Nursing unions joined a move to block new federal overtime rules issued by the Department of Labor (DOL) in April.

The DOL called the new rules a “win for workers,” saying 1.3 million more salaried white collar workers will qualify for overtime than under the current rules.

In general, workers earning under $23,600 would be guaranteed overtime pay. For those earning between $23,660 and $100,000 eligibility for overtime would depend on job duties.

Under the old regulations, only workers earning less than $8,060 annually were guaranteed overtime pay.

But nursing unions say the rules “threaten the right of RNs” to overtime pay. The American Nurses Association (ANA) and 8 unions that represent nurses supported an amendment sponsored by Sen Tom Harkin (D-Iowa) to block the rules. The U.S. Senate passed the amendment May 4 with some Republicans crossing the aisle to vote for it. But the amendment’s fate was still unclear. It is part of a corporate tax bill the Senate had yet to approve, and the House had not yet taken up the amendment. Time was short with lawmakers eager to leave Washington to campaign.

Without legislation, the rules take effect in August.

Where do RNs stand?

For the first time, the rules clearly state that licensed practical nurses (LPNs) are eligible for overtime pay because they are not required to have an advanced academic degree.

But for RNs, the situation is not as clear-cut. The DOL says on its web site, “Registered nurses who are paid on an hourly basis should still receive overtime pay.”

Under the rules, however, RNs meet the test for “learned professionals” who, if salaried and making over $23,660 a year, can be considered exempt from overtime pay. The DOL says this is not a change from the current rule because RNs have been considered exempt since 1971.

To meet the test to be exempt as “learned professionals,” employees must:

- be salaried and make at least $455 a week ($23,660 a year)
- have as their primary duty work that requires “advanced knowledge” in a “field of science or learning” that is “customarily acquired by a prolonged course of specialized intellectual instruction.”

Would hourly RNs still get overtime?

The unions say the rules don’t do enough to protect the vast majority of RNs—75% according to the DOL—who are paid hourly.

In a letter to the Senate May 5, the unions note the new rules change the definition of “salary” by stating an exempt employee’s earnings “may be calculated on an hourly, daily, or shift basis” without the employee losing exempt status. The unions say that wording could be interpreted to mean hourly employees such as RNs could be denied overtime pay.

The unions give an example of how the new definition could affect an RN who earns $25 an hour and typically works 50 hours a week. Under the current rules, the RN would earn $1,000 for the first 40 hours plus $375 (10 hours at a time-and-a-half rate of $37.50), for a total of $1,375. Under the new rules, the RN would be paid $1,000 for the first 40 hours but might be paid straight time for the additional
10 hours ($250) for a total of $1,250. This is $125 less a week or $6,500 over 52 weeks.

“This rule will cut the pay of registered nurses who already are forced to work mandatory overtime,” the unions wrote.

They charge that hospitals use mandatory overtime to help make up for inadequate staffing, leading to nurse burnout, and that the new rules will make it easier to do so.

“Denying these employees overtime pay will worsen the situation and cause more registered nurses to leave the field,” said the letter signed by ANA, the Service Employees International Union, and the American Federation of Teachers, among others.

Competing for RNs

But the DOL notes in the rule’s preamble that market forces have a bearing on how RNs are paid. In a time of nursing shortage, employers have to compete for RNs, just as they do for other highly skilled workers. Thus, employers are unlikely to rock the boat by forcing RNs to work overtime without premium pay. Doing that could cause nurses to leave and go elsewhere to work.

What seems likely is that the new rules will end up in litigation, which is what DOL says it was trying to avoid with the new rules. The rules are final and will be effective August 23 unless blocked by legislation. They are in the April 23 Federal Register at www.gpoaccess.gov/fr/index.html and are posted at www.dol.gov.

Highlights of rule

- Under the 50-year-old rules, only workers earning less than $8,060 a year were guaranteed overtime.
- Under the new rules:
  —Workers earning less than $23,660 a year are guaranteed overtime—meaning 1.3 million salaried white-collar workers will be eligible who weren’t eligible under the old rules.
  —Licensed practical nurses and similar employees are eligible for overtime.
  —Employees are exempt from overtime if they meet certain tests for their job duties and are paid a salary of $455 a week or more.