

**Comment and Response Document**

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## **I. COORDINATION WITH FEDERAL RULE/IMPACT OF USDOL RULE**

### **a. Comment:**

Commentators stated that discrepancies between the state and federal requirements would be increased if the Department did not wait first for the federal regulations to be promulgated before the Department promulgated its regulations (121,179, 871, 895, 896).

### **Department response:**

The Department heeded the suggestion by stakeholders, legislators, and commentators to wait for the USDOL final rule. USDOL promulgated its final rule at 84 Fed. Reg. 51230 on September 27, 2019. In USDOL's final rulemaking, USDOL updated its current salary threshold to qualify for the Executive, Administrative and Professional (EAP) exemptions from \$455 per week to \$684 per week for EAP-covered employees except for certain employees in the US territories. The USDOL's final rulemaking also updated the salary thresholds for employees who are highly compensated employees, work in educational establishments and computer employees. It also clarified that weekly salary rate may be translated into an equivalent amount for periods longer than a week. USDOL's final rulemaking also amended its rule that allows ten percent of the salary amount to be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid annually or more frequently instead of quarterly or more frequently. The USDOL's new salary threshold and related amendments become effective on January 1, 2020.

After reviewing the USDOL's final rulemaking, the Department adjusted its initial salary threshold to \$684 per week and amended the language allowing the payment of quarterly bonuses to allow the payment of yearly bonuses to align with the USDOL's final rule. The Department's final regulations will also let employers decide whether to use a calendar year, fiscal year or anniversary of hire year in calculating and paying bonuses.

### **b. Comment:**

Commentators stated that it would be confusing to have too many standards among state and federal laws (697, 701, 703, 706, 709, 710, 712, 713, 714, 715, 717, 720, 721, 723).

### **Department response:**

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act (Act), and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

The Department has made significant efforts to more closely align with Federal regulations. The Department recognizes the importance of providing more consistency for employers and employees. The Department believes aligning more closely with the Federal regulations will result in less misclassification of workers, thus reducing litigation over an employee's status.

To the extent permissible and appropriate under Pennsylvania law, the duties tests for the EAP exemptions have been aligned with the applicable Federal standards, creating one standard for employers to administer. The amendments to the duties test for the EAP

exemptions will make the applicable tests easier to understand and therefore will increase compliance.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020 to give employers an opportunity to adjust to that increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

**c. Comment:**

Commentator stated that the Department should incorporate Federal regulations by reference (866).

**Department response:**

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act, and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

To the extent permissible and appropriate under Pennsylvania law, the duties tests have been aligned with the applicable federal standards, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020 to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

**d. Comment:**

Commentators stated that the final rulemaking should be consistent with the federal law (801,807, 829, 867).

**Department response:**

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act, and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

To the extent permissible and appropriate under Pennsylvania law, the duties tests have been aligned with the applicable federal standards, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

The commentators specifically suggested the adoption of the computer exemption. The Department cannot create a computer exemption because that exemption does not exist in the Act. The FLSA specifically exempts "any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is (A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour." 29 U.S.C. § 213(a)(17). This exemption does not exist anywhere in the Act. The Department cannot add a categorical exemption through regulation that does not exist in the Act. *Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990).

**e. Comment:**

Commentators stated that the Department should adopt federal standards, including the computer profession exemption (201,870).

**Department response:**

The Department cannot simply adopt all Federal regulations because there are differences between the Department's enabling legislation, the Minimum Wage Act, and the Federal Fair Labor Standards Act under which the Federal regulations are promulgated.

To the extent permissible and appropriate under Pennsylvania law, the duties tests have been aligned with the applicable federal standards, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in a future rulemaking.

The Department has also aligned the initial salary threshold, which will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*, with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania.

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**f. Comment:**

Commentators stated that the Commonwealth should not propose its own overtime rules (134,186).

**Department response:**

The Department is required by the Minimum Wage Act to promulgate regulations to implement minimum wage and overtime regulations. The Act provides that the secretary ***shall*** make and, from time to time, revise regulations, with the assistance of the board, when requested by the secretary, which shall be deemed appropriate to carry out the purposes of this act and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations defining and governing bona

fide executive, administrative, or professional employees . . .” 43 P.S. § 333.109 (emphasis added).

**g. Comment:**

A commentator stated that the proposed regulation would be more onerous than federal law (201).

**Department response:**

To the extent permissible and appropriate under Pennsylvania law, the Department has aligned this final-form rulemaking with Federal law. The Department has aligned the initial salary threshold with the Federal threshold for 2020. However, the Federal threshold, which is based on earnings in the Southern region of the country, which has the lowest wages in the United States, is not representative of the Pennsylvania economy. Thus, after an adjustment period, the threshold will be incrementally adjusted to appropriately reflect Pennsylvania’s economic conditions.

**II. DUTIES TEST**

**a. Comment:**

A commentator stated that the outside sales exemption is too high (801).

**Department response:**

The Department’s current regulations interpreting the Act contain an exemption for outside sales. The Department did not propose any changes to the outside sales exemption and received no comments from labor organizations regarding whether the outside sales exemption should be updated, or a new exemption created. As such, it would be more appropriate to address these issues in a future rulemaking where the Department can conduct outreach and receive input from all interested parties.

**b. Comment:**

Numerous commentators stated that the duties test does not reach the goal of aligning with Federal regulation (12, 13, 14, 30, 31, 32, 33, 34, 35, 36, 37, 38, 44, 46, 47, 48, 49, 52, 53, 59, 60, 61, 63 64, 69, 70, 72, 95, 97, 99, 100, 101, 107, 114, 116, 123, 127, 129, 132, 133, 158, 163, 166, 181, 200, 229, 266, 268, 354, 360, 406, 801, 813).

**Department response:**

The Department agrees that Pennsylvania’s duties test should align with the Federal regulations. Pennsylvania’s current regulations align with the Federal law as it existed 1977, which included the long and short duties test. At the time, Federal regulations included a “long test” with a more restrictive duties test and a lower salary threshold, and a “short test” with a less stringent duties requirements and a higher salary threshold. In 2004, the Federal duties test was simplified to reflect the less stringent duties in the “short test” and eliminated the “long test.”

Discrepancies between Pennsylvania’s regulations and USDOL regulations make it difficult for employers to know if they comply with the duties test. The Department has

much more closely aligned the duties test to the Federal regulations in the final-form rulemaking, including by eliminating the “short” and “long” duties tests and more closely aligning the definitions. Aligning the duties test more closely with those in the Federal regulations will provide increased clarity to both employers and employees as to who is and is not an exempt employee.

**c. Comment:**

A commentator asked the Department to provide clearer guidance on the duties test (400).

**Department response:**

The final-form rulemaking significantly simplifies the duties test by the elimination of the “short” and “long” duties tests and by more closely aligning the standards with the those found in the Federal regulations.

**d. Comment:**

A commentator stated that the Governor is placing HR professionals in a very odd position and should allow employers to have the opportunity to invest in their employees and evaluate an appropriate salary for employees based on their education, experience and skills (127).

**Department response:**

The Department agrees that employees should be paid an appropriate salary for their education, experience and skills, which is the reason that the Department revised its salary threshold methodology to rely on data that reflects actual salaries paid in Pennsylvania. An appropriate salary is one that does not have an employee working unlimited overtime hours, such that that the employee is effectively paid an hourly rate below the minimum wage.

**e. Comment:**

Commentators have stated that they disagree that the Department’s duties test aligns with Federal rule (147, 231, 233, 241, 268, 285, 834).

**Department response:**

The Department agrees that Pennsylvania’s duties test should align with the Federal regulations. Pennsylvania’s current regulations align with the Federal law as it existed 1977, which included the “long” and “short” duties test. At the time, Federal regulations included a “long test” with a more restrictive duties test and a lower salary threshold, and a “short test” with a less stringent duties requirements and a higher salary threshold. In 2004, the Federal duties test was simplified to reflect the less stringent duties in the “short test” and eliminated the “long test.”

Discrepancies between Pennsylvania’s regulations and USDOL regulations make it difficult for employers to know if they comply with the duties test. The Department has much more closely aligned the duties test to the Federal rules in the final-form rulemaking, including eliminating the “short” and “long” duties tests and more closely aligning the standards. Aligning the duties test more closely with those in the Federal regulations will

provide increased clarity to both employers and employees as to who is and is not an exempt employee.

**f. Comment:**

A commentator stated that using the 40th percentile standard will render the duties test superfluous and that the Department has no federal authority to propose an automatic increase. (834)

**Department response:**

Neither the proposed nor the final-form regulation provides for the use of a 40<sup>th</sup> percentile standard in setting a salary threshold. The Department's final-form rulemaking provides for the salary threshold to be set based on the 10<sup>th</sup> percentile of salaries of Pennsylvania workers who work in exempt classifications.

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)." This grants the Department broad authority to define exempt EAP employees, including adopting a salary threshold tied into wages paid to those employees, which will adjust at appropriate intervals. The Department does not require authorization from Congress to enact regulations under a Pennsylvania statute.

**g. Comment:**

Commentator stated that the Department provided insufficient notice of proposed rulemaking for the duties test and the Department did not propose any specific changes in the proposed rulemaking. Commentator asked whether the final regulation goes outside scope of proposed rulemaking (834).

**Department response:**

The final-form rulemaking is not outside the scope of the proposed regulation and the Department provided sufficient notice in its proposed rulemaking. The proposed regulation specifically included amendments to the duties test. Additionally, the Department received numerous public comments regarding the amendments to the proposed duties test. The amendments to the duties test in the final-form rulemaking reflect the Department's consideration of those comments. In the final-form regulation, the Department has sought to more closely align the duties test with the existing Federal regulations in order to reduce confusion and inconsistent application.

**h. Comment:**

Commentator states that the final regulation will turn duties test into a salary test (871)

**Department response:**

Confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulations and USDOL's regulations, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

**i. Comment:**

A commentator stated that the Commonwealth should not update the duties test to make this increase. The first year is consistent with wage growth in Pennsylvania over the last 14 years. The second and third increases are annual increases of 3.1% and 4.0%, which are far beyond the pace of wage growth. Rates are set by DHS and cannot pass the increased cost to the customer. The Psychiatric Residential Treatment Facility per diem rate was last adjusted in 2006. In 2004, the weekly salary limit was 25.52% above the federal poverty line. After three years, the threshold is raised to 125.52% of the 2004 limit (353).

**Department response:**

There is general agreement that the existing salary threshold is obsolete and that the current Federal threshold needs to be updated. While the Department recognizes that the salary threshold increases are higher than the percentages of wage growth, the threshold has not been updated in fifteen years. The salary threshold must align with the salaries of the workers it was intended to protect. In the final form rulemaking, the Department revised its methodology for calculating the salary threshold to take into account the actual earnings of Pennsylvania workers and economic conditions in the Commonwealth.

These concerns have been seriously considered and it is recognized that many nonprofits depend on limited funds from foundations and government grants.

Like all affected organizations, affected nonprofits have several strategies they can use to adjust for the rule. Nonprofit employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

A two-year phase-in period has been proposed, which provides nonprofits with adequate time to become familiar with the regulation, identify whether they employ affected non-

exempt EAP workers, and plan accordingly by making necessary adjustments to their organization.

Nonprofit organizations provide important services to the Commonwealth, and in many cases to vulnerable populations. However, the mission of an organization is not justification to exclude its workers from protections that the General Assembly intended to provide under the Pennsylvania Minimum Wage Act. Further, a new market rate is not being set for services by non-exempt employees via this regulation; rather, it is ensuring that non-exempt employees receive compensation for hours worked beyond 40 per week, as intended by both the Minimum Wage Act and the overtime exemption regulation.

**j. Comment:**

Commentator believes regulations may be *ultra vires* like the 2016 Federal regulations because increasing the minimum salary to a high level made the duties tests irrelevant which is inconsistent with FLSA (and Act). (813)

**Department response:**

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity... (as such terms are defined and delimited from time to time by regulations of the secretary)."

In May 2016, the USDOL published a regulation which raised the minimum salary level for exempt employees under the FLSA from \$455 per week to \$913 per week. The new salary level was based on the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage region of the country (the South), and also created an automatic updating mechanism that adjusts the minimum salary level every three years starting in 2020. A Federal district court in Texas invalidated and enjoined the 2016 USDOL regulation implementing a salary increase to the FLSA's exemptions on the basis that because the regulation more than doubled the previous minimum salary level, it made exempt status depend predominately on a minimum salary level and thereby supplanted an analysis of an employee's job duties. *Nevada v. United States Dep't of Labor*, 275 F.Supp.3d 795 (E.D. Texas 2017). The court held that doing so was inconsistent with congressional intent and thus was outside the scope of the USDOL rulemaking authority. *Id.*

The final regulations implementing the Minimum Wage Act differ in material respects from the 2016 USDOL regulation in at least three significant ways.

First, the Department's increase is smaller than the 2016 USDOL rule and is phased in over two years rather than immediately effective. In the Texas case, the Federal district court based its decision that USDOL's regulation violated the FLSA in part on the fact that USDOL immediately doubled the salary threshold, from \$455 per week to \$913 per week, which in the court's view effectively eliminated the test based on the employee's duties. Under the Department's regulation, the salary level immediately resets to \$684 to be consistent with the salary threshold set in the USDOL's new rule which becomes effective on January 1, 2020. The Pennsylvania-specific salary threshold gradually rises to the Year 2 intermediate salary threshold of \$780 (a 14% increase over the salary level effective on January 1, 2020), and in the following year to the Year 3 salary threshold of \$875 (a 12% increase over the Year 2 salary level).

Second, unlike the USDOL's 2016 rulemaking, which focused exclusively on the salary level of exempt employees in the EAP categories, the increase in the salary threshold in the final regulation is part of the Department's comprehensive effort to update the EAP definitions to make them more relevant in the modern marketplace and more consistent with the Federal exemptions. The Department's rulemaking also updates the duties test to qualify for the EAP exemption including eliminating the "long" and "short" tests, establishing that the duties remain the focus of the exempt analysis. The Department's comprehensive overhaul of the Commonwealth's EAP regulations undercuts the notion the salary threshold is intended to be or will be determinative of an employee's status in disregard of an analysis of an employee's job duties. In the Texas case, the court noted that the USDOL's 2016 rulemaking stated that white collar employees earning less than \$913 per week would be eligible for overtime "irrespective of their job duties and responsibilities." 275 F.Supp.3d at 806 (quoting 81 Fed. Reg. 32,391, 32405 (May 23, 2016)). In contrast, in its final regulations, the Department both modernized its definitions and developed a salary threshold that is consistent with EAP duties, calculated using salary data of exempt Pennsylvania employees.

Third, the Department used a different methodology to calculate the salary threshold than the USDOL used in 2016 to calculate its salary threshold. Pennsylvania's EAP salary threshold has failed to keep pace with economic growth and the rising nominal salaries of exempt salaried workers, and no longer protects most EAP workers intended by this regulation to receive minimum wage and overtime pay. The salary threshold has not been updated since 1977 and is currently \$8,060 per year for Executive and Administrative employees under the long test. For Professional employees the salary threshold is \$8,840 per year for the long test. For all the EAP exemptions, the annual salary threshold is \$13,000 per year for the short test. The purpose of the salary threshold is such that non-exempt workers should be unlikely to make more than the threshold, and exempt workers should be unlikely to make less than the threshold. Today in Pennsylvania, the average yearly salary of individuals in exempt occupations is \$82,480. As such, the current salary thresholds are irrelevant because virtually all white-collar workers make a higher salary than the salary threshold. The final regulation sets the salary threshold for all EAP exemptions at the weighted average of 10th percentile exempt wages (the Department's methodology for determining salary threshold) and would be \$45,500 per year. This will act as a real threshold to ensure that salaried workers are properly classified as exempt.

Moreover, confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

### III. GEOGRAPHICAL CONSIDERATION

**a. Comment:**

Commentators state that it is inappropriate for the Department to base the threshold on the Northeast region because salaries differ greatly in Pennsylvania (163, 173, 202, 718, 808, 807, 828, 834, 865, 866, 876, 893, 900).

**Department response:**

The Department carefully considered this comment and, as a result, revised its methodology for calculating the salary threshold. The final-form rulemaking contains a salary threshold that is calculated based on data specific to Pennsylvania workers and therefore reflects the economic realities of the Commonwealth.

**b. Comment:**

Commentator states that Clarion County cannot compete with the North East region census data and will have to raise property taxes if the Commonwealth does not provide more funding for the programs. The regulations will affect employees or cut services that they provide (888).

**Department response:**

The Department decided to change the methodology in the final rule from the methodology used in the proposed rulemaking. In the proposed rulemaking, the Department set the salary threshold at 30% of all salaried workers in the Northeast Region. Commentators accurately pointed out that this data included wage data from high income areas such as New York City, Boston and other northeast metropolitan areas. In consideration of this concern, the Department revised the methodology to limit the calculation of the salary threshold to Pennsylvania specific data.

Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, Center for Workforce Information and Analysis (CWIA) identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated weighted 10th percentile wages for

total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,500.

The Department adapted a methodology that was previously used by the Federal government but adjusted it to take into account only Pennsylvania data and wages.

**c. Comment:**

Commentator states that all businesses and locations across PA are not the same. For example, Philadelphia is not in the same situation as Fayette County businesses (808).

**Department response:**

County-level data demonstrates that the proposed overtime threshold of \$45,500 is below most other county's median household income, including those in high-population and rural areas. Counties with some of the state's most significant populations – Allegheny, Lehigh, Erie, Dauphin, Lackawanna, and Lancaster – have median household income levels of 6 to 35% above \$45,500. Only Philadelphia had a median household income that was lower (-11%). Counties with some of the state's sparsest populations in rural areas – Fulton, Elk, and Mercer – have median household income levels of 4 to 10% above the proposed overtime threshold.

Furthermore, when drilling down to the average annual occupational wages by county, certain occupations, regardless of county, will be lower or higher than the proposed OT threshold. Occupations that we expect to be the most impacted by the proposed overtime threshold in terms of greatest number of affected employees include Management, Business and Financial Operations, and Office and Administrative Support.

The average annual wage for Management; Business and Financial Operations; Construction and Extraction; and Installation, Maintenance, and Repair occupations was generally significantly higher than \$45,500 across the state, including rural areas. For example, average wage levels for the Management occupation, included those in rural regions that were above 45% (Cameron), 140% (Fulton), 127% (Elk), 83% (Forest), 147% (Fayette), and 144% (Mercer). Occupations under the Office and Administrative Support; Sales and Related; Production; and Transportation and Material Moving categories typically had lower average wages than the overtime threshold established by these regulations. Other categories, such as Community and Social Services were more mixed, depending on the county.

**d. Comment:**

Commentator stated that the Department should take geography into account; concern about rural areas (357).

**Department response:**

County-level data demonstrates that the proposed overtime threshold of \$45,500 is below most other county's median household income, including those in high-population and rural areas. Counties with some of the state's most significant populations – Allegheny,

Lehigh, Erie, Dauphin, Lackawanna, and Lancaster – have median household income levels of 6 to 35% above \$45,500. Only Philadelphia had a median household income that was lower (-11%). Counties with some of the state’s sparsest populations in rural areas – Fulton, Elk, and Mercer – have median household income levels of 4 to 10% above the proposed overtime threshold.

Furthermore, when drilling down to the average annual occupational wages by county, certain occupations, regardless of county, will be lower or higher than the proposed OT threshold. Occupations that we expect to be the most impacted by the proposed overtime threshold in terms of greatest number of affected employees include Management, Business and Financial Operations, and Office and Administrative Support.

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**e. Comment:**

Commentator stated that the regulation does not consider the cost of living per market or part of the country and will have to employ more part time employees to make up for the missed overtime (873).

**Department response:**

The Department decided to change the methodology in the final rule from the methodology used in the proposed rulemaking. In the proposed rulemaking, the Department set the salary threshold at 30% of all salaried workers in the Northeast Region. Commentators accurately pointed out that this data included wage data from high income areas such as New York City, Boston and other northeast metropolitan areas. In consideration of this concern, the Department revised the methodology to limit the calculation of the salary threshold to Pennsylvania specific data.

Using Pennsylvania’s Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, CWIA identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated weighted 10th percentile wages for total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,500.

The Department adapted a methodology that was previously used by the Federal government but adjusted it to take into account only Pennsylvania data and wages.

#### IV. GENERALLY OPPOSED

**a. Comment:**

Commentator stated that the regulation will result in higher costs to consumers (31).

**Department response:**

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359  
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558  
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393  
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or limited non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly non-exempt workers initially will be lower than the number of newly non-exempt workers upon full implementation. Costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**b. Comment:**

Commentator stated that the Commonwealth should not be hostile like New York towards business (168).

**Department response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. In addition, employers will have flexibility in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the

business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Additionally, the Department has provided for an incremental approach to increasing the salary threshold, in order to give businesses time to adjust. This will permit businesses to explore the above options, or a combination thereof, to determine how to achieve compliance with a minimal impact on operations.

**c. Comment:**

Commentator suggested that the Commonwealth should look at the California model, because it increased the wage and businesses failed (169).

**Department response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. In addition, employers will have flexibility in determining how to implement the final-form regulation. Employers can choose cost neutral options to comply, if they choose.

**d. Comment:**

Commentator stated that health care providers will have an inability to pay due to reimbursement issues (231).

**Department response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. In addition, employers will have flexibility in determining how to implement the final-form regulation. Employers may implement cost neutral options to comply, if they choose.

These concerns have been seriously considered and it is recognized that many nonprofits depend on limited funds from foundations and government grants. Like all affected organizations, affected nonprofits have several strategies they can use to adjust for the rule. Nonprofit employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;

- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

A two-year phase-in period has been proposed, which provides nonprofits with adequate time to become familiar with the regulation, identify whether they employ affected non-exempt EAP workers, and plan accordingly by making necessary adjustments to their organization.

Nonprofit organizations provide important services to the Commonwealth, and in many cases to vulnerable populations. However, the mission of an organization is not justification to exclude its workers from protections that the General Assembly intended to provide under the Pennsylvania Minimum Wage Act. Further, a new market rate is not being set for services by non-exempt employees via this regulation; rather, it is ensuring that non-exempt employees receive compensation for hours worked beyond 40 per week, as intended by both the Minimum Wage Act and the overtime exemption regulation.

**e. Comment:**

Commentator stated that the regulation will result in negative impact to PA residents and taxpayers--higher taxes and fewer services (357).

**Department response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**f. Comment:**

Commentators stated that the regulation will render the minimum wage the sole arbiter of deciding exempt status for most positions (740, 744, 745, 752, 758, 867, 890).

**Department response:**

Confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The salary threshold is based only on EAP worker salaries, so the duties of exempt workers are reflected in the calculation of the threshold amount. The increase in the salary threshold will make employers and employees aware of the weighted average 10<sup>th</sup> percentile salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

**g. Comment:**

Commentator stated that he is opposed to any minimum wage (170).

**Department response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**h. Comment:**

Commentator stated that Department does not have the authority to set wages or salaries for employees that alone exclude them from the exempt classification (866).

**Department response:**

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity... (as such terms are defined and delimited from time to time by regulations of the secretary)."

Confusion exists around Pennsylvania's antiquated use of both a "short" and "long" test for the EAP exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

**i. Comment:**

Commentator stated that he is opposed to any changes (11).

**Department response:**

The commentator did not provide any rationale for his opposition to the regulation. The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**j. Comment:**

Commentator asked the Department to allow private companies to handle their problems (244).

**Department response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**k. Comment:**

Commentator stated that the proposed regulation is well intended but employer and employees should agree to what works for circumstances, and does not believe we need a one size fits all policy (71).

**Department response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. The commentator indicated a fundamental misunderstanding of eligibility and applicability of current overtime exemptions for workers and appears to believe that any salaried employee is automatically exempt from overtime.

**l. Comment:**

Commentators caution Department not to rely on one-sided studies and political rhetoric (22, 23, 33, 34, 35, 39, 59, 60, 61, 63, 95, 97, 99, 100, 173, 364).

**Department response:**

The Department's revised methodology uses objective wage data for Pennsylvania employees.

**m. Comment:**

Commentator stated that the state has no further business regulating overtime and the Department should be rolling back regulations, not adding to them (167)

**Department response:**

The Department's authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that "[e]mployment in the

following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary).”

**n. Comment:**

Commentator stated that excessive regulation creates a drag on economic growth and hurts not only employers but also employees (167).

**Department response:**

The Department’s authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) provides that “[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary).”

Ensuring that workers are fairly compensated and paid a living wage will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive. And paying overtime where appropriate will provide income that employees will use to spend on goods and services.

**o. Comment:**

Commentator stated that overtime should be on all work beyond a 40-hour week. Overtime should be applied to anytime a shift goes more than a normal 8-hour period unless the agreed shift is set up for 4-10 or 3-12 hour shifts (16).

**Department response:**

The Act does not require overtime for any shift in excess of eight hours, only for hours in excess of 40 per week for non-exempt employees.

**p. Comment:**

Commentator questioned whether this rulemaking was truly altruistic in nature to help and build the middle class or simply a way to increase the public coffers in Harrisburg by increased income tax revenues at the expense of the private sector. This is bad public policy and should be dropped. This proposal could cause "brain drain" in PA. The proposed rate is extreme and double the current minimum salary requirement (136).

**Department response:**

The Department’s initial salary threshold aligns with the new Federal salary threshold for 2020, and therefore causes no additional impact. Thereafter, the Department has taken an

incremental approach to a salary threshold that is based on Pennsylvania-specific data and will accurately reflect economic conditions in the Commonwealth.

Fairly compensating workers will incentivize them to remain in Pennsylvania, rather than to leave.

**q. Comment:**

Commentator stated that unfunded mandates are a significant burden to human service providers. Services are not able to be automated like fast food. Raising the wages will put people out of work if a business wants to keep the price of a product the same. Fiscal impact: FY 19/20 = \$403,560, FY 20/21 = \$741,504, FY 21/22 = \$1,140,024. There are no additional funds for these providers as well. If this increase happens, there will not be anyone to care for the children. This is not creating jobs, it is decreasing the amount of jobs available. (171)

**Department response:**

The General Assembly has already made a basic policy decision in enacting the Minimum Wage to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. To the extent the human services provider is a non-profit, the General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**r. Comment:**

Commentator stated that his company is looking to relocate headquarters to NJ, DE, MD, VA, or WV. Regulations will have a large impact on company and state in form of lost revenue. The newest regs do not include Computer Employee exemption for highly skilled computer workers that the Federal government has. State should set salary limit at \$455 a week to comply with USDOL and surrounding states (201).

**Department response:**

The Department cannot create a computer exemption because that exemption does not exist in the Act. The Federal FLSA specifically exempts “any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is (A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour.” 29 U.S.C. § 213(a)(17). The Act does not provide this exemption, and the Department cannot add a categorical exemption through regulation that does not exist in the Act. See *Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990).

Additionally, the USDOL has promulgated a new rule raising the salary threshold to \$683 and the Department has aligned with that salary for the first year. However, the Federal threshold, which is based on earnings in the Southern region of the country, the area with the lowest wages in the US, is not representative of the Pennsylvania economy. Therefore, the Department has adapted its methodology for calculating the salary threshold to incrementally adopt a threshold that is based on Pennsylvania-specific data.

**s. Comment:**

Commentator stated that he represents 300 health and human service members serving 1 million people with disabilities in PA. Has heard of significant concerns that proposed regulation will have direct impact on individuals living and working with disability. RCPA is 100% supportive of an increase to wages, but has serious concerns about the regulation because of fiscal impact on members. Overtime increase will be unfunded mandate. Human service providers will be forced to make salaried employees hourly. Concern about impact on individuals living and working with a disability; the Department should balance the priority of ensuring adequate compensation for all workers and ensuring that the services and supports that individuals with disabilities rely on remain intact. unintended consequences for many health and human service providers (228).

**Department response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” See 43 P.S. § 333.101. That

employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without changing duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**t. Comment:**

The regulation will result in increased costs to consumers (403).

**Department response:**

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359  
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558  
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393  
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or limited non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, whether an employer's costs increase under the new regulation

will depend factors such as whether any of its employees are overtime exempt as well as how the employer chooses to respond to the regulation.

Whether employers incur or absorb any additional costs or elect to pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**u. Comment:**

Commentator stated that regulation will have a negative impact on career advancement and employee flexibility (812).

**Department response:**

There is nothing in the rulemaking that would prohibit employers from offering employees flexibility of hours or career advancement. Employers can choose to provide flexible shifts to employees previously classified as exempt. By promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, employers can trap workers in a position where they have very little time to improve independently their economic situation by pursuing education goals or to work a second job to supplement income while “working their way up the ladder.” Indeed, these workers become beholden to their current employer; with no time outside of work to pursue other opportunities, they must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The Commentator implies that loss of flexibility is bad for worker morale. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

**v. Comment:**

Commentator stated that regulations should address outside sales exemption; computer professional exemption; highly compensated employee exemption; administrative exemption for education establishments; health care limited exemption (880).

**Department response:**

The Department cannot create a computer employee exemption because that exemption does not exist in the Act. The Federal FLSA specifically exempts “any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is (A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (C) the design, documentation, testing, creation, or modification of computer programs related to machine operating

systems; or (D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour.” 29 U.S.C. § 213(a)(17). Contrary to the FLSA, the Act does not include this exemption. As noted above, the Department cannot add a categorical exemption through regulation that does not exist in the Act. *See Nationwide Mut. Ins. Co. v. Foster*, 580 A.2d 436, 442 (Pa. Cmwlth. 1990).

The Department’s current regulations interpreting the Act contain an exemption for outside sales but do not contain exemptions for highly compensated employees, business owners and employees of educational establishments. Moreover, the proposed regulation did not address updating or creating these exemptions. As such, the Department received no comments from labor organizations regarding whether the outside sales exemption should be updated, or a new exemption created. As such, it would be more appropriate to address these issues in a future rulemaking where the Department can conduct outreach and receive input from all interested parties.

Other commentators recommended that the Department mirror Federal law and adopt an 8/80 rule for the health care industry. In order for the Department to adopt this rule, the Department would require an amendment to 34 Pa. Code § 231.42, which states that a weekend is a period of 7 consecutive work days. This amendment would also be better addressed in a future rulemaking to provide all interested parties an opportunity to review and comment on any proposed changes.

Other commentators noted the absence of a concurrent duties test and key definitions such as primary duty and salary basis. While the Department has more closely aligned its regulations with federal regulations, the Department has not adopted all federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Act that are similar. The Department will continue to review federal regulations and may address additional inconsistencies between Federal and state provisions in future rulemaking.

**w. Comment:**

Commentator stated that industries governed by Medicaid regulations and who are wholly dependent on government for funding, cannot implement the regulation without a reciprocal increase in rates and related appropriations unless it cuts benefits, training and infrastructure maintenance (833).

**Department response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the

business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give it the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profit employers from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**x. Comment:**

Commentator asks the Department to allow the free market to function without additional regulations (299).

**Department response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. 43 P.S. § 333.101.

**y. Comment:**

Commentator stated that regulation will result in increased administrative and operations costs; limited career advancement; disruption of employee use of mobile devices and remote electronic access to workplace resources; increase litigation based on off the clock work claims. (890)

**Department response:**

The regulation will not impose any new or additional recordkeeping requirements on businesses that would create increased administration costs. In fact, employers are already obligated to keep such records. The Act currently specifically directs that employers keep "a true and accurate record of the hours worked by each employee and the wages paid to each." 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

The regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening.

Capping employee work hours at forty per week does not prohibit an employee from pursuing advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their economic situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly-paid workers and will be compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages to reduce their costs likely will have difficulty retaining their employees, especially given a tight labor market.

**z. Comment:**

Commentator suggests exempting municipal governments (357).

**Department response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

**aa. Comment:**

Commentator stated that regulation will result in increased FLSA litigation (892).

**Department response:**

The final-form rulemaking more closely aligns with federal law, which provides more consistency for employers and lessens the burden of compliance with different federal and state standards. The rulemaking will result in less misclassification of workers, thus reducing unnecessary litigation over an employee's status.

**bb. Comment:**

Commentator stated that the regulation would be too expensive to implement because of increased legal and operational costs, including administrative costs (892).

**Department response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. The Department cannot anticipate whether employers will choose to incur legal expenses in response to the regulation.

**cc. Comment:**

Commentator disagrees with "customarily and regularly exercise discretionary powers" language. States SB 587 would align PA duties test with the Federal regulation. Other states have done this. Suggests having one standard as outlined in bill (893).

**Department Response:**

In the final-form rulemaking, the Department removed "customarily and regularly" from the duties test. SB 587 was significantly different from the Department's proposed

regulation and did not move out of committee last session. Although it has been reintroduced, it remains in committee. Senator Baker, the bill's sponsor, indicated in her comments that she sought closer alignment with the federal regulations. As discussed in detail, in response to comment I(b) above, this final form regulation represents significantly closer alignment with the federal regulation.

**dd. Comment:**

Commentator stated that business will be negatively impacted, benefits and career opportunities for employees reduced (903).

**Department response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime, but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

Capping employee work hours at forty per week does not prohibit an employee from pursuing advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while “working their way up the ladder.” Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their economic situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments

from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages in order to reduce their costs likely will have difficulty retaining their employees, especially given a tight labor market.

**ee. Comment:**

Commentator stated that the regulation will lead to less affordable housing options for consumers (903).

**Department response:**

The Department sees no correlation between the regulation and affordable housing options. In fact, increased compensation leads to increased spending by consumers. In addition, increased wages to employees creates more spending in local economies. The Department estimates the following induced spending will result from this regulation.

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending  
FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending  
FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending  
FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending  
FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

**ff. Comment:**

Includes comments about the USDOL's proposed overtime rule. The International Franchise Association has grave concerns regarding the catastrophic impact of the proposed regulations. (834)

**Department response:**

The comments submitted were in response to overtime regulations proposed by USDOL 2016 proposed overtime rule, and did not address the Department's proposed regulation.

**V. IMPACTS TO BUSINESS**

**a. Comment:**

Commentators stated the regulation will create burdensome recordkeeping for businesses (233,801).

**Department Response:**

There should be no impact on recordkeeping requirements, as those requirements already exist. The Act specifically directs that employers keep "a true and accurate record of the hours worked by each employee and the wages paid to each." *See* 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

**b. Comment:**

Commentators stated some businesses will have to reduce services due to the regulation (64, 115, 753, 759, 760, 830, 869, 887, 888, 898).

**Department Response:**

Employers will not be required to reduce services, but will have a range of options to consider in determining how to best implement the regulation. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to

supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

**c. Comment:**

Commentator stated that business might have to cut workforce size and cut programs that benefit their business and workers. Follow the CPI-W index and the MSA model. Business already follows a lot of regulations and the Chamber does not believe that the regulation timeline is long enough or transparent (828).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate so as to maintain service levels to customers and constituents. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

The Department has aligned the salary threshold with the new federal salary threshold for 2020, so there will be negligible impact on employers for a year. The Department has incrementally increased the salary threshold thereafter, using a methodology that reflects economic realities in Pennsylvania.

**d. Comment:**

Commentator stated there will be an increased cost to the employer having to constantly examine their employees (890).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not

fairly commensurate with the value of the services rendered.” *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department did examine managerial costs associated with the rule-making and factored these costs into the overall cost to employers. Managerial costs were determined to be ten minutes per affected employee per week, to take into consideration time spent to minimize the costs of overtime.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

**e. Comment:**

Commentator stated that the regulation will decrease productivity (865).

**Department Response:**

Ensuring that workers are fairly compensated and paid a living wage will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive. And paying overtime where appropriate will provide income that employees will use to spend on goods and services.

**f. Comment:**

Commentators stated that the regulation would dramatically increase labor costs (155, 355, 690, 691, 692, 693, 694, 696, 699, 704, 705, 708, 716, 718, 719, 722, 724, 725, 731, 732, 740, 741, 743, 744, 747, 752, 762, 764, 818, 825, 867, 876, 896).

**Department Response:**

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

For employers that choose to maintain business operations by scheduling employees for overtime, approximate additional payroll costs, Commonwealth-wide, are as follows:

FY 2020-2021: \$3,565,467 - \$3,984,681 in increased worker wages  
FY 2021-2022: \$13,211,856 - \$14,765,256 in increased worker wages  
FY 2022-2023: \$19,871,561 - \$22,207,985 in increased worker wages  
FY 2023-2024: \$20,450,344 - \$22,854,819 in increased worker wages  
FY 2024-2025: \$20,450,344 - \$22,854,819 in increased worker wages

**g. Comment:**

Commentator stated Convenience industry has seen other expenses such as gasoline tax increase and cigarette and vapor taxes and businesses cannot absorb such a large increase. The regulation will force businesses to close. Most businesses provide livable wages. If the federal law did not pass, why would state officials think it is a good idea (40).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

**h. Comment:**

Commentator stated that the regulation will increase cost of doing business in the Commonwealth (201).

**Department Response:**

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359  
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558  
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393  
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or limited non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly non-exempt workers initially will be lower than the number of newly non-exempt workers upon full implementation. Costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**i. Comment:**

Commentators stated regulation negatively impacts employee morale, which will in turn affect business reputation (161, 162, 172).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly wages is entirely an employer's decision.

Several commentators stated the loss of flexibility is bad for worker morale. The regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted from salaried to hourly wage positions. Even if an employer chooses to convert an employee to an hourly wage position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages likely will have difficulty retaining their employees, especially given a tight labor market.

**j. Comment:**

Commentator stated that regulation will drive remaining business out of PA. Why has Governor decided to be anti-business (182)?

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” *See* 43 P.S. § 333.101. Ensuring that workers are fairly compensated and paid a living wage will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive and paying overtime where appropriate will provide income that employees will use to spend on goods and services.

**k. Comment:**

Commentator stated that extreme increase poses a significant threat to credit union operations and consumer access to financial services (893).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” *See* 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;

- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

**l. Comment:**

Commentator stated any changes will just reduce hours to eliminate overtime. Changes should not be made in trucking sector because they are paid by the mile or the load they deliver. Workers who are salaried will be made hourly which would cause employees to lose benefits. It would hurt Pennsylvania's ability to compete (8).

**Department Response:**

The General Assembly has made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101. While the Department is not aware of the individual commentator's business structure, in general, truck drivers are not covered by these exemptions. Truck drivers generally do not meet the duties test and are usually not salaried employees.

**m. Comment:**

Commentator stated employers will adjust to new rule that minimizes impact on costs to reduce workers hours or increases workers salary to just above threshold or to pay workers overtime (8).

**Department Response:**

The Department agrees that employers will have several options to respond to the new rulemaking. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

**n. Comment:**

Commentator stated regulation will affect business quality and reputation; will cut back on hours of employees. Can't afford reduced flexibility (681).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become

compliant with the regulation. The shift from salary to hourly wages is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. The regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly wage from salaried employment. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages to reduce costs likely will have difficulty retaining their employees, especially given a tight labor market.

**o. Comment:**

Commentator stated regulation would be too expensive to implement (23, 265, 267, 271).

**Department Response:**

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359  
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558  
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393  
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the

salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**p. Comment:**

Commentator stated negative impact for businesses because of less flexibility for employees and burdensome recordkeeping (241).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly wage is entirely an organizational decision.

Commentators stated the loss of flexibility is bad for worker morale. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment also seems to assume that employees must have a set schedule or that they must be on the employer's premises to be considered as working. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly wages. Even if an employer chooses to convert an employee from salary to an hourly wage, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Capping employee work hours at 40 per week does not prevent an employee from pursuing advancement opportunities. By promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement

income while “working their way up the ladder.” Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their economic situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

The regulation will not impose any new or additional recordkeeping requirements on businesses that would create increased administration costs. In fact, employers are already obligated to keep such records. The Act specifically directs that employers keep “a true and accurate record of the hours worked by each employee and the wages paid to each.” 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

**q. Comment:**

Commentator stated that the regulation will have a heavy impact on their operating budget. Will create a deficit for their operating budget and they would need to request an increase in their rates from the state (894).

**Department Response:**

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359  
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FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation.

Again, whether an employer's costs increase under the new regulation will depend on factors such as whether any of its employees are overtime exempt as well as how the employer chooses to respond to the regulation.

Whether employers incur or absorb increased costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. *See* 43 P.S. § 333.101.

**r. Comment:**

Will cause significant job losses and have severe impacts on business, especially non-profits. Business might have to cut workforce size and cut programs that benefit their business and workers. Follow the CPI-W index and the MSA model. Business already follows a lot of regulations and the Chamber does not believe that the regulation timeline is long enough or transparent (828).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid overtime costs;
- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a federal overtime rule since 1938 and have responded by finding more efficient ways to operate so as to maintain service levels to customers and constituents. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

The Department has aligned the salary threshold with the new federal salary threshold for 2020, so there will be negligible impact on employers for a year. The Department has incrementally increased the salary threshold thereafter, using a methodology that reflects economic realities in Pennsylvania.

**s. Comment:**

Commentator stated it has 30 full-time, part-time, and seasonal employees. Works for 40 townships, boroughs, and municipal authorities in Western PA. 65% of revenue comes from municipal engineering services. This would have negative impact because of the revenue stream of the company comes from local government. This could lead to lay-offs in the company (407).

**Department Response:**

There is no effect on the stream of revenue to the Commentator because these overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**t. Comment:**

Commentator stated that while an update to minimum wage is long overdue, increasing the minimum wage for salaried exempt employees to \$47,000 is just too much. It will create hardship on business (367).

**Department Response:**

The commentator mistakenly believed the Department was raising the minimum wage for all employees to \$47,000. However, the Department is only raising the salary thresholds for exempt EAP employees.

**VI. INCREASED THRESHOLDS**

**a. Comment:**

Commentator stated that threshold increase is too drastic (874).

**Department Response:**

The update to the salary thresholds will protect Pennsylvania employees from being arbitrarily designated as exempt and required to work excessive overtime hours without additional compensation. The current federal salary threshold of \$23,660, over which an

EAP employee does not have to be paid overtime is artificially low because 15 years have passed since the salary thresholds were updated. This threshold has not even been adjusted for inflation. Although the federal threshold is scheduled to be increased on January 1, 2020, that threshold is based upon the earnings of the lowest-paid salaried employees in the nation and is not reflective of Pennsylvania's economy. This rulemaking uses a methodology that takes into account the economic realities in the Commonwealth, using more relevant, Pennsylvania-specific data and uses that same methodology to adjust the salary threshold at regular intervals where warranted by current data. This process replaces infrequent, dramatic changes that would result if the threshold were unaddressed for long periods of time, with predictable and gradual changes.

By ensuring that workers are fairly compensated and paid a living wage, this rulemaking will have an overall positive economic impact for the Commonwealth. Employees who are compensated appropriately for their work will be more productive. And paying overtime where appropriate will provide income that employees will use to spend on goods and services.

The rulemaking also gradually phases in a higher salary threshold, first adopting the new federal threshold and then incrementally adjusting to the Pennsylvania-appropriate threshold. This will allow time for employers to plan and adjust operations to determine how best to implement the rulemaking, based on the individual needs of the business. This rulemaking need not have a detrimental impact on employers. Employers will have a range of options by which to implement the new duties test and updated thresholds for their EAP employees. Employers will have the ability to make these changes cost neutral for their operation.

**b. Comment:**

Commentator stated that the Commonwealth overreached by updating threshold to nearly 150% inflation while essentially turning the duties test into a salary test (871).

**Department Response:**

The Department has reduced the salary threshold from the proposed rulemaking. The increase in the salary threshold is based upon wages paid to Pennsylvania employees who perform EAP duties. Under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test.

This rulemaking uses a methodology that uses more relevant, Pennsylvania-specific data and uses the same methodology to adjust the salary threshold at regular intervals where warranted by current data. This process allows for more predictable and gradual adjustments, and replaces infrequent, dramatic changes that result when the threshold goes unaddressed for long periods of time.

## **VII. AUTOMATIC THRESHOLDS**

**a. Comment:**

Commentator stated that automatic raises do not allow for employer input (874).

**Department Response:**

The final-form rulemaking provides that before the salary threshold is adjusted, the Minimum Wage Advisory Board will have the opportunity to review and comment on any adjustment. Employer groups are represented on the Board.

**b. Comment:**

Commentator stated that automatic increases will hurt business because it doesn't account for economic realities. L&I should not rely on the data and opinion of the Economic Policy Institute (EPI) for reasons explained in the letter (875).

**Department Response:**

The automatic adjustments are based on salaries paid to EAP workers in Pennsylvania, not on EPI data. Using Pennsylvania specific wage data allows the Department ensures that the salary threshold will reflect the current economic reality of the Commonwealth. Sporadic increases in the salary threshold lead to the employer community having to play "catch up" each time the salary threshold is increased at an arbitrary time. In contrast, the automatic adjustment mechanism allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to a regulatory update and subject to overtime upon update due to a large increase in the salary threshold to reflect current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

The Department is not relying on EPI data to set the automatic adjustment. Rather, the data used will be collected by the Department and represents Pennsylvania-specific wage data.

**c. Comment:**

Commentator stated that automatically raising the threshold hurts business because they will have to constantly reevaluate their employees (889).

**Department Response:**

The purpose of the automatic adjustment is not to create a pool of newly-exempt workers with each adjustment; rather, the salary threshold adjustment should continue to reflect the intent of the regulation and continue providing protections to non-exempt workers, while continuing to exempt those executive, administrative, and professional employees that the General Assembly intended to exempt.

Sporadic increases in the salary threshold lead to the employer community having to play "catch up" each time the salary threshold is increased at an arbitrary time. In contrast, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to a regulatory update and subject to overtime upon update due to a large increase in the salary threshold to reflect current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

**d. Comment:**

Commentator stated that Automatic increases will hurt business because they will not be allowed to have input into the level. Proposal should be more open to non-discretionary bonuses and the such (866).

**Department Response:**

The final-form rulemaking provides that before the salary threshold is adjusted, the Minimum Wage Advisory Board will have the opportunity to review and comment on any adjustment. Employer groups are represented on the Board.

The Department amended the provisions of the final-form rulemaking regarding bonuses to align with the federal regulations.

**e. Comment:**

Commentator stated that automatic threshold would create obstacles in business planning (233).

**Department Response:**

The automatic adjustment is calculated based on the weighted average of the 10<sup>th</sup> percentile of wages in exempt occupations. Beginning in 2023, once adjusted, the salary threshold will be in place for three years. This will provide employers with predictability and stability.

**f. Comment:**

Commentator quotes DOL preamble from 2004--where DOL says adopting automatic increase is contrary to congressional intent and inappropriate (834).

**Department response:**

The Department is promulgating these regulations under the Minimum Wage Act enacted by the General Assembly. The Minimum Wage Act differs from the Fair Labor Standards Act, under which Federal rules are promulgated.

The Department has the statutory authority to promulgate the automatic adjustment provision of the regulations. Pennsylvania courts have long recognized the power of an administrative agency to administer a statutorily-mandated program and under the Act, has expressly delegated authority to the Department to “define and delimit” the EAP terms in Section 5(a) of the Act, 43 P.S. § 333.105(a) and left it to the Department’s discretion how to do so. This is the same broad delegation of authority that has underpinned the Department’s use of a salary threshold as a characteristic to define the EAP exemption since 1977, which remains effective in Pennsylvania.

**g. Comment:**

Commentator stated that automatic adjustments require a more thorough analysis of the economic consequences (817).

**Department Response:**

The automatic adjustment, like the initial salary threshold, will be based on Pennsylvania-specific wage data and will reflect the economic realities in Pennsylvania at the time.

**h. Comment:**

Commentator stated that recommends basing automatic increase on CPI-W index; establish a cap of 3 percent increase (828)

**Response:**

The Department has revised its methodology for calculating future salary thresholds and is no longer relying on the CPI-U index. Instead, salary thresholds will be adjusted based on Pennsylvania-specific wage data of EAP workers.

**i. Comment:**

Oppose the automatic increase; this creates an unsustainable floor; no evidence that the legislature intended that the salary level test for exemption be indexed. (866)

**Department Response:**

The Secretary has authority to issue regulations that safeguard the minimum wage rates that are established. 43 P.S. § 333.109. In order to ensure that the salary thresholds are based on wages actually paid to EAP workers, the Department will adjust the salary threshold in accordance with the final-form rulemaking.

The automatic adjustment is calculated based on the weighted average of the 10<sup>th</sup> percentile of wages in exempt occupations. Beginning in 2023, once adjusted, the salary threshold will be in place for three years. This will provide employers with predictability and stability.

Arbitrary and sporadic increases lead to the employer community having to play “catch up” each time the salary threshold is increased. In contrast, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to the automatic adjustment and subject to overtime upon update, as any increase in the salary threshold reflects current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

**j. Comment:**

Commentator stated that against automatic increase and suggests an automatic review. (893)

**Department Response:**

The Secretary has authority to issue regulations that safeguard the minimum wage rates that are established. 43 P.S. § 333.109. In order to ensure that the salary thresholds are based on wages actually paid to EAP workers, the Department will adjust the salary threshold in accordance with the final-form rulemaking.

Arbitrary and sporadic increases lead to the employer community having to play “catch up” each time the salary threshold is increased. In contrast, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to the automatic adjustment and subject to overtime upon update, as any increase in the salary threshold reflects current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

**k. Comment:**

Commentator stated that their biggest concern is the automatic reset in future years. There are estimates that the minimum threshold will be \$72,000 in five years and they do not plan on offering that salary to lower managers. If they had to service prices would be increased and it would just become a cycle for all companies that would be affected. This would cause businesses to close and people would lose their jobs. (757)

**Department Response:**

The Department has revised its methodology for calculating future salary thresholds and is no longer relying on the CPI-U index, so the figure quoted by the commentator is inaccurate. Instead, salary thresholds will be adjusted based on Pennsylvania-specific wage data of EAP workers.

Arbitrary and sporadic increases lead to the employer community having to play “catch up” each time the salary threshold is increased. Indeed, the automatic adjustment allows the regulation to be carried out as intended: there would be few instances of an employee being exempt prior to the automatic adjustment and subject to overtime upon update, as any increase in the salary threshold reflects current wages. Periodic small adjustments to the salary threshold allow the salary threshold to continue to meet the intent of the regulation without causing upheaval to the employer community.

**VIII. PHASE-IN**

**a. Comment:**

Commentator requested the Department to reconsider the speed of the phase-in period (400).

**Department Response:**

The Department has revised the salary threshold implementation to align with the new federal salary threshold that becomes effective on January 1, 2020. Therefore, businesses will have a full year before there is any impact of the revised salary threshold, as Pennsylvania’s threshold will not diverge from the federal threshold until January 1, 2021. Given the revised federal regulation, the Department believes the phase-in period is reasonable.

**b. Comment:**

Commentator stated that increases should be phased in with adequate notice (834).

**Department Response:**

The Department has revised the salary threshold implementation to align with the new federal salary threshold that becomes effective on January 1, 2020. Therefore, businesses will have a full year before there is any impact of the revised salary threshold, as Pennsylvania's threshold will not diverge from the federal threshold until January 1, 2021. Given the revised federal regulation, the Department believes the phase-in period is reasonable.

Information regarding future adjustments will be reviewed with the Minimum Wage Advisory Board no less than 90 days before the effective date. Future adjustments will be published in the *Pennsylvania Bulletin* at least 30 days prior to the effective date.

**c. Comment:**

Commentator stated that the regulation does not provide a reasonable time to comply (828).

**Department Response:**

The Department has revised the salary threshold implementation to align with the new federal salary threshold that becomes effective on January 1, 2020. Therefore, businesses will have a full year before there is any impact of the revised salary threshold, as Pennsylvania's threshold will not diverge from the federal threshold until January 1, 2021. Given the revised federal regulation, the Department believes the phase-in period is reasonable.

**IX. IMPACTS TO EMPLOYEES**

**a. Comment:**

Employers would have to let employees go and switch salaried workers to hourly which is bad for morale. (893).

**Department Response:**

The commentator expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples provided included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who is out of the office on one day may be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

**b. Comment:**

Commentator stated that employers will control the employee hours more tightly which will limit training, travel, and advancement (875).

**Department Response:**

The commentator stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

**c. Comment:**

Commentators stated that the regulation will limit flexibility on hours, benefits, and pay (94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 231, 234, 235, 241, 269, 270, 297, 298, 302, 355, 366, 656).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility

would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples provided by commentators included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. For example, an employee who needs to be out of the office for a couple of hours one day may be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock. Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason that the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

**d. Comment:**

Commentators stated that the regulation will negatively affect morale by forcing employees back to punching in on a time clock (94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 231, 234, 235, 241, 269, 270, 297, 298, 302, 355, 366, 656).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours one day may be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock. Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary

raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

**e. Comment:**

Commentator states that people will also make less if they don't hit the 40-hour mark (756).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours one day may be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed

and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

- f. **Comment:** Commentator states that it will be difficult for workers to adjust to different situations. (690, 691, 692, 693, 694, 696, 699, 704, 705, 708, 716, 718, 719, 722, 724, 725, 731, 732, 740, 741, 743, 744, 747, 752, 764, 818, 825, 867, 876, 896).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours one day may be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying

managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while “working their way up the ladder.” Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

## **X. IMPACTS TO LOCAL GOVERNMENT**

### **a. Comment:**

Commentator states that PSATS is a nonprofit that represents the interests of officials from 1400 townships. PSATS objects to changes. There is a 200% jump in salary requirements. Will disproportionately affect municipal employers with rural populations, will increase or raise taxes, and will eliminate services to townships (357).

### **Department Response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**b. Comment:**

Commentator urges the state to work with counties on the proposal (888).

**Department Response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

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This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**c. Comment:**

Commentator states that Municipal Government Employers will be negatively impacted (357).

**Department Response:**

These overtime rules are inapplicable to public employers, including state affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

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This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**d. Comment:**

Commentator states that Berks County cannot compete with the NE census states and will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the employees that will be affected to be reviewed. Urges the state to work with counties on the proposal and wait until USDOL updates their regulations (898).

**Department Response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of "employer" in 1974, but has not altered the definition of "employer" to include public entities. The General Assembly's clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act's definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**e. Comment:**

Commentator desires language that explicitly states that political subdivisions are exempt. The abilities of counties to deliver services will be affected because they have already lost funding so they cannot pick up the slack of paying the extra increases. It will take significant time and effort to review employee positions and job descriptions to examine if they will be exempt or not. The one-size fits all approach does not work for PA. PA should work with the counties to come up with a proposal that works for everyone (887).

**Department Response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of "employer," indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**f. Comment:**

Commentator states that Franklin County cannot compete with the NE census states and will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the employees that will be affected to be reviewed. Urges the state to work with counties on the proposal and wait until USDOL updates their regulations (869).

**Department Response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act of 1968 (Act) specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**g. Comment:**

Commentator states that Lancaster County will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the 63 of the 390 exempt employees that will be affected to be reviewed. Urges the state to work with counties on the proposal (830).

**Department Response:**

These overtime rules are inapplicable to public employers, including state affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**h. Comment:**

Commentator states that Forest County will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. 30 employees will be eligible for overtime and urges the state to work with counties on the proposal (755, 759, 760).

**Department Response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**i. Comment:**

Commentator states that Lycoming County will have to raise property taxes if the state does not provide more funding for the programs and employees that will be affected by the regulations or cut services that they provide. It will also take significant man power to for the duties of the 33 employees that will be affected to be reviewed. Urges the state to work with counties on the proposal (753).

**Department Response:**

These overtime rules are inapplicable to public employers, including state-affiliated entities, counties, municipalities, and public-school systems. The Minimum Wage Act specifically omits public employers from its definition of “employer,” indicating the intent of the General Assembly to exclude public employers from coverage under the Act. Instead, the FLSA, which expressly includes state-related entities within its definition of covered employers, establishes the rules applicable to public employers.

The General Assembly has amended the Act five times since the FLSA was amended to include public entities within the definition of “employer” in 1974, but has not altered the definition of “employer” to include public entities. The General Assembly’s clear intention by its omission was not to extend coverage under the Act to public employers. Accordingly, because the General Assembly has chosen not to include the Commonwealth or any of its political subdivisions in the Act’s definition of employer, the Department has properly interpreted the Act to exclude them.

This exemption is longstanding and it appears, from the relatively small number of comments, that most public employers understood that the proposed rulemaking would not apply to them.

**XI. IMPACTS ON COMMONWEALTH ECONOMY**

**a. Comment:**

Commentator stated that the regulation will harm Commonwealth's ability to compete and attract business; Commonwealth will also become less attractive to business because surrounding states have regulations that mirror the FLSA (716, 746).

**Department Response:**

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
FY 2021-2022 Total Employer Cost: \$21,954,959 - \$23,508,359  
FY 2022-2023 Total Employer Cost: \$28,058,135 - \$30,394,558  
FY 2023-2024 Total Employer Cost: \$28,636,918 - \$31,041,393  
FY 2024-2025 Total Employer Cost: \$28,636,918 - \$31,041,393

This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers in year one will be lower than the number of newly nonexempt workers in Year 2. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Whether employers incur costs or pass those costs on to their customers will be a function of how the employer chooses to implement the regulation. However, the General Assembly has already made the basic policy choice to protect workers from unfair wages not commensurate with the value of the services rendered. 43 P.S. § 333.101.

Additionally, New York has adopted a salary threshold higher than the FLSA, so not all surrounding states use the Federal salary threshold.

**b. Comment:**

Commentator stated that the flexibility in the long run will hurt the recruitment and retention efforts of the business (696).

**Department Response:**

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee that needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Having a higher salary threshold will assist employers in recruiting and retaining employees. Workers who are fairly compensated for their work are less likely to seek other opportunities and are likely to be more productive.

**c. Comment:**

Commentator urges for no cap in the percentage allowed for nondiscretionary bonuses and incentive payments (874).

**Department Response:**

The Department aligned the provisions for nondiscretionary bonuses and incentive payments with the Federal regulation to avoid confusion.

**d. Comment:**

Commentator stated that the Commonwealth should be working to reduce regulations, not create more (697, 698, 702, 703, 706, 709, 710, 712, 713, 714, 717, 720, 721, 723).

**Department Response:**

The Department's authority to adopt regulations is clear. The General Assembly has already made a basic policy decision and indicated, in enacting the Act, that it intended to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the Executive, Administrative and Professional exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5) states, "Employment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary)."

**XII. IMPACTS TO NON-PROFIT ORGANIZATIONS**

**a. Comment:**

Commentator stated that the regulation will cause significant job losses and have severe impacts on business, especially non-profits. Business might have to cut workforce size and cut programs that benefit their business and workers. Follow the CPI-W index and the MSA model. Business already follows a lot of regulations and the Chamber does not believe that the regulation timeline is long enough or transparent (828).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

The Department has aligned the salary threshold with the new Federal salary threshold for 2020, so there will be negligible impact on employers for a year. The Department has incrementally increased the salary threshold thereafter, using a methodology that reflects economic realities in Pennsylvania.

**b. Comment:**

Commentator stated that as a non-profit foster care agency she is already reliant on DHS dollars to hire staff. The increased threshold would force us to cut staff and put employees back to hourly workers, and all her employees hated this when it was in the proposed Obama-era regulations. Employees considered it a demotion - especially young professionals. It is not uncommon for employees in non-profits to work less than 40 hours in a week. Even if employees are changed to hourly, there is still not enough money to pay them overtime. This would result in a loss in pay to employees. Would support raising the threshold to \$30,000 per year and then index it over time. Recommends making an exemption for non-profits (62).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to

supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**c. Comment:**

Commentator stated that regulation will hurt non-profits because they must spend more money on staffing which takes away the funding available for care and services, in this case. They cannot increase revenue because seniors have limited income. It is too great of a jump for the overtime salary increase and the shift for salaried workers to become hourly will be burdensome. It will be hard for the members to recruit committed employees because they will have to compete with the higher wages. States that it is not fair to base PA wages off Northeast states because there are many differences in lifestyle in pay already. Salaried workers will lose benefits if switched to salary such as vacation and a sense of trust (701).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises,

are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

The Department decided to change the methodology in the final rule from the methodology used in the proposed rulemaking. In the proposed rulemaking, the Department set the salary threshold at 30% of all salaried workers in the Northeast Region. Commentators accurately pointed out that this data included wage data from high income areas such as New York City, Boston and other northeast metropolitan areas. In consideration of this concern, the Department revised the methodology to limit the calculation of the salary threshold to Pennsylvania specific data.

Using Pennsylvania's Occupational Employment Statistics (OES) data for 2018, the most recent year for which this data is available, CWIA identified the employment volume and 10th percentile wage for each exempt occupation. The 10th percentile wage was multiplied by total employment to create a weighted 10th percentile wage for each exempt occupation. CWIA then aggregated total employment across all exempt occupations, aggregated weighted 10th percentile wages for total weighted 10th percentile wage across all exempt occupations, and divided the aggregated weighted 10th percentile wage by aggregated employment to determine the average 10th percentile wage of all exempt workers, which is \$45,533.

The Department adapted a methodology that was previously used by the Federal government, but adjusted it to take into account only Pennsylvania data and wages.

**d. Comment:**

Commentator stated that as a Non-profit, the regulations will result in higher costs which we cannot recoup. Will result in fewer services (53).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to

supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**e. Comment:**

Commentator is legal counsel for several non-profit exempt health entities. The proposal runs counter to public interest. The threshold is so high that it reduces the importance of the duties test. Proposal does not consider inflation and is well beyond what the rate of inflation has been since 1977. Makes this more of a salary test than a duties test. Differing Federal and state minimum wage and overtime can be very confusing. Federal government provides definitions for highly compensated, computer employees and exempt business owners under executive exemption. Also says no outside sales or use of fluctuating workweek. This is an unfunded mandate on non-profits. Clients will have to increase prices to offset the costs. Employee salaries will be lowered to adjust. Will hurt employee morale to change to hourly. Clients may have to lay off employees. Clients may be forced to discipline dedicated employees that respond to work emails from home, or complete reports on the weekends. (411)

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services

should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

Confusion exists around Pennsylvania's antiquated use of both a short and long test for the Executive, Administrative, and Professional exemptions. Many individuals understand only the salary threshold portion of the regulation, and mistakenly assume that if they make over \$23,660 (USDOL's current threshold until the updated USDOL regulation takes effect on January 1, 2020), they are ineligible for overtime. However, under both the Department's regulation and USDOL's regulation, the individual must make over the salary threshold AND meet the duties test. The increase in the salary threshold will make employers and employees aware of the average salaries paid for employees who perform EAP duties; aligning Pennsylvania's duties test with the Federal duties test will assist employers with compliance.

The Department cannot simply adopt all Federal regulations, because the Department's enabling legislation, the Minimum Wage Act, is different from the Fair Labor Standards Act, under which the Federal regulations are promulgated.

The Department has made significant efforts to more closely align with Federal regulations. The Department recognizes the importance of providing more consistency for employers and employees. The Department believes aligning more closely with the Federal regulations will result in less misclassification of workers, thus reducing unnecessary litigation over an employee's status.

The amendments to the duties test for the EAP exemptions make the applicable test easier to understand and therefore will increase compliance. To the extent permissible and appropriate under Pennsylvania law, these tests have been aligned with the applicable Federal definitions, creating one standard for employers to administer.

While the Department has more closely aligned its regulations with Federal regulation, the Department has not adopted all Federal definitions. However, the Department considers Federal law for guidance in interpreting provisions of the Minimum Wage Act that are similar to those in USDOL regulations. The Department will continue to review Federal regulations and may address any further inconsistencies in future rulemaking.

The Department has also aligned the salary threshold with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania. Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become

compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee that needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

**f. Comment:**

Commentator stated that regulation is bad for non-profit employer. 70 percent of the current budget already goes to salaries and benefits of current employees. Currently, 98 percent of revenue is brought in through pre-determined fees-for-service. This regulation would put a strain on the business and many other non-profits. This would reduce the amount of funding for direct care services. This regulation would impact the most vulnerable people in our society. Services for vulnerable people will be reduced (115).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**g. Comment:**

Commentator stated that non-profits should be exempt from the proposed current regulations. The increase should not be more than \$100 per week. Many people choose to work for non-profits because they want to do charitable work in the community. That is something that is part of the "non-monetary" compensation. Cites an EPI article that the average non-profit CEO pay is \$100,000 compared to \$15 million of the top 350 firms in the USA. 30% of program directors are paid less than \$47,892 (80% of assistant directors). These individuals are still executives. Salary thresholds should be set lower in the non-profit world (242).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**h. Comment:**

Commentator stated that regulation will impact nonprofits and medical providers the most; these sectors cannot raise prices to absorb cost of the increased salary levels (866).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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**i. Comment:**

Commentator stated that regulation will have a major negative impact to nonprofit organizations (890, 891).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases

is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

**j. Comment:**

Commentator does not support nonprofit exemption, but rather, suggests studying the process and potential solutions, and phase-in so that businesses have time to adjust. Suggests that mandated increases to the exempt threshold should only be raised with an increase in human services funding because many non-profits that offer those kinds of services are already having trouble making ends meet. Understands the suggestion of making non-profits exempt but in the end, it would just make their services less competitive in the job market and will negatively impact human services providers. It is well documented that a staffing crisis exists in the human service field in PA (891).

**Department Response:**

The Department has aligned the salary threshold with the Federal threshold for 2020, to give employers an opportunity to adjust to the increase before incrementally increasing the threshold to one that appropriately reflects economic conditions in Pennsylvania. The Department has no ability to influence human services funding.

Raising the salary threshold may assist non-profits in recruitment and less the staffing crisis in the human services field.

**k. Comment:**

Commentator stated that its non-profit would not be able to sustain itself under greater personnel costs as they get limited money from the government. If rules are implemented allow non-profits to option a waiver. Includes numbers as to their budget (763).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage. If that were not the case, it would be increasingly difficult for non-profits to recruit and retain employees.

The Department has no authority under the law to grant waivers.

**Comment:**

Commentator stated that non-profits have limited funds for personnel costs and people take jobs with them understanding that. The proposed threshold is too high (699).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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### **XIII. FEDERAL RULE STRUCK DOWN**

#### **a. Comment:**

Numerous commentators stated that a Federal court already struck down the Obama-era rule that proposed to do the same thing. (12-14, 30-32, 36-38, 44, 46-49, 52, 53, 64, 69, 70, 72, 94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 147, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 227, 231, 234, 235, 241, 269, 270, 297, 298, 302, 344, 345, 346, 347, 349, 350, 354, 356, 355, 363, 366, 651, 652, 654, 655, 681, 656, 759, 801, 803, 813, 828, 829, 865-868, 871, 889, 890, 982, 983).

#### **Department Response:**

In May 2016, the USDOL published a regulation which raised the minimum salary level for exempt employees under the FLSA from \$455 per week to \$913 per week. The new salary level was based on the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage region of the country (the South), and also created an automatic updating mechanism that adjusts the minimum salary level every three years starting in 2020. A Federal district court in Texas invalidated and enjoined the 2016 USDOL regulation implementing a salary increase to the FLSA's exemptions on the basis that the regulation more than doubled the previous minimum salary level and it made exempt status depend predominately on a minimum salary level; thereby supplanting an analysis of an employee's job duties. *Nevada v. United States Dep't of Labor*, 275 F.Supp.3d 795 (E.D.Texas 2017). The court held that doing so was inconsistent with congressional intent and thus was outside the scope of the USDOL rulemaking authority. *Id.*

The final regulations implementing the Minimum Wage Act differ in material respects from the 2016 USDOL regulation in at least three significant ways.

First, the Department's increase is smaller than the 2016 USDOL rule and is phased in over two years rather than immediately effective. In the Texas case, the Federal district court

based its decision that USDOL's regulation violated the FLSA in part on the fact that USDOL immediately doubled the salary threshold, from \$455 per week to \$913 per week, which in the court's view effectively eliminated the test based on the employee's duties. Under the Department's regulation, the salary level immediately resets to \$684 to be consistent with the salary threshold set in the USDOL's new rule which becomes effective on January 1, 2020. The Pennsylvania-specific salary threshold gradually rises to the Year 2 intermediate salary threshold of \$780 (a 14% increase over the salary level effective on January 1, 2020), and in the following year to the Year 3 salary threshold of \$875 (a 12% increase over the Year 2 salary level).

Second, unlike the USDOL's 2016 rulemaking, which focused exclusively on the salary level of exempt employees in the EAP categories, the increase in the salary threshold in the final regulation is part of the Department's comprehensive effort to update the EAP definitions to make them more relevant in the modern marketplace and more consistent with the Federal exemptions. The Department's rulemaking also updates the duties test to qualify for the EAP exemption including eliminating the "long" and "short" tests, establishing that the duties remain the focus of the exempt analysis. The Department's comprehensive overhaul of the Commonwealth's EAP regulations undercuts the notion the salary threshold is intended to be or will be determinative of an employee's status in disregard of an analysis of an employee's job duties. In the Texas case, the court noted that the USDOL's 2016 rulemaking stated that white collar employees earning less than \$913 per week would be eligible for overtime "irrespective of their job duties and responsibilities." 275 F.Supp.3d at 806 (quoting 81 Fed. Reg. 32,391, 32405 (May 23, 2016)). In contrast, in its final regulations, the Department both modernized its definitions and developed a salary threshold that is consistent with EAP duties, calculated using salary data of exempt Pennsylvania employees.

Third, the Department used a different methodology to calculate the salary threshold than the USDOL used in 2016 to calculate its salary threshold. Pennsylvania's EAP salary threshold has failed to keep pace with economic growth and the rising nominal salaries of exempt salaried workers, and no longer protects most EAP workers intended by this regulation to receive minimum wage and overtime pay. The salary threshold has not been updated since 1977 and is currently \$8,060 per year for Executive and Administrative employees under the long test. For Professional employees the salary threshold is \$8,840 per year for the long test. For all the EAP exemptions, the annual salary threshold is \$13,000 per year for the short test. The purpose of the salary threshold is such that non-exempt workers should be unlikely to make more than the threshold, and exempt workers should be unlikely to make less than the threshold. Today in Pennsylvania, the average yearly salary of individuals in exempt occupations is \$82,480. As such, the current salary thresholds are irrelevant because virtually all white-collar workers make a higher salary than the salary threshold. The final regulation sets the salary threshold for all EAP exemptions at the weighted average of 10th percentile exempt wages (the Department's methodology for determining salary threshold) and would be \$45,500 per year. This will act as a real threshold to ensure that salaried workers are properly classified as exempt.

Additionally, the decision of the Texas Federal district court is inherently flawed. The standard imposed by the court in that case created a standard that would invalidate nearly any regulation that relied on a salary threshold. An examination of the decision shows that the judge not only misunderstood the operation of the rule at issue, he based his decision on the fact that the regulation gave new overtime protections to workers whose jobs had not changed. The decision ignored the fact that the 2004 amendment to the Federal rule similarly extended overtime protections to workers whose jobs had not changed. There is no precedent for deciding that a rule is invalid based solely on its impact.

**b. Comment:**

Commentator is aware of the Obama-era overtime regulations, however, is confused and/or does not know that these regulations were struck down in the courts (193).

**Department Response:**

The Department thanks the commentator for the comment.

**XIV. IMPACTS TO SMALL BUSINESS**

**a. Comment:**

Commentators state that proposal underestimates the burden it will place on small businesses (9, 94, 96, 102, 103, 105, 106, 111, 113, 128, 130, 138, 142, 143, 148, 149, 152, 153, 155, 156, 161, 162, 168, 169, 170, 172, 185, 188, 199, 226, 231, 234, 235, 241, 269, 270, 297, 298, 302, 355, 364, 366, 656).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

**b. Comment:**

Commentator states that these regulations are bad for small business (269, 270, 298, 299, 364, 818, 819, 828, 834, 903).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

**c. Comment:**

Commentator states that this regulation would tell small business owners “we only want big box stores in PA instead of small Pennsylvania owned companies” (5).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

**d. Comment:**

Commentator states that the regulation would have negative impact on his business; is already paying storm water fee, which is reaching thousands of dollars (6).

**Department Response:**

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

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**e. Comment:**

Commentator states that the cost of doing business will increase and impact clients. Will negatively harm competitiveness; will force small businesses to shift from full time salaried employees to full time hourly employees creating a rigid work schedule and fewer training opportunities and lower morale. It will be a burden to track time and will affect morale (7).

**Department Response:**

The commentator expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. Organizations have several ways in which to comply with the regulation. The shift from salary to hourly is entirely an organizational decision. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Several commentators stated the loss of flexibility is bad for worker morale. Examples provided by commentators included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other

opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

**f. Comment:**

Commentator states that the regulation will hurt employees because small businesses will have to cut back hours and pay (226).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to comply with the final-form regulation.

Affected businesses, including small businesses, will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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**g. Comment:**

Commentator employs 100 people in 9 locations. Concerned that proposed regulations would hinder flexibility of what they offer and create a quality of life issue for many, even a scenario under which many may not be able to work. Convenience industry has seen other expenses such as gasoline tax increase and cigarette and vapor taxes and businesses cannot absorb such a large increase. Will force business to close. Most businesses provide livable wages (40).

**Department Response:**

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
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- Allow for some overtime but reduce base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The array of compliance alternatives allows employers to choose the option that best works for their business, without closing their doors.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin

being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

Although many businesses do pay a livable wage, the General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from "unreasonably low" wages that were "not fairly commensurate with the value of the services rendered." 43 P.S. § 333.101. This regulation ensures that all employees are minimally protected against overtime hours for which they are not fairly compensated.

**h. Comment:**

Commentator states that many government regulations ignore the realities of the agriculture sector. Labor is very market driven, and wages are based on the demand for labor. Prior to setting a salary, job requirements are carefully measured so that "extra" time is already accounted for in the employment agreement. There is a negative association from going from salaried to an hourly employee. This will hinder flexibility as a small business and an employer (179).

**Department Response:**

Employers of all sizes have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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**i. Comment:**

Commentator states proposal underestimates the burden it will place on small businesses. It will ultimately increase labor costs. Over 50% of the employees have been there for over 20 years. The image of them using a time clock every day is demoralizing. Insurance agencies work on commissions and are not able to set any pricing for anything--dependent on insurance companies (355).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to comply with the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Several commentators stated the loss of flexibility is bad for worker morale. Commentators asserted that flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each

organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

Commentator commented that his employees should be exempt as professional employees. The Department cannot comment on the exempt status of any particular employee.

**j. Comment:**

Commentator, as owner of a funeral home, states that he is already subject to taxes, fees and requirements that make it difficult to keep his head above water. Proposal will force small businesses to cut back the hours and pay of employees. Morale of employees will be impacted by punching time clock. (359)

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

The Department estimates the total direct cost to the regulated community in Pennsylvania to comply with this regulation to be an average of \$78.42 per employer per year across the current and next five fiscal years:

FY 2019-2020 Total Employer Cost: \$6,961,025  
FY 2020-2021 Total Employer Cost: \$14,315,133 - \$14,734,347  
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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Several commentators stated the loss of flexibility is bad for worker morale. Commentators asserted that flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

**k. Comment:**

Commentator states that regulation will cause slower construction, and less affordable housing (405).

**Department Response:**

The Department sees no correlation between the regulation and affordable housing options. In fact, increased compensation leads to increased spending by consumers. In addition, increased wages to employees creates more spending in local economies. The Department estimates the following induced spending will result from this regulation.

FY 2020-2021 Economic Impact: \$1,957,441 - \$2,187,590 in induced spending  
FY 2021-2022 Economic Impact: \$7,253,309 - \$8,106,125 in induced spending  
FY 2022-2023 Economic Impact: \$10,909,487 - \$12,192,184 in induced spending  
FY 2023-2024 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending  
FY 2024-2025 Economic Impact: \$11,227,239 - \$12,547,296 in induced spending

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them.

**I. Comment:**

Commentator represents 14,000 small businesses in PA. There will be increased costs for compliance for small businesses. The economic impact on employees is overstated, while the negative impact on small businesses are greatly underestimated. It will negatively affect morale, quality, customer service, and a business's reputation. Businesses with fewer than 50 employees spend 30% more on regulatory compliance per employee, each year, than large businesses. Small businesses will be impacted disproportionately because they lack personnel. Converting employees to hourly will curb benefits of being exempt such as paid time off. Small businesses lose their appeal of flexibility (682).

**Department Response:**

Increased compensation leads to increased spending by consumers. In addition, increased wages to employees creates more spending in local economies. The Department estimates the following induced spending will result from this regulation.

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Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers in upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

Several commentators stated the loss of flexibility is bad for worker morale. Commentators asserted that flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

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The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. The Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

**m. Comment:**

Commentator states that businesses with under 100 employees should be exempt (808).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. The Department does not have authority to exempt specific groups of employers from the Act.

**n. Comment:**

Commentator considers himself a Republican, but just wants something done about the “illegals” that get everything and citizens are second class. There are reasons that every country has borders (656).

**Department Response:**

The Department does not have jurisdiction over immigration matters.

**o. Comment:**

Commentator states it would create an undue burden on his business (653).

**Department Response:**

The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

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Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them and therefore the rulemaking will not impose an undue burden.

**p. Comment:**

Commentator states that as a small business owner, this change would hurt his business financially due to the cost of my salary workers (303).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers in upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

**q. Comment:**

Commentator states that the dramatic increase in the wage requirement to qualify for exempt status will force many employers to convert salaried employees to hourly status, which entails a more rigid work schedule, less flexibility, burdensome record-keeping, and

fewer training opportunities and benefits. Hourly workers risk less take-home pay if they work fewer than 40 hours in a week (365, 368).

**Department Response:**

Commentators expressed that implementation of this regulation would be bad for employee morale, stating that it would cause organizations to shift employees from salaried to hourly, would require workers to punch a clock and track hours, and that employee flexibility would be reduced. However, organizations have several ways in which to become compliant with the regulation. The shift from salary to hourly is entirely an organizational decision.

Several commentators stated the loss of flexibility is bad for worker morale. Examples included that exempt workers can currently work longer hours on certain days in order to work fewer hours on other days, allowing them to attend their children's extracurricular activities or attend appointments. Commentators asserted that this flexibility would end once an employee becomes non-exempt and must be paid overtime for hours worked over 40. However, the regulation specifies only the number of hours that may be worked in a week before overtime must be paid; each organization still has flexibility as to how and when an employee fulfills their 40-hour workweek.

This comment seems to assume that employees must have a set schedule or that they must be on the employer's premises. The Minimum Wage Act does not contain any such restrictions. This rulemaking will not prevent employers from providing flexibility to their employees. An employee who needs to be out of the office for a couple of hours on a Monday can be given the option to make up the hours on other days, or to work from home that evening. There is no requirement that employees be forced to punch a time clock.

Likewise, there is no requirement that employees be converted to hourly positions. Even if an employer chooses to convert an employee to an hourly position, any concerns about morale should be offset by the fact that the employee will be paid fairly for hours worked.

Some businesses stated that capping employee hours at 40 does not allow an employee to pursue advancement opportunities. However, by promoting employees into low-paying managerial jobs, but then taking advantage of exempt status and forcing unpaid overtime, workers are trapped in a position where they have very little time to independently improve their economic situation by pursuing education goals or working a second job to supplement income while "working their way up the ladder." Indeed, these workers become beholden to their current employer, with no time outside of work to pursue other opportunities. They must hope that their hard work at their current employer is noticed and that internal advancement is available, as that is the only feasible way they will improve their current situation.

The fact is, regardless of how an employer chooses to comply, workers will benefit from this rulemaking. Perhaps this is the reason why the Department received no comments from or on behalf of workers raising these concerns. Some employees will have their salary raised above the threshold, so that they continue to be exempt. Some employees will

become hourly and will begin being compensated for hours worked in excess of forty hours per week. Other employees will no longer be required to work in excess of forty hours per week without compensation. Employers that take the step of reducing wages will have difficulty retaining their employees, especially given a tight labor market.

The regulation will not impose any new or additional recordkeeping requirements on businesses that would create increased administration costs. In fact, employers are already obligated to keep such records. The Act specifically directs that employers keep “a true and accurate record of the hours worked by each employee and the wages paid to each.” 43 P.S. § 333.108. The Act does not require that such records be kept only for hourly employees.

**r. Comment:**

Commentator, a small business owner, states regulation will hurt business quality, customer service and reputation. Higher costs will result in cut in pay (98).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers in upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

**s. Comment:**

Commentator represents nearly 400 employers from Columbia and Montour counties. The Board of Directors of the Columbia Montour Chamber of Commerce opposes these changes. The proposed regulations are excessive and burdensome. Small businesses and non-profits do not have the ability to adjust to the regulations in three years. Market conditions are already driving up wages and benefits for employees in many sectors. The government should allow the free market to provide this growth (178).

**Department Response:**

A number of commentators opined that the proposed rulemaking would be detrimental to the interests of small businesses in the Commonwealth. These comments do not recognize the flexibility that employers will have in determining how to implement the final-form regulation.

Affected businesses will likely adapt to the regulation in the least costly way possible. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. Each affected employer must consider the regulation, including both the duties test and the salary threshold, and consider if they will adjust operations to make the regulation cost neutral, or if they wish to maintain several options for operations, including requiring employees to work beyond 40 hours a week, and therefore respond to the regulation in a way that may increase payroll costs.

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This assumes that all employers in the state will review the new regulation and that some will determine that they are exempt from the regulation, for example, because they are municipal, public, or certain non-profit employers. It also considers that, given that the salary threshold will be phased in to \$45,500 over time, the number of newly nonexempt workers initially will be lower than the number of newly nonexempt workers in upon full implementation. Again, costs to employers will depend not only on if the employee is exempt and if the employer has any non-exempt workers currently on staff, but how the employer chooses to respond to the regulation.

The General Assembly has already made a basic policy decision, in enacting the Act, to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. That employees being paid a fair wage for their work may result in some minimal cost increases is not a reason to reject this final-form regulation. In fact, employers have a range of options to respond to possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business’s operations, current staffing structure, and current scheduling practices.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees’ hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them. But the fact that an employer provides human services should not give them the right to pay an unreasonably low wage to its workers. The General Assembly determined, in not exempting non-profits from the Minimum Wage Act, that employees of non-profit organizations, just like their counterparts in for-profit enterprises, are entitled to a fair wage.

## **XV. LEGISLATIVE PROCESS**

### **a. Comment:**

Commentator stated that fundamental changes like this should be handled by the legislature and not through executive action (411, 875).

### **Department Response:**

The Department’s authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate

with the value of the services rendered.” 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5), provides that “[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary).” This change need not be the subject of legislation.

**b. Comment:**

Commentator states that this process should be handled through legislative process (813, 832, 871).

**Department Response:**

The Department’s authority under the Act to adopt regulations is clear. The General Assembly has already made the basic policy decision in enacting the Minimum Wage Act to protect employees from “unreasonably low” wages that were “not fairly commensurate with the value of the services rendered.” 43 P.S. § 333.101. The General Assembly has also specifically directed the Department to define the EAP exemptions by regulations. Section 5(a)(5) of the Act, 43 P.S. § 333.105(a)(5), provides that “[e]mployment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act: In a bona fide executive, administrative, or professional capacity...(as such terms are defined and delimited from time to time by regulations of the secretary).” This change need not be the subject of legislation.

**XVI. REGULATORY REVIEW ACT**

**a. Comment:**

Commentator states that the Department failed to comply with section 5 of the Regulatory Review Act in several ways, including failing to identify the costs and financial impact to small businesses (866).

**Department Response:**

The Department has extensively addressed the impact of this final-form rulemaking on small businesses in the Regulatory Analysis Form.

**XVII. IMPACTS TO HIGHER EDUCATION**

**a. Comment:**

Majority of revenue is generated through tuition. Non-market driven increases in compensation will add pressure to raise tuition and fees for prospective students. Along with this increase, Haverford will not be only college or university that has negative consequences. All colleges and universities in the Commonwealth will be at a competitive disadvantage with higher education outside the state. College employs 600 people, many are already in exempt positions.

**Department response:**

Employers have a range of options to respond to the possibility of small cost increases occasioned by the final rulemaking. Business response to the regulation will vary depending on the characteristics of the business's operations, current staffing structure, and current scheduling practices. To adjust for the rule, employers may pursue one or a combination of several options:

- Pay non-exempt employees overtime;
- Limit non-exempt employee hours to 40 hours a week to avoid Overtime Costs;
- Allow for some overtime but reducing base pay or benefits;
- Raise non-exempt employee salaries to above the threshold.

Businesses have been subject to a Federal overtime rule since 1938 and have responded by finding more efficient ways to operate. This includes hiring additional employees to supplement the work of non-exempt employees; capping employees' hours to avoid the extra cost of overtime; and switching employees from a salary basis to an hourly basis without having to change duties. Employers will have the flexibility to determine what approach works best for them to minimize or eliminate the impact on tuition.

## **XVIII. INSUFFICIENT PUBLIC OUTREACH**

### **a. Comment:**

By the Department's own admission, there was "no effort to meet with the thousands of owners in this Commonwealth to obtain feedback and no consideration given to the geographical makeup and different costs of living" (101, 104, 110, 112, 119, 120, 124, 126, 131, 141, 151, 154, 159, 160, 164, 202).

### **Department response:**

In response to comments related to the Department's outreach efforts, the Department elected to host ten roundtable meetings throughout the Commonwealth to consult with the regulated community and obtain feedback on the proposed rulemaking. The Department, together with the Pennsylvania Chamber of Commerce and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), held five sessions with Pennsylvania businesses and local chambers of commerce, and five sessions with local labor organizations between May 20, 2019 and June 6, 2019. The agendas for these roundtable meetings provided that the goals were to educate stakeholders on the existence and the Department's interpretation of the EAP exemptions, and to engage stakeholders and elicit feedback. The Department specifically asked the stakeholders to discuss the impacts of the proposed rulemaking and provide recommendations for changes.

On May 20, 2019, the Department held a roundtable in Harrisburg, Pennsylvania, including the following participants: Keystone Research Center, Service Employees International Union (SEIU), Communications Workers of America, SEIU Healthcare and AFL-CIO.

On May 21, 2019, the Department held a roundtable in Harrisburg, Pennsylvania, including the following participants: Harrisburg Regional Chamber of Commerce, the Pennsylvania Chamber of Commerce, Pennsylvania Association of Community Bankers, Army Heritage

Foundation, Ned Smith Nature Center, HACC, Perfectly Pennsylvania, RETTEW, Capital Blue Cross, Greater Reading Chamber Alliance, York County Economic Alliance, Hampton Inn, Insurance Agents and Brokers, Hershey Entertainment and Resorts, Dickinson College and Pennsylvania Consortium for Liberal Arts.

On May 22, 2019, the Department held a roundtable in Erie, Pennsylvania for local businesses, including the following participants: Country Fair Stores, Family House, Inc., Community Health Net, Knox McLaughlin, Erie Federal Credit Union, Community Resources for Independence, Achievement Center, North Country Brewing Company and Mercyhurst.

On May 22, 2019, the Department held another roundtable in Erie, Pennsylvania for local labor organizations, including the following participants: AFL-CIO Northwest, IBEW 56, UE Local 506 (Wabtech) and UE Local 618 (Wabtech).

On May 28, 2019, the Department held a roundtable in Malvern, Pennsylvania, including the following participants: Abel Brothers Towing & Automotive, Inc., East Goshen Township, Aqua, Miller's Insurance Agency, Inc., CCCBI, Endo International, Chester County Economic Development Council, Sojourn Philly, Desmond Hotel & Conference Center, Community Action Partnership, Cozen O'Connor, Exton Regional Chamber of Commerce, Post & Schell, Chester County Economic Development Council, Wawa, Inc., Gawthrop Greenwood, PC, Germantown Cricket Club, National Bank of Ethiopia and West Chester University.

On May 29, 2019, the Department held a roundtable in Plymouth Meeting, Pennsylvania including the following participants: Philadelphia AFL-CIO, Pathways PA, Community Legal Services, Outten & Golden, Stephan Zouras, R., Winebrake and Santillo, Berger Montague and UFCW.

On June 2, 2019, the Department held a roundtable in Pittsburgh, Pennsylvania, including the following participants: USW and Mon Valley Unemployed Committee.

On June 5, 2019, the Department held another roundtable in Pittsburgh, Pennsylvania, including the following participants: Allie Kiski Chamber of Commerce, Sodini & Company, African American Chamber of Commerce of Western Pennsylvania, Keep It Simple Training, Eat'N Park, SMC Business Controls, North Side / North Shore Chamber of Commerce, Priory Hospitality, HR-FamilyLinks, Duquesne, Robert Morris, Community Care Connect, MHY Family Services, Community Human Services, Standard Bank, Littler Mendelsohn and Family House.

On June 6, 2019, the Department held a roundtable in Scranton, Pennsylvania for local businesses, including the following participants: Greater Scranton Chamber, Ufberg Law, Advocacy Alliance, Fidelity Bank, Commonwealth Health/Moses Taylor Hospital, Girl Scouts in the Heart of PA, Allied Services, SLHDA, UFCW Federal credit union, Institute for HR & Services, Needle Law, Greater Scranton Chamber and Ben Franklin Technology Partners.

Also, on June 6, 2019, the Department held another roundtable for local labor organization in Scranton, Pennsylvania including the following participants: AFSCME and Labor Law Compliance.

ID	Name	Affiliation	Address
1	IRRC		
2	Mr. Simon	<a href="mailto:simonradecki@gmail.com">simonradecki@gmail.com</a> by	<a href="#">email only</a>
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4	Ms. Debra Antol	Sweet Street Desserts	722 Hiesters Lane Reading PA 19605
5	Mr. Chuck Bickel	Ace Fixit Hardware	827 Route 764, PO Box 249 Duncansville PA 16635
6	Mr. Dave Blouch Sr	Blouch Fuel Service	440 South 9th St Lebanon PA 17042
7	Ms. Patricia Bryner	Reyna ITS	590 Centerville Rd #179 Lancaster PA 17601
8	Mr. Joseph Butzer	Advantage Nationalease	1 Mark V Drive, Po Box 190 Lititz PA 17543-0190
9	Mr. Charles Cole	Quality Services Inc	559 Rodi Rd Pittsburgh PA 15235
10	Mr. Marty Eichelberger	Letort Trust	3130 Morningside Drive Camp Hill PA 17011
11	Mr. David Graciano	<a href="mailto:dgraciano@eba209.com">dgraciano@eba209.com</a>	
12	Mr. Brian Kaiser		1010 Western Ave, Suite 500 Pittsburgh PA 15233
13	Ms. David Thompson	Thompson Mailing Corp	21 Naus Way, PO BOX 150 Bloomsburg PA 17815
14	Mr. Diane Tutich		7650 State Route 30 Irwin PA 15642
15	Mr. Joe Westhoff	Alantic Concrete Products	8900 Old Route 13, PO Box 129 Tullytown PA 19007
16	Mr. Jim Blanski	<a href="mailto:jmb@blankienergy.com">jmb@blankienergy.com</a>	
17	Mr. Keith Foust	Susquehanna Fire Equipment CO	2122 Main St Dewart PA 17730
18	Mr. Carol Rogers		4912 Knox Street Philadelphia PA 19144
19	Mr. Leonard Rich	Director, Lawrence County CTC	750 Phelps Way New Castle PA 16101
20	Mr. Bonnie Yoder		136 Quince Lane Charlottesville VA 22902

21	Ms. Liz Ferry	The Chamber of Commerce for Greater Philadelphia	200 South Broad St Suite 700 Philadelphia PA 19102-3813
22	Mr. Curtis Shulman	Hotel State College & Co	100 W College Ave State College PA 16801
23	Ms. Jennifer Zangrilli	Dante's Restaurants Inc	138 Moses Thompson Lane State College PA 16801
24	Ms. Adrienne Morgado		844 Wortington Mill Road Newtown PA 18940
25	Ms. Cheryl Peters		303 Edgeboro Drive Newtown PA 18940
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27	Mr. Eileen Reed		1 Ebony Court Newtown PA 18940
28	Mr. Molly Smith		5925 Wayne Ave Philadelphia PA 19144
29	Mr. Robin Sowards		7239 Whipple Street Pittsburgh PA 15218
30	Mr. Chester Amick		661 Robinwood Drive Pittsburgh PA 15216
31	Ms. Pamela Brogen-Spacht		5351 Jacycee Ave Suite B Harrisburg PA 17112
32	Ms. Julia Brulia		16563 Lincoln Highway Breezewood PA 15533
33	Mr. Robert Commero	Press Room Restaurant and Barr	41 Weaver Ave Ephrata PA 17522
34	Mr. Eric Corneilson	Wingate by Wyndham Hotel	22 Brimmer Ave New Holland PA 17557
35	Mr. John Delozier	Windsor Twp	105.Surrey Lane York PA 17402
36	Mr. John Fanelli		202 Tower Rd Avonmore PA 15618
37	Mr. Thomas Fiorini		5000 Hanoverville Rd Bethlehem PA 18017
38	Ms. Ward McMasters		115 W Germantown Pike, Suite 200 Norristown PA 19401
39	Mr. Robert Trotta		100 Adams Ave Scranton PA 18503
40	Ms. Lisa Dell'Alba	Square One Markets	2432 Emrick Blvd Bethlehem PA 18020
41	Ms. Linda Bililey	Green Township Supervisor	9333 Tate Rd Erie PA 16509

42	Mr. Denise Hall		83 Sauerman Road Doylestown PA 18901
43	Ms. Richard Williams		82 S Main Wilkes Barre PA 18701
44	Mr. Richard Beech		629 W Main St Grove City PA 16127
45	Mr. Patrick Castellani		2300 Adams Ave Scranton PA 18509
46	Mr. Cliff Ellis		1807 Serene Way Lancaster PA 17602
47	Ms. Mary Gaiski	Pennsylvania Manufactured Housing Association	315 Limekilm Rd New Cumberland PA 17070
48	Mr. Andrew Gehman		178 Muddy Creek Church Rd Denver PA 17517
49	Mr. David Martin		PO Box 818 Chadds Ford PA 19317
50	Mr. Kenneth Trippet		187 N Old Turnpike Rd Drums PA 18222
51	Ms. Allison McDowell		852 North 24th Street Philadelphia PA 19130
52	Mr. Michael Anderson	American Specialty System	2590 Monroe St York PA 17404
53	Ms. Nancy Fulmer	Community Care Connections Inc	114 Skyline Drive Butler PA 16001
54	Ms. Tony Knepp	Masonic Village	One Masonic Drive Elizabethtown PA 17022
55	Mr. Seth Lyons		5355 Knox Street Philadelphia PA 19144
56	Mr. Maria Rosen		704 Honey Run Road Ambler PA 19002
57	Ms. Lisa Santer		435 Gaskill Street Philadelphia PA 19147
58	Ms. Donna Abbonizio	McDonalds	962 Liberty Lane Warrington PA 18976
59	Ms. Betrand Artigues	Cloud 9 Wine Bar & Restaurant	3315 Raspberry St Erie PA 16508
60	Mr. Jeff Detzi	Detzi's Tavern	314 N Lobb Ave Pen Argyl PA 18072
61	Ms. Kimberly Greenwalt	McDonalds	12 N Market St Millerstown PA 17062
62	Mr. Susan Miklos	Bair Foundation	241 High Street New Wilmington PA 16124

63	Ms. Lisa Rager, Executive Director	Johnstown Convention & Vistors Bureau	2026 Belton St Jonhstown PA 15904
64	Mr. Aaron Smalley		2755 Krilia Rd Hermitage PA 16148
65	Ms. Mark Volk	Lackawanna College	VolkM@lackawanna.edu
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68	Mr. StephanieAnne Thompson		2561 Hill Road Sellersville PA 18960
69	Ms. Carla Luthke		4101 Post Road Marcus Hook PA 19061
70	Sister Clark McHenry		584 Poplar Road Honey Brook PA 19344
71	Ms. David Souders		19 Ash Street Mont Alto PA 17237
72	Rev. Matthew Stuckey		500 Broad Street, PO Box 489 Holidaysburg PA 16648
73	Ms. Elizabeth Greim		539 Diamond Street Sellersville PA 18960
74	Ms. Ann Henderson		P.O. Box 46, 97 Geigel Hill Road Erwinna PA 18920
75	Mr. Megan Horn		14 Pond Lane Levittown PA 19054
76	Mr. Darrin Kelly	Allegheny County Labor Council	1459 Woodruff Street Pittsburgh PA 15220
77	Mr. Alfred Kovnač		2616 Woodsvievw Dr. Bensalem PA 19020
78	Ms. Scott Kristoff		PO Box 72 Madison PA 15663
79	Mr. MaryAnn Lawler- Rees		208 Tanager Court Warrington PA 18976
80	Mr. Bobbi Linksens	<a href="mailto:wrightba77@gmail.com">wrightba77@gmail.com</a>	(By email only)
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82	Ms. Athur Miller		One Dorset Pl Newtown PA 18940
83	Mr. Christine Parker		650 Fir Ave Langhorne PA 19047
84	Ms. Pat Randolph		800 Austin Drive Fairless Hills PA 19030
85	Mr. Carl Ruzicka		18 North Lancaster Ln Newtown PA 18940

86	Mr. Leslie Silva		5234 Schuyler Street Philadelphia PA 19144
87	Mr. Amanda Sirine		201 N Warminster Rd Hatboro PA 19040
88	Ms. Ashleigh Strange		815 S. Front Street Allentown PA 18103
89	Ms. Nicole Temons		626 Anderson Ferry Rd Mount Joy PA 17552
90	Ms. Lorrie Topolin		One Middle Rd New Hope PA 18938
91	Mr. Rebecca Zemach		106 Pebble Valley Ct Doylestown PA 18901
92	Mr. Vladimir Zykov		440 W. Sedgwick Street, Apt. C218 Philadelphia PA 19119
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95	Mr. David Aungst	High Hotels LTD	108 Chelsea Loop Lancaster PA 17602
96	Ms. Judy Bennett		2656 Apple Way Chambersburg PA 17202
97	Mr. Steven Bretherick	Horst Realty	205 Granite Run Drive Lancaster PA 17601
98	Ms. Marie Brown		1219 South Main Street Old Forge PA 18518
99	Mr. Trudy Carrington		25 Eastbrook Rd Ronks PA 17572
100	Mr. Christopher Clifford	Pancoast & Clifford	206 Carter Drive West Chester PA 19382
101	Mr. Jack Cohen	President, Butler County Tourism	310 E Grandview Ave Zelienople PA 16063
102	Mr. Larry Cole		17422 Rout 957 Bear Lake PA 16402
103	Mr. Matthew Cole		8971 Harmony Drive Pittsburgh PA 15237
104	Mr. Dave Craig ,PGA - COO / GM	Chester Valley Golf Club	212 Skylar Lane Wayne PA 19087
105	Mr. John Driver		441 North 10th Street Lewisburg PA 17837
106	Ms. Sharon Faux		1 Liberty Blvd. Malvern PA 19355
107	Mr. Chris Gabriel	MidAtlantic Family	2745 Terwood Rd Willow Grove PA 19090

108	Mr. Derek Giacomontonio	McDonalds	205 Easton Road Horsham PA 19044
109	Ms. Staci Goodspeed	Watson Inn	100 Main St Watsontown PA 17777
110	Ms. Meg Heinlein	Residence Inn by Marriott Pittsburgh	131 Priscilla Drive Pittsburgh PA 15229
111	Mr. Pat Herring		4253 Glades Pike Somerset PA 15501
112	Mr. Joseph Hoover	Appalachian Brewery Company	50 N Cameron St Harrisburg PA 17101
113	Mr. Jay Horning		405 West Metzler Road Ephrata PA 17522
114	Mr. Robert Hughes	McDonalds	2264 Chablis Dr Macungie PA 18062
115	Mr. William Isemann	KidsPeace	4085 Independence Drive Schnecksville PA 18078
116	Mr. David Jacobi	Adventure Sports	PO Box 1372 Marshalls Creek PA 18335
117	Mr. Mukesh Kadhiwala		755 N 38th St Allentown PA 18104
118	Mr. Patrick Kahle	Zacherl Motor Truck Sales	PO Box 686, 795 Greenville Pike Clarion PA 16214
119	Ms. Maria Kaminski	VFW Country Club	303 S 6th St Indiana PA 15701
120	Ms. Jennifer Katke	Hampton Inn & Suites	380 E Main St Ephrata PA 17522
121	Rep. Rob Kauffman	PA House of Representatives, Labor and Industry Committee	Room 312 Main Capitol Building, P.O. Box 202089 Harrisburg PA 17120
122	Mr. Pete Keares	Lancaster Brewing	302 N Plum St Lancaster PA 17602
123	Ms. Laurie Kerkering		1331 Ship Rd West Chester PA 19380
124	Mr. Barry Kidd	Country Inn of Lancaster	1141 Nissley Rd Lancaster PA 17601
125	Ms. Nicole Kiefer		1432 Fort Washington Ave Ambler PA 19002
126	Mr. Robert Kirkpatrick		52 Timber Wood Drive Danville PA 17821
127	Mr. Natasha Kline-Hughes		21 Naus Way, PO BOX 150 Bloomsburg PA 17815
128	Mr. Tim Koch		28 Terrace Cir Orwigsburg PA 17961
129	Mr. Keith Komon	High Hotels LTD	4 Fortuna Lane Enola PA 17025

130	Mr. James Kopenhaver		334 High Street Hanover PA 17331
131	Mr. Paul Kornfield	Chester Valley Golf Club	430 Swedesford Rd Malvern PA 19355
132	Ms. Debra Krelow		220 Beacon Rd Renfrew PA 16053
133	Mr. Dennis Liegey	Denny's Beer Barrel Pub	216 Northview Dr Clearfield PA 16830
134	Mr. David Little		108 Rose Lane Perkiomenville PA 18074
135	Mr. Eric Loch	Lochs Jewelers	3370 Lehigh Street Allentown PA 18103
136	Mr. Dianne Lowden	Vice President, DFT Inc	140 Sheree Blvd, PO Box 566 Exton PA 19341-0566
137	Mr. James McIntyre		654 Front St Hellertown PA 18055
138	Mr. Harry Mckean		162 Onyx Road New Oxford PA 17350
139	Mr. Carla McKinney		PO BOX 131, Toughkenamon PA 19374
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141	Ms. Theresa Miller	Country Inn of Lancaster	2133 Lincoln Highway E Lancaster PA 17602
142	Mr. Ernest Naugle		248 Gemini Lane Montoursville PA 17754
143	Ms. Nancy Ney		122 North Front Street Sunbury PA 17801
144	Mr. Victor Paolicelli	Alternative Staffing Inc	111 Fairway Circle Pittsburgh PA 15241
145	Mr. Devang Parikh	Two Franchise Hotels	55 S 3rd Ave Reading PA 19611
146	Mr. Michael Passalacqua	Angelo's Restaurant	204 Waynesburg Rd Washington PA 15301
147	Mr. Linda Perin		1033 Blue Valley Drive Pen Argyl PA 18072
148	Mr. Patricia Pinto		2011 South 15th Street Philadelphia PA 19145
149	Ms. Shirley Prasko		198 Account Lane Hastings PA 16646
150	Mr. Philip Reck		54 S Beaver Street York PA 17401
151	Mr. Bryan Reichelt	Residence Inn Harrisburg Carlisle	1 Hampton Ct Carlisle PA 17013

<b>152</b>	Mr. Dee Rhoad		111 Jacobs Drive Coatesville PA 19320
<b>153</b>	Mr. John Ross		5173 Synder Mill Road Spring Grove PA 17362
<b>154</b>	Mr. Joseph Ruvane	Barley Creek Brewing Company	1774 Sullivan Trl Tannersville PA 18372
<b>155</b>	Ms. Betsy Schlegel		1426 State Route 147 Dalmatia PA 17017
<b>156</b>	Mr. Larry Schwartz		4955 Stubenville Pike Ste 160 Pittsburgh PA 15205
<b>157</b>	Mr. Rick Sell	Metz Culinary Management	10 Oldfeild Road Shavertown PA 18708
<b>158</b>	Ms. Tarri Shay	Springfield Restaurant Group, Rachel's Roadhouse	1553 Perry Highway Mercer PA 16137
<b>159</b>	Mr. Stephen Sikking	Eden Resort	222 Eden Rd Lancaster PA 17601
<b>160</b>	Mr. Chris Sirianni	The Brewerie at Union Station	123 W 14th St Erie PