Protection Agency (w/o 40 CFR § 52)	281	0.37	105
Interior Department (w/o FWS)	113	0.73	83
DHS/USCG Drawbridge rules (33 CFR § 117)	69	1	69
Agriculture Department (w/o AMS)	71	0.69	49
Health and Human Services Department (w/o CMS)	90	0.51	46

Note: A certification has a basis if it has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity. A factual basis is a basis grounded in truth. For CFR categories 14 CFR §§ 71 and 97, many rules have a basis outside the RFA section but are shown in this table as lacking a basis.

## Appendix B: Agency-by-Agency Certification Report Cards

Rules are categorized by agency, except for subagencies or CFR categories that are particularly numerous. In those cases, the prolific subagencies, or rule categories, are listed first. The rules promulgated by the “rest of” the parent agency are tabulated on the following pages. For example, Centers for Medicaid and Medicare Services rules are tabulated on pages before the Health and Human Services table. Another example: Approval and Promulgation of Implementation Plans (rules editing 40 CFR § 52) are tabulated on the pages before the rest of the Environmental Protection Agency table. The full list of subagencies and categories is:

- USDA/Agriculture Marketing Service (AMS),
- Commerce/National Oceanic and Atmospheric Administration’s (NOAA),
- EPA/Approval and Promulgation of Implementation Plans (40 CFR § 52)
- HHS/CMS,
- DHS/USCG Water Safety rules (33 CFR § 100),
- DHS/USCG Drawbridge rules (33 CFR § 117),
- DHS/USCG Safety Zones rules (33 CFR § 165),
- Interior/Fish and Wildlife Service (FWS) rules,
- DOT/FAA Airworthiness rules (14 CFR § 25 or 14 CFR § 39),
- DOT/FAA Airspace rules (14 CFR § 71),
- DOT/FAA Standard Instrument Procedures (14 CFR § 97)
- Treasury/IRS

Any rule promulgated by multiple agencies is counted in each authoring agency’s rule-count table. Therefore, while the rule-count tables have the same format as the government-wide Table 5, summing the 85 rule-count tables that follow (82 when excluding the three DOT/FAA CFR categories) will yield totals greater than Table 5.

The fifty rules selected as prime examples of certification abuse are discussed below the authoring agency’s rule-count table. Three of those fifty are authored by multiple agencies but have their discussion displayed only on the IRS page (87 FR 52618 and 89 FR 77586) or only on the Treasury page (86 FR 53412). In the PDF version of this appendix, each Federal Register citation of a prime example **links to the rule text** as hosted by FederalRegister.gov. In almost all cases, the hyperlink jumps to the exact paragraph where the author asserts that the rule will not have an economically significant impact on a substantial number of small entities.

### Agency for International Development rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	0	2
Certified w/o a Basis	0	3	0	7
FRFA	0	0	0	0
Total	0	5	0	9

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Agriculture/AMS rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	12	0	32
Certified w/o a Basis	0	0	0	7
FRFA	1	25	1	76
Total	1	37	1	115

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
88 FR 83210: Transparency in Poultry Grower Contracting and Tournaments	<p>This major rule imposes substantial paperwork, reporting, and compliance burdens on small live poultry dealers and small broiler growers, with first-year costs estimated at \$29,000 per small dealer and \$117 per grower. While the rule includes a partial exemption for small live poultry dealers, they are still required to issue disclosures in certain contracting situations. No exemption applies to small broiler growers, who must review, acknowledge, and adhere to extensive new contract and disclosure conditions. The agency itself acknowledges that alternative approaches—such as exempting more small dealers—would reduce costs. Preparing and reviewing the required disclosures demands legal, administrative, and IT resources that contribute to the rule’s disproportionate impact on small businesses.</p>

Citation: Rule Title (click to see rule)	Description
<a href="#">88 FR 83305: National Bioengineered Food Disclosure Standard; List of Bioengineered Foods</a>	<p>The rule places added compliance responsibilities on small companies that produce or process sugarcane. Manufacturers and processors must keep documentation or secure certifications to justify non-disclosure and perform testing to verify whether any genetically modified content is present. Although some flexibility is provided to smaller manufacturers, the rule still introduces significant administrative and financial challenges, particularly around updating packaging, maintaining records, and informing consumers. The rule itself notes that, should bioengineered sugarcane become more widely available, these mandates could result in additional costs for small operators, including specific administrative and certification fees, which are especially difficult for small businesses to absorb due to their limited capacity. Labeling these expenses as "not significant" overlooks the reality that such demands may be considerable for small businesses engaged in the manufacture or processing of sugarcane.</p>

### Agriculture Department (w/o AMS) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	6	2	22
Certified w/o a Basis	1	12	3	49
FRFA	2	3	2	8
Total	4	21	7	79

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 28488: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages	This major rule imposed a compliance burden of at least 1,670,776 hours. Almost 90 percent of the vendors that must comply are small entities, primarily small grocery stores, pharmacies, and independent retailers. The rule acknowledges that small vendors may face difficulty meeting the new stocking requirements, and directly estimates that approximately 150 small vendors may exit the program as a result. Certification of 'no SISNOSE' is inconsistent with the substantial quantified administrative burden and vendor attrition acknowledged by the rule itself.
86 FR 11603: Rural eConnectivity Program	The Rural eConnectivity Program rule requires detailed eligibility information, a complex application process, and creditworthiness assessments. These obligations translate directly into administrative costs, paperwork, and potential legal or consulting expenses for small entities, especially where application competition is "intense". These burdens fall disproportionately on small businesses, which typically lack dedicated compliance staff. The rule's certification that federal financing benefits outweigh these burdens does not negate the concrete up-front costs and operational strains imposed on a substantial number of small entities.

