The U.S. Environmental Protection Agency, along with the U.S. Army Corps of Engineers, finalized its problematic “Waters of the United States” rule in May. The rule vastly increases the federal government’s power over private landowners and small business owners.

In short, the rule broadly expands the waters that are considered under federal jurisdiction. The new rule covers seasonal streams, ponds, ditches, and depressions in fields — even those that are dry most of the year — if they are found to impact downstream waters.

Consequently, filling or altering any of these land formations would require a Clean Water Act permit. These permits typically cost tens of thousands of dollars, include lengthy delays, and there is no guarantee a permit will be approved. Violations of the Clean Water Act are subject to fines of up to $37,500 per day.

In addition, the uncertainty surrounding this rule is extraordinary, and will act as a disincentive for small business owners to make property upgrades and other land improvements. The only way to be sure whether or not a seasonal feature is a federal water is to have either the EPA or the Army Corps make a formal determination. These agencies have clear incentives to rule that features are under federal jurisdiction.

NFIB will continue to fight this federal land grab. We are working with a bipartisan group of lawmakers in the House of Representatives and the Senate to overturn the rule.

This month, NFIB’s Legal Center filed a lawsuit in a federal court in Tulsa, Okla. aiming to strike down the rule since the agencies did not consider the impact on small businesses, as is required by law.

For more information and to comment on the rule, visit www.NFIB.com/waters.
**DOL proposes rule expanding overtime eligibility**

The U.S. Department of Labor recently proposed changes to its overtime rules that will make it harder for small businesses to promote workers up to management level by creating additional costs and record-keeping headaches.

**NFIB is concerned about the impact of the rule if it finalized.**

**What is DOL seeking to do?**

In an effort to increase the number of employees eligible for time-and-a-half overtime pay, DOL proposed raising the minimum salary threshold – the amount below which workers must be paid overtime – from $23,660 to $50,440.

The proposal would also permanently link the threshold to the 40th percentile of earnings for full-time salaried workers. This means the amount could increase every year going forward.

While DOL did not propose any changes to the “duties test,” under which employees can be exempt from overtime based on managerial or administrative duties, the agency did not rule out making changes to this test in the final rule depending on the public’s input.

**How could this affect my business?**

Small businesses will likely have employees that will be newly eligible for time-and-a-half overtime pay. If a business cannot afford these new costs, the business will have to limit employees to 40 hours per week.

In order for small businesses to avoid costly overtime pay, these managers are likely to be moved from their salaried positions to hourly jobs and kept under or at 40 hours per week, and lose those perks. These workers will view the change as a demotion.

Worker morale will likely decline. NFIB anticipates the proposed changes, if finalized, would especially hit low-to-mid-level managers. These managers may currently make less than the $50,440 proposed threshold, but enjoy perks such as flexibility of hours and benefits like health insurance.

Fewer salaried, managerial positions would signal to employees that there is little opportunity for growth at the company.

**What is NFIB doing to fight this?**

NFIB will explain to the DOL and Congress the negative impact this proposal will have on small businesses, and just as importantly, their employees – the very people this rule is aimed at helping.

**Administration releases ambitious regulatory agenda**

According to the regulatory agenda issued by the White House’s Office of Management and Budget in May, small businesses need to brace for an aggressive wave of regulation through January 2017.

The document revealed that federal agencies are currently working on more than 3,200 regulations.

Here are five rules that small businesses should be on the lookout for.

**EPA: Greenhouse Gas Emissions; New and Existing Power Plants** — Final Rules Expected in August

NFIB estimates the rules will increase electricity costs by at least $500 annually by 2020 for the average small business.

**OSHA: Electronic Tracking of Workplace Injuries and Illnesses** — Final Rule Expected in September

OSHA is expected to require employers to submit data from its injury logs electronically to the agency so that it can make a searchable database of injuries, by establishment, available to the public.

**DOL: Interpretation of the “Advice Exemption”**

— Final Rule Expected in December

Also known as the “persuader rule,” the DOL is expected to greatly inhibit the ability of small businesses to rely on outside labor experts, by requiring those experts to reveal all their clients.

**DOT: Financial Responsibility for Motor Carriers**

— Proposed Rule Expected in 2016

The Federal Motor Carrier Safety Administration is considering a rulemaking that would increase the minimum levels of insurance for motor carriers, perhaps by more than 500 percent.

**EPA: Lead: Renovation, Repair, and Painting Rule for Public and Commercial Buildings**

— Proposed Rule Expected in 2015

Following on its problematic Lead: RRP rule covering residential housing, the EPA is poised to expand the rule to cover commercial buildings.

For more information on these and other upcoming NFIB regulations, contact Dan Bosch, NFIB’s manager of regulatory policy, at dan.bosch@nfib.org.