### Architectural and Transportation Barriers Compliance Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	1
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	1
Total	0	1	0	3

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Central Intelligence Agency rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	2
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	0	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Chemical Safety and Hazard Investigation Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	0	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Commerce/NOAA rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	6	0	32
Certified w/o a Basis	0	46	0	165
FRFA	0	19	1	63
Total	0	71	1	260

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Commerce Department (w/o NOAA) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	1	10
Certified w/o a Basis	0	5	1	27
FRFA	0	0	4	3
Total	0	7	6	40

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Committee for Purchase From People Who Are Blind or Severely Disabled rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	1
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	1	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

#### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Commodity Futures Trading Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	6	0	14
Certified w/o a Basis	0	1	0	3
FRFA	0	0	0	0
Total	0	7	0	17

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Consumer Financial Protection Bureau rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	2	3	6	8
Certified w/o a Basis	0	1	2	4
FRFA	0	0	1	1
Total	2	4	9	13

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
86 FR 34848: Protections for Borrowers Affected by the COVID–19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X	This rule inhibited and, for a period, outright prohibited mortgage foreclosure, which is a primary tool for mortgage servicers to collect what they are owed. A rule cannot be certified as having no SISNOSE if the rulemaker lacks even a general understanding of how many small entities are affected, as is the case for this rule.
90 FR 3276: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)	Finalized in early January 2025, the rule prohibits creditors from considering medical information in credit eligibility determinations and prohibits consumer reporting agencies from furnishing to a creditor a consumer report containing information on medical debt. The rule would unnecessarily impose data handling requirements and expose businesses to greater liability risks on an issue that is already being addressed by the private sector. The annual costs to small entities would be in the billions of dollars, especially in terms of financial losses on medical debt. Although CFPB asserted no SISNOSE, it did convene a Small Business Review Panel and published both an IRFA and a FRFA, "in an abundance of caution."

### Consumer Product Safety Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	1
Certified w/o a Basis	0	2	0	9
FRFA	0	0	3	6
Total	0	3	3	16

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Corporation for National and Community Service rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	2
Certified w/o a Basis	0	2	0	9
FRFA	0	0	0	0
Total	0	3	0	11

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

**Council of the Inspectors General on Integrity and Efficiency rules**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	0	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

**Prime Examples of Certification Abuse**

**\*\* NONE \*\***

### Council on Environmental Quality rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	0	1	4
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	1	0	1	4

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)

Description

89 FR 35442: National  
Environmental Policy Act Implementing  
Regulations Revisions Phase 2

The rule creates additional NEPA review requirements, thereby increasing the time and expense for completing NEPA reviews. Although the rule claims to 'apply only to Federal agencies,' NEPA reviews are often prepared or funded by project sponsors such as small businesses that directly bear the impact of the rule's substantially increased compliance costs, paperwork, and delays. The rule will force project applicants, including small businesses, to spend more time and resources preparing environmental documentation and complying with agency review processes. CEQ refused to prepare a regulatory flexibility plan, despite evidence that expanded review and documentation requirements will significantly increase economic impacts on small businesses, contradicting its certification of no SISNOSE.

### Court Services and Offender Supervision Agency for the District of Columbia rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	1
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	0	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

#### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Defense Department rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	8	0	56
Certified w/o a Basis	0	7	0	36
FRFA	1	18	2	63
Total	1	33	2	155

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Defense Nuclear Facilities Safety Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	1
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	1	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Education Department rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	14	6	28
Certified w/o a Basis	0	5	1	17
FRFA	2	1	2	2
Total	2	20	9	47

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
86 FR 26608: Eligibility To Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs	This major rule imposes substantial paperwork and administrative burdens on small entities, requiring them to establish processes for administering and disbursing emergency grants and perform extensive compliance work. The rule itself acknowledges that an estimated 1,306,588 hours of compliance are required. Such paperwork and administrative demands fall disproportionately on small institutions with limited staff and resources. Despite noting these burdens, the rule dismisses their significance without considering that fixed paperwork and compliance costs represent a much higher per-entity and per-student burden for small entities, demonstrating a significant economic impact on a substantial number of small entities.
87 FR 65904: Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program	This major rule imposes substantial compliance burdens on small entities through expanded reporting requirements, mandatory system updates (taking approximately 50 hours per entity), and significant paperwork obligations that fall disproportionately on small lenders and institutions, as directly acknowledged in the rule. The text also references a total compliance burden of at least 111,263 hours, yet dismisses these burdens as "not significant" despite acknowledging that nearly 40% of small institutions will be directly affected by new requirements to change contracts and processes.

Citation: Rule Title (click to see rule)	Description
87 FR 65426: Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control	<p>This major rule imposes substantial paperwork, reporting, and compliance costs on small institutions, as evidenced by estimated costs per institution reaching up to \$4,593 and compliance burdens that collectively require at least 70,272 hours. These burdens include new disclosure requirements, complex revenue calculations for 90/10 compliance, and expanded reporting and notification obligations due to changes in ownership—mandates that fall disproportionately on small entities less able to absorb such fixed compliance costs. The rule itself acknowledges these significant paperwork and compliance duties, yet dismisses their impact as "minimal", despite directly admitting the high aggregate compliance hours and broad scope of entities affected.</p>

### Energy/FERC rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	3	2	21
Certified w/o a Basis	0	5	0	16
FRFA	0	0	0	0
Total	1	8	2	37

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 49280: Building for the Future Through Electric Regional Transmission Planning and Cost Allocation	The rule imposes ongoing annual compliance costs of \$446,390 per year for each transmission provider with an Open Access Transmission Tariff (OATT), a burden that is not scaled for entity size and includes extensive paperwork and reporting requirements, as evidenced by the rule's own estimation of at least 186,340 compliance hours. These significant and recurring costs, which are not mitigated by the theoretical ability of providers to recover expenses, fall disproportionately on small entities, particularly because small entities have fewer staff and resources to manage the substantial administrative, recordkeeping, and procedural obligations. Despite acknowledging at least 18 affected small entities (14% of the regulated population), the rule's assertion that this impact is not significant or substantial is inconsistent with both the concrete cost data provided and with RFA guidance on paperwork burdens.

Citation: Rule Title (click to see rule)	Description
<a href="#">87 FR 2244: Managing Transmission Line Ratings</a>	<p>The rule imposes concrete, quantifiable one-time costs ranging from \$16,734 to \$178,719 on small transmission owners, generator owners, and transmission service providers, with approximately 68% of affected entities classified as small. The rule acknowledges a substantial compliance burden of at least 184,853 hours, and these paperwork and procedural obligations (reporting, database maintenance, hourly updates) inherently fall disproportionately on small entities, which have fewer administrative resources to absorb such burdens.</p>

### Energy Department (w/o FERC) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	2	9	5	61
Certified w/o a Basis	0	1	2	22
FRFA	6	0	10	8
Total	8	10	17	91

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
87 FR 27439: Energy Conservation Program: Energy Conservation Standards for General Service Lamps	The rule codifies a strict 45 lumens per watt requirement for general service lamps, which imposes mandatory compliance obligations on manufacturers, including small businesses. This technical standard will require small lamp manufacturers to redesign products, switch suppliers, or invest in new production processes, actions that typically incur substantial dollar costs and compliance burdens that disproportionately affect small entities with limited capital. The rule itself acknowledges nationwide manufacturer impacts, yet dismisses the burden on small businesses solely on the basis that costs are statutorily mandated, ignoring the fact that these costs still result in significant economic impact for a substantial number of small entities.
87 FR 27461: Energy Conservation Program: Definitions for General Service Lamps	The rule requires small manufacturers of general service lamps (GSLs) to determine whether their products meet the newly adopted definitions and to use DOE's test procedures to certify compliance, imposing direct compliance, testing, and reporting burdens on at least 8 small entities identified by DOE. The need to certify products and comply with relevant standards and procedures entails additional paperwork, testing costs, and ongoing monitoring. By DOE's own admission, these costs affect a substantial number of small lamp manufacturers and cannot be reasonably dismissed as insignificant burdens.

Citation: Rule Title (click to see rule)	Description
89 FR 105188: Energy Conservation Program: Energy Conservation Standards for Consumer Gas-fired Instantaneous Water Heaters	<p>The major rule got the attention, and disapproval, of the 119th Congress. It would have required all manufacturers of gas-fired instantaneous water heaters, including any small entities, to comply with amended, more stringent energy conservation standards, which can impose significant redesign, testing, and certification costs. Small businesses are particularly sensitive to such increased compliance burdens due to their limited economies of scale. The rule itself acknowledges that its analysis is based on the current absence of small domestic Original Equipment Manufacturers (OEMs) in this product category, but this overlooks U.S. small businesses engaged in importing, distributing, or servicing these products, who face indirect compliance burdens such as product availability constraints, increased costs, and administrative overhead. By focusing solely on direct manufacturer effects and excluding these indirect yet substantial burdens, the rule inappropriately dismisses significant economic impact on a substantial number of small entities.</p>



### EPA Implementation Plans (40 CFR 52) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	9	2	83
Certified w/o a Basis	0	118	0	646
FRFA	0	0	0	0
Total	0	127	2	729

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Environmental Protection Agency (w/o 40 CFR 52) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	15	44	25	176
Certified w/o a Basis	0	22	2	105
FRFA	5	2	6	4
Total	20	68	33	285

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
88 FR 73098: Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020	The rule's most significant effects on small entities arise from the forced transition away from HFC refrigerants to flammable ones. This shift requires equipment redesign, new safety–engineering features, and compliance with updated flammability standards. Small manufacturers must retool, recertify, and incorporate fire–mitigation components. Small HVAC contractors and installers must purchase A2L–compatible tools, obtain specialized training, meet upgraded state and local safety codes, and bear higher insurance and liability exposure. EPA acknowledges some of these costs, but does not quantify any of them. Through its fictional certification, EPA failed to convene a SBREFA panel that would have revealed economic costs and safety risks.

Citation: Rule Title (click to see rule)	Description
89 FR 91094: Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions	This major rule got the attention, and disapproval, of the 119th Congress. It would have established a new system for calculating and imposing methane waste–emissions charges on petroleum and natural gas facilities. Operators must develop data systems to quantify, verify, and report emissions with a precision and frequency far exceeding prior reporting regimes. Although seemingly applicable only to high-emission operators, the exemption is narrow and administratively complex, particularly for small operators with dispersed low-output assets. EPA acknowledges that “small producers and processing facilities will need to make substantial adjustments to measurement, monitoring, and recordkeeping systems,” yet nonetheless certified the rule without convening a Small Business Advocacy Review panel that would have more accurately assessed small–entity compliance costs.
89 FR 39124: Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances	Liability exposure is increased for small businesses that have PFOA or PFOS on their property because the rule would classify them as hazardous substances. Additionally, as EPA is still defining new types of PFAS, new “hazardous substances” could be designated after the rule’s promulgation. The rule also imposes a paperwork and reporting obligation that requires at least 6,889 compliance hours, with a per–report cost of \$2,658, an obligation that falls disproportionately on small entities. Despite acknowledging that small businesses will be among those subject to multiple reporting requirements, the rule dismisses the aggregate impact by focusing only on a single report's cost as a percentage of revenue, without accounting for cumulative or repeated requirements over time. Coupled with the aforementioned liability costs, the significant aggregate compliance hours and per–incident cost constitute a substantial economic burden on a large number of small businesses in affected industries.
89 FR 37028: Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)	The 2024 rule changed how EPA judges chemicals. Instead of deciding risk one use at a time, it gave one overall decision for the chemical. This expansive reading of the Toxic Substances Control Act would make unreasonable–risk findings more likely even when well–controlled industrial uses posed minimal risk, effectively letting consumer exposures drive findings that implicate the entire chemical. Chemical manufacturers risk being put out of business. The small entity costs would be in the billions of dollars.

### Equal Employment Opportunity Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	2
Certified w/o a Basis	1	0	1	1
FRFA	0	0	0	0
Total	1	1	1	3

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 29096: Implementation of the Pregnant Workers Fairness Act	EEOC underestimated the compliance costs of this rulemaking, and should have considered further costs in a Supplemental Initial Regulatory Flexibility Analysis. The rule imposes direct annual costs for providing pregnancy-related accommodations, calculated at \$60 per accommodation per year, plus a one-time compliance cost of up to \$170.27 per small entity not previously covered, and these costs accumulate for entities with multiple pregnant employees or those in female-dominated sectors. These burdens include mandated updating of policies, training, administrative tracking, and immediate response timeframes, as well as the legal risk of fines up to \$50,000 per violation for businesses with 15–100 employees, which disproportionately impact small entities both financially and operationally, demonstrating a significant economic effect on a substantial number of small businesses.

### Executive Office of the President rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	0	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Export–Import Bank rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	0	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Farm Credit Administration rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	4	0	11
Certified w/o a Basis	0	1	0	3
FRFA	0	0	0	0
Total	0	5	0	14

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Communications Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	1	5
Certified w/o a Basis	0	1	0	9
FRFA	8	36	14	132
Total	8	39	15	146

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Federal Deposit Insurance Corporation rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	5	2	14
Certified w/o a Basis	0	0	0	0
FRFA	0	0	1	0
Total	1	5	3	14

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Election Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	0	2
Certified w/o a Basis	0	1	0	3
FRFA	0	0	0	0
Total	0	3	0	5

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Housing Finance Agency rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	3	2	12	3
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	3	2	12	3

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Labor Relations Authority rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	4	0	7
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	4	0	8

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Maritime Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	3
Certified w/o a Basis	0	3	0	3
FRFA	0	0	0	1
Total	0	4	0	7

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Mediation and Conciliation Service rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	0	2
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	2	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Mine Safety and Health Review Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	0	0	2
FRFA	0	0	0	0
Total	0	0	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Register, Administrative Committee rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	2
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	0	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Federal Reserve System rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	4	2	10
Certified w/o a Basis	0	0	0	3
FRFA	0	0	0	1
Total	1	4	2	14

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Retirement Thrift Investment Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	3	0	6
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	3	0	6

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Federal Trade Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	2	2	4
Certified w/o a Basis	0	6	1	15
FRFA	1	1	1	3
Total	2	9	4	22

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 590: Combating Auto Retail Scams Trade Regulation Rule	The rule imposes substantial recordkeeping and compliance obligations—including required disclosures, policy updates, and retention of records for 24 months—resulting in at least 1,595,085 compliance hours industry-wide, a figure explicitly acknowledged in the rule. These burdens translate to thousands of dollars in first-year compliance costs per dealer (e.g., over \$4,300 for the smallest), and documentation requirements, estimated at hundreds of hours per dealer, are disproportionately difficult for small entities that typically lack in-house compliance and legal staff. The rule admits that the vast majority of affected entities are small businesses, and paperwork, training, and IT investments fall especially hard on them, yet dismisses these costs as "not significant" despite industry and SBA Advocacy comments to the contrary.

Citation: Rule Title (click to see rule)	Description
89 FR 90476: Negative Option Rule	<p>The rule imposes extensive compliance, recordkeeping, and disclosure requirements on all sellers of negative option programs, affecting small entities across numerous industries. Despite partial reductions, the rule acknowledges cumulative compliance obligations—such as retaining records for three years, immediate disclosures, and detailed consent processes—that, according to the record, demand at least 265,000 hours of compliance, a burden that disproportionately impacts small businesses due to their limited administrative resources. Paperwork and reporting requirements are universally recognized as falling more heavily on small entities, and the rule itself admits a lack of adequate data on how many small businesses are affected. Nevertheless, the agency proceeds to certify without resolving this data gap, disregarding significant public comments expressing concern about underestimated economic impacts.</p>

### General Services Administration rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	7	0	30
Certified w/o a Basis	0	1	0	13
FRFA	1	7	1	28
Total	1	15	1	71

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Government Ethics Office rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	3	0	10
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	3	0	10

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### HHS/CMS rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	11	3	24	6
Certified w/o a Basis	2	4	14	13
FRFA	8	0	26	2
Total	21	7	64	21

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 8758: Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children's ...	The rule acknowledges that compliance will require at least 7 million hours, a massive paperwork and labor burden that heavily impacts small entities who lack the compliance infrastructure of larger organizations. CMS certifies by suddenly discovering, and selectively applying, indirect economic effects such as government payments and enrollee premiums that adjust through market forces. In doing so, CMS ignores the essence of the RFA, failing “to recognize differences in the scale and resources of regulated entities.” In other words, by imposing fixed costs, the policy is a force for driving smaller entities out of the market.
89 FR 40876: Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting	At a time of real shortage of qualified nurses and other nursing home caregivers, this major rule required more than 80 percent of facilities to increase their staffing. Penalties for noncompliance were severe. Unable to pass along or absorb these costs, many facilities would have to close. In Congress, this rule became one of the most discussed Biden rules precisely because of its significant economic impact on a substantial number of small entities.

Citation: Rule Title (click to see rule)	Description
87 FR 27704: Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency; Additional Policy and Re...	This major rule includes business–to–business contracting restrictions that independent pharmacies have long requested as essential to stay in business. Policies affecting the viability of a business segment are well beyond any reasonable threshold for economic significance.
88 FR 22120: Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All–Inclusive Care for the Elderly	Many plans, often small entities, are required to update their marketing and advertising materials. They also face new restrictions on the tools available for cost management. CMS certifies by suddenly discovering, and selectively applying, indirect economic effects as government payments and enrollee premiums adjust through market forces. In doing so, CMS ignores the essence of the RFA, failing “to recognize differences in the scale and resources of regulated entities.” Separately, and in addition, the CMS certification ignores the indirect effects on third–party marketing organizations (TPMOs) – insurance agencies, field marketing organizations, call centers, and individual independent agents or brokers who sell or promote Medicare Advantage or prescription drug plans. TPMOs are required by the rule to record and retain all sales, marketing, and enrollment calls with beneficiaries for 10 years and to state a standardized disclaimer at the beginning of each interaction.



### Health and Human Services Department (w/o CMS) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	7	13	16	44
Certified w/o a Basis	3	12	6	46
FRFA	4	4	7	7
Total	14	29	29	97

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 32976: HIPAA Privacy Rule To Support Reproductive Health Care Privacy	The rule would have imposed a suite of requirements that would be quite significant for small providers. Namely, it would have required providers to make system-wide updates to HIPAA policies, internal workflows, role-based training, and legal review to implement the new prohibition standard and decision trees for determinations; create intake triage, drafting attestation protocols, validating elements, recordkeeping, ceasing disclosure upon discovering material falsity, and integrating this into release-of-information operations for specified non-health disclosures (oversight, judicial/administrative, law enforcement, coroners/medical examiners); rewrite updated NPPs to incorporate reproductive health protections and aligned 42 CFR Part 2 changes; update patient authorization templates and request-for-information forms to identify when reproductive PHI is implicated and ensure workflows route to the attestation pathway when applicable; and change EHR and release-of-information systems, flags for reproductive PHI, audit capabilities for attestations, and retention practices to demonstrate compliance in investigations or audits.

Citation: Rule Title (click to see rule)	Description
87 FR 50698: Medical Devices; Ear, Nose, and Throat Devices; Establishing Over-the-Counter Hearing Aids	This rule removed barriers to selling hearing aids without a prescription, fitting, and exam. Such barriers greatly reduce sales of hearing aids by retailers -- both on-line and brick-and-mortar -- and manufacturers of hearing aids. In NAICS code 334510 ("Electromedical and Electrotherapeutic Apparatus Manufacturing"), 92 percent of firms are small. They receive 34 percent of the industry's revenue. In short, the rule had a significant economic impact on a substantial number of small entities for much of the same reason that it is economically significant and major.
89 FR 7528: Medications for the Treatment of Opioid Use Disorder	This rule removed or relaxed multiple longstanding federal restrictions on Opioid Treatment Programs (OTPs) and the administration of medication-assisted treatment, making it easier for small entities to treat patients with methadone and buprenorphine. The rule had a significant economic impact on a substantial number of small entities for much of the same reason that it is economically significant and major. Perhaps HHS came to a different conclusion because it considered only increases in compliance costs, not decreases.

**DHS/USCG water safety rules (33 CFR 100) rules**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	24	0	106
FRFA	0	0	0	0
Total	0	24	0	106

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

**Prime Examples of Certification Abuse**

**\*\* NONE \*\***

### DHS/USCG Drawbridge rules (33 CFR 117) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	25	0	69
FRFA	0	0	0	0
Total	0	25	0	69

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### DHS/USCG Safety Zones (33 CFR 165) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	3
Certified w/o a Basis	0	168	0	722
FRFA	0	0	0	0
Total	0	169	0	725

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

**Homeland Security Department (w/o 3 USCG CFRs) rules**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	11	3	43
Certified w/o a Basis	0	8	0	30
FRFA	1	3	1	8
Total	1	22	4	81

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

**Prime Examples of Certification Abuse**

**\*\* NONE \*\***

### Housing and Urban Development Department rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	4
Certified w/o a Basis	0	14	1	28
FRFA	0	0	0	0
Total	0	15	1	32

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

#### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 101270: 30-Day Notification Requirement Prior To Termination of Lease for Nonpayment of Rent	The rule acknowledges that “small PHAs [public housing authorities] and owners often have limited staff and resources when operating rental assistance programs. HUD is also aware that smaller PHAs and owners may be more susceptible to financial variations to their operating budgets ... due to nonpayment of rent by a tenant during the notification period.” Because eviction filing is delayed by the rule, tenants will accrue more arrears, damage property more, or more frequently vacate without paying, which are financial losses for the PHAs and owners. The annual losses could easily be in the hundreds of millions of dollars.

### Interior/FWS rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	12	0	57
Certified w/o a Basis	0	7	0	24
FRFA	2	0	12	0
Total	2	19	12	81

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Interior Department (w/o FWS) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	14	1	30
Certified w/o a Basis	2	23	2	83
FRFA	1	1	1	1
Total	4	38	4	114

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 42602: Renewable Energy Modernization Rule	The major rule's RFA certification ignores the real, substantial risks offshore wind development poses to commercial fishermen and related small entities. Numerous fishermen and industry groups have described large-scale offshore wind as a “fight of our lives” that could “sink” their businesses, citing displacement from key grounds, gear damage, navigation hazards, and higher operating costs. These effects are neither remote nor speculative; they arise directly from turbine arrays, export cables, and associated closures in heavily used fishing areas. At least two commercial fishermen died near the Block Island wind farm, which creates operational constraints for rescuers.
89 FR 35634: Rights-of-Way, Leasing, and Operations for Renewable Energy	In economic terms, this major rule changes property/use rights on BLM lands. Land use is essential to small businesses such as ranching. Among other things, by facilitating more renewable-energy authorizations in grazing areas, the rule would increase the frequency with which BLM modifies or cancels leases. BLM did not attempt to estimate the number of small businesses affected in this way.

Citation: Rule Title (click to see rule)	Description
<p>89 FR 40308: Conservation and Landscape Health</p>	<p>Although the 12866–significant rule claims not to directly regulate industry, it would apply new land health standards, conservation tools, and procedural obligations (such as documentation, monitoring, and decision–making processes) to all users of BLM–managed lands. Small businesses dependent on public lands such as ranchers, miners, and energy producers would be less able to obtain or renew leases. Several court challenges were framed around harms to small businesses. Similar land management issues in a 2016 rule were so significant as to garner a disapproval from Congress under the CRA. This rule’s own acknowledgment of high compliance hours by itself contradicts its certification of negligible economic impact on small entities.</p>

### International Development Finance Corporation rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	1	0	1
FRFA	0	0	0	0
Total	0	1	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Justice Department rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	8	2	44
Certified w/o a Basis	0	5	0	32
FRFA	1	1	3	2
Total	1	14	5	78

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
88 FR 46983: Partial Filling of Prescriptions for Schedule II Controlled Substances	The rule imposes mandatory paperwork and recordkeeping obligations on small pharmacies and prescribers, requiring additional compliance for each partial fill of a Schedule II prescription, including documentation and labeling requirements. The practitioner may authorize a partial fill at a date after the prescription was issued, after consultation with a pharmacist. DEA only estimates the time of 10 seconds, and 40 cents of costs. This is an underestimation of time, as the practitioner would have to evaluate the prescription, contact and consult with a pharmacist. This may take 30 minutes or more. The DEA itself estimates the rule will require at least 50,521 compliance hours annually and result in direct costs (up to 0.487% of revenue for the smallest pharmacies), disproportionate to small entities whose limited administrative resources amplify the burden of even 'minor' paperwork or cumulative hourly requirements. Paperwork burdens particularly impact small entities, and the rule acknowledges widespread impact—over 318,000 small entities—yet improperly dismisses these costs as 'minimal,' despite their aggregation and disproportionate effect on small business operations.

### Labor/OSHA rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	0	4
Certified w/o a Basis	0	0	0	2
FRFA	0	0	0	1
Total	0	2	0	7

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)

Description

89 FR 22558: Worker Walkaround  
Representative Designation Process

This RFA only quantifies "rule familiarization" costs, which are not significant by themselves but are merely a small fraction of the overall compliance costs. Many other costs flow directly and predictably from the rule, including the costs of screening, processing, and accompanying the additional non–employee third–party representative(s) during the inspection and related activities. During the comment period, small entities explained that costs include: advanced planning and coordination, providing additional screening and security, revising third–party access policies and procedures, training employees on new third–party visitor protocols, obtaining additional legal advice and consultation, providing additional protections for confidential business information, preparing additional non–disclosure and other forms, providing additional staff and experts (including possible outside experts) to correspond to the variety of non–employee third–party participants during inspections and related activities, potential liability for injuries to third parties during their presence at the workplace and during the inspection, purchasing additional insurance, and providing additional personal protective and other safety and health equipment.

Citation: Rule Title (click to see rule)	Description
<a href="#">89 FR 100321: Personal Protective Equipment in Construction</a>	<p>High OSHA penalties make noncompliance materially risky for small contractors, with maximums now at roughly \$16,550 per serious item and \$165,514 per willful or repeated violation, so even a handful of citations can be financially devastating for small firms. Ambiguity around what documentation proves “proper fit” and how inspectors will apply the rule raises counseling, training, and risk–avoidance costs beyond simple equipment purchases. Because construction is dominated by especially small businesses, spreading fixed compliance tasks across many micro-employers amplifies the per-firm burden of documenting fit assessments, training, and recordkeeping tied to the new “must fit properly” duty. Sourcing non-standard sizes and specialty items often entails higher unit prices, longer lead times, and vendor minimums, challenges that large primes can absorb but small subs cannot, especially when fit issues surface mid-job and work must pause to procure replacements.</p>

### Labor Department (w/o OSHA) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	3	5	8	17
Certified w/o a Basis	0	6	1	14
FRFA	10	0	14	0
Total	13	11	23	31

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
86 FR 24303: Independent Contractor Status Under the Fair Labor Standards Act (FLSA): Withdrawal	Withdrawing the Independent Contractor Status rule imposes concrete compliance obligations on small businesses, including analysis of worker classification using the complex 'economic reality' test, which demands legal consultation, significantly increased paperwork and recordkeeping. Over 5.9 million small firms must incur 'regulatory familiarization' costs, which are dismissed as minimal without accounting for misclassification risk, potential back pay, penalties, and legal expenditures, all of which disproportionately burden small entities lacking dedicated compliance departments. In the National Small Business Association's (NSBA) 2025 poll, small businesses identified the classification of independent contractor/employee as the most costly and time consuming regulation.

Citation: Rule Title (click to see rule)	Description
86 FR 40939: Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule	The rule estimates that small businesses would incur a regulatory familiarization cost of \$9 per entity. However, by rescinding the prior joint–employer rule and reverting to a fact–intensive, multi–factor standard, the rule substantially increases legal uncertainty and expands potential joint–employer liability under the FLSA for millions of small firms operating as franchisees, subcontractors, staffing firms, or users of third–party labor arrangements. The rule provides no evidence that the resulting legal, contractual, and risk–management costs associated with this expanded liability—particularly for franchisees, subcontractors, and staffing arrangements—are insignificant for small businesses, thus directly contradicting its certification of no SISNOSE. This rule would require small businesses to evaluate and possibly rewrite their franchise, third–party contracts (like subcontracts) in relation to employees, to minimize the risk of having joint liability. For example, this would impact the type of legal, HR, and employee handbooks provided by franchisors to franchisees.
86 FR 60114: Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal	The rule imposes specific compliance obligations, including management costs of \$376.36 per year per small business, for tracking and limiting non–tipped duties, as well as initial regulatory familiarization and adjustment costs. In addition, the rule acknowledges potential per–entity wage cost increases of up to \$1,557, which combined with other compliance costs can total over 1.3% of revenues for small businesses in certain industries—an economically significant burden for entities with low margins. The rule admits substantial total wage transfer costs (up to \$733 million) and paperwork and monitoring burdens, yet dismisses their impacts by spreading them across all affected entities and excluding them from core RFA calculations, contrary to concerns raised by SBA Advocacy and small business commenters who note these costs are understated or omitted.



### Management and Budget Office rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	1
Certified w/o a Basis	0	2	0	2
FRFA	0	0	0	0
Total	0	2	0	3

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### National Aeronautics and Space Administration rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	3	0	16
Certified w/o a Basis	0	3	0	5
FRFA	1	6	1	26
Total	1	12	1	47

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### National Archives and Records Administration rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	4	0	9
FRFA	0	0	0	0
Total	0	4	0	9

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### National Credit Union Administration rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	4	0	11
Certified w/o a Basis	0	1	0	14
FRFA	0	0	0	0
Total	0	5	0	25

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### National Foundation on the Arts and the Humanities rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	2	0	14
FRFA	0	0	0	0
Total	0	2	0	14

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

**National Intelligence, Office of the National Director rules**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	1
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	0	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

**Prime Examples of Certification Abuse**

**\*\* NONE \*\***

### National Labor Relations Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	2	0	2	0
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	2	0	2	0

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
88 FR 73946: Standard for Determining Joint Employer Status	The rule creates significant economic impacts on a substantial number of small entities—specifically, franchisees, contractors, temporary agencies, and unions—by dramatically broadening the standard for joint–employer status to include reserved or indirect control, not just exercised or direct control. This means small businesses operating under common business models (franchises, subcontracting, staffing) now face greatly increased legal uncertainty, exposure to collective bargaining obligations, and mutual liability for NLRA violations. The results include greater compliance costs, legal fees, and risks of litigation—burdens that the rule text itself repeatedly acknowledges, but then dismisses as 'indirect' or speculative, despite being concrete, foreseeable, and disproportionately challenging for small entities compared to larger firms. This rule would have required small businesses to evaluate and possibly rewrite their franchise, third–party contracts (like subcontracts) in relation to employees, to minimize the risk of having joint liability. For example, this would impact the type of legal, HR, and employee handbooks provided by franchisors to franchisees. In another example, prime contractors would have had increased liability with all of their dozens of subcontractors down the line. The NLRB only estimates costs of \$150 for small employers.

### National Science Foundation rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	2
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	0	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### National Transportation Safety Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	4
Certified w/o a Basis	0	1	0	4
FRFA	0	0	0	0
Total	0	2	0	8

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Nuclear Regulatory Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	12	0	37
Certified w/o a Basis	0	0	0	3
FRFA	1	0	4	0
Total	1	12	4	40

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Peace Corps rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	2	0	3
FRFA	0	0	0	0
Total	0	2	0	3

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Pension Benefit Guaranty Corporation rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	2
Certified w/o a Basis	0	1	0	3
FRFA	0	0	0	0
Total	0	1	0	5

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Personnel Management Office rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	9	1	19
Certified w/o a Basis	1	4	2	26
FRFA	0	0	0	0
Total	1	13	3	45

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Railroad Retirement Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	0	6
Certified w/o a Basis	0	1	0	1
FRFA	0	0	0	0
Total	0	3	0	7

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Securities and Exchange Commission rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	6	4	10	11
Certified w/o a Basis	1	0	2	4
FRFA	6	1	14	7
Total	13	5	26	22

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)

Description

88 FR 13872: Shortening the Securities Transaction Settlement Cycle

The rule imposes significant new recordkeeping and compliance requirements on small broker-dealers and investment advisers, expressly acknowledging that compliance will require "at least 230,160 hours" across affected entities—costs that fall disproportionately on small entities with limited staff and infrastructure. Specific obligations include making changes to business operations, upgrading or deploying new technology, financing changes due to a shortened settlement cycle, and—crucially—establishing, maintaining, and enforcing written policies and procedures for institutional trade processing, as well as extensive new paperwork requirements for recordkeeping, reporting, and date/time stamping documents. The rule repeatedly concedes that small entities must bear these new burdens, including substantial paperwork costs, but nonetheless dismisses their impact as insignificant, which is inconsistent with the documented scale and disproportionate effect of these compliance obligations.

Citation: Rule Title (click to see rule)	Description
<p>87 FR 78770: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers</p>	<p>This too is a major rule. A sitting Commissioner (Uyeda) objected that small entities would face “not insignificant” manager compliance costs and noted the lack of staggered compliance for smaller entities. The manager reporting obligation (say-on-pay on Form N-PX) would impose non-trivial new systems, data-mapping, and coordination costs, especially for smaller advisers. Commenters proposed alternatives such as de minimis thresholds and broader exemptions from filing for managers, but these were not adopted. Furthermore, the scope of the manager rules comes from a 1978 threshold of \$100 million in securities under discretionary management, which should have been updated by one or two orders of magnitude to reflect changed asset values over the intervening 44 years.</p>
<p>88 FR 75100: Short Position and Short Activity Reporting by Institutional Investment Managers</p>	<p>The rule creates significant compliance obligations for small entities that cross the reporting thresholds, such as requiring monthly filings of Form SHO, ongoing daily monitoring of short positions, and detailed calculations of gross and net activity. These operational and reporting requirements impose additional costs, time, and administrative burdens, which disproportionately affect small entities with limited resources. The rule itself acknowledges that small managers can, in practice, meet the threshold (e.g., the \$10 million gross short position can represent 40% of a small entity's assets), and that calculating and monitoring compliance is complex and burdensome, directly contradicting the claim of no significant impact.</p>



### Selective Service System rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	1
Certified w/o a Basis	0	2	0	3
FRFA	0	0	0	0
Total	0	3	0	4

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Small Business Administration rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	9
Certified w/o a Basis	0	6	0	15
FRFA	0	1	0	11
Total	0	8	0	35

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Social Security Administration rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	4	1	4	16
Certified w/o a Basis	0	1	1	1
FRFA	0	0	0	0
Total	4	2	5	17

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Special Counsel Office rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	1
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	0	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### State Department rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	2	0	5
Certified w/o a Basis	0	2	2	15
FRFA	0	1	0	1
Total	0	5	2	21

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
86 FR 59613: Schedule of Fees for Consular Services—Passport Security Surcharge	This major rule increases the passport book security surcharge (PSS) from \$60 to \$80, imposing an additional \$20 cost per passport product processed. Small businesses that regularly require employees to obtain or renew passports—such as travel agencies, consultants, or firms with international operations—will face significant aggregate cost increases, which the rule itself quantifies as \$318 million in additional annual fees. The rule does not analyze whether a substantial number of small entities rely on these services for routine business operations, nor does it discuss options to minimize the impact on small entities as required by the Regulatory Flexibility Act, resulting in an unsupported certification of no SISNOSE.

Citation: Rule Title (click to see rule)	Description
88 FR 18243: Schedule of Fees for Consular Services–Nonimmigrant and Special Visa Fees	<p>This major rule increases consular processing fees for nonimmigrant visas and Border Crossing Cards, which will result in direct, recurring costs for small entities such as travel agencies, law firms, and employers reliant on foreign workers. The State Department fails to identify small entities that apply for and pay for workers under these visas. For example, Advocacy has worked with many small businesses, small nonprofits and small governmental entities (schools) that apply for H visas (H–2A, H–2B, H–1B), L visas (high tech companies with employees who lateral), and O visas (small nonprofit companies). The State Department does not evaluate costs. These fee increases represent clear financial burdens that disproportionately impact small businesses with limited ability to absorb additional costs, yet the rule does not consider or estimate the cumulative economic impact or discuss alternatives for small entities, thus improperly certifying no SISNOSE despite imposing significant expenses.</p>

### Surface Transportation Board rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	1	0	5
Certified w/o a Basis	0	1	0	3
FRFA	0	0	0	0
Total	0	2	0	8

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

### Tennessee Valley Authority rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	2
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	0	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Trade Representative, Office of United States rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	2
Certified w/o a Basis	0	0	0	0
FRFA	0	0	0	0
Total	0	0	0	2

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*

**DOT/FAA Airworthiness Directives (14 CFR 25 or 39) rules**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	1
Certified w/o a Basis	0	225	0	1181
FRFA	0	1	0	4
Total	0	226	0	1186

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

**Prime Examples of Certification Abuse**

**\*\* NONE \*\***

**DOT/FAA Airspace rules (14 CFR 71) rules**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	154	0	767
FRFA	0	0	0	0
Total	0	154	0	767

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

**Prime Examples of Certification Abuse**

**\*\* NONE \*\***

**DOT/FAA Standard Instrument Procedures (14 CFR 97) rules**

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	49	0	208
FRFA	0	0	1	0
Total	0	49	1	208

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

**Prime Examples of Certification Abuse**

**\*\* NONE \*\***

Transportation Department (w/o 14 CFR 25, 39, 71, 97) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	1	16	3	61
Certified w/o a Basis	1	39	5	116
FRFA	2	4	3	9
Total	4	59	11	186

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity. Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
87 FR 25710: Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks	The rule acknowledges that small internal combustion engine manufacturers do not meet the new standards and must petition for relief, imposing ongoing compliance, paperwork, and administrative costs; relying on the ability to petition does not eliminate these burdens but instead institutionalizes them. Moreover, the rule's RIA acknowledges that the rule would increase the average purchase price of light–duty vehicles by more than \$1000. This purchase price effect could easily have been acknowledged in the RFA section of the rule. With several million small entities owning a light–duty vehicle, the cost of the rule for small entities is several billion dollars.

### Treasury/IRS rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	3	4	4	16
Certified w/o a Basis	2	11	7	37
FRFA	4	2	10	5
Total	9	17	21	58

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
89 FR 77586: Requirements Related to the Mental Health Parity and Addiction Equity Act	This major rule imposes almost 3 million hours of new paperwork, data collection, and reporting obligations to demonstrate parity in mental health and substance use disorder benefits. The rule itself acknowledges average per-entity costs in the tens of thousands of dollars for these analyses, and explicitly requires ongoing annual costs, but certifies nonetheless.
87 FR 52618: Requirements Related to Surprise Billing	This major rule imposes significant burdens on small entities, especially thousands of independent physicians that bill out of network. Independent physicians face increased paperwork, lower reimbursement, and more complex arbitration procedures—while large hospital systems assimilate compliance more easily. It is one of a suite of rules that makes independent physician practices less viable.

### Treasury Department (w/o IRS) rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	2	9	5	21
Certified w/o a Basis	1	10	1	44
FRFA	2	0	3	0
Total	5	19	9	65

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
86 FR 53412: Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond	This major rule requires compliance activities of at least 2 million hours in aggregate, mostly for health insurance issuers. Such paperwork and reporting requirements are especially onerous for small issuers, as these entities have fewer staff and resources to absorb such obligations relative to larger firms.

### United States Agency for Global Media rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	0	0	0	0
Certified w/o a Basis	0	0	0	1
FRFA	0	0	0	0
Total	0	0	0	1

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

\*\* NONE \*\*



### Veterans Affairs Department rules

Category	FY 2024		Biden Admin.	
	Major	Nonmajor	Major	Nonmajor
Certified with a Basis	2	13	5	46
Certified w/o a Basis	1	6	3	34
FRFA	0	0	0	0
Total	3	19	8	80

Note: A basis has point estimates or ranges for the number of small entities affected and the typical impact on an affected small entity.

Rules in the first row may nonetheless be prime examples of certification abuse due to the inaccuracy of their estimates.

### Prime Examples of Certification Abuse

Citation: Rule Title (click to see rule)	Description
86 FR 28692: Loan Guaranty: COVID-19 Veterans Assistance Partial Claim Payment Program	The rule would reimburse mortgage servicers tens of millions of dollars for missed payments by veterans. The rule had a significant economic impact on a substantial number of small entities for much of the same reason that it is economically significant and major. Perhaps the VA came to a different conclusion because it considers significant economic impacts to be only adverse effects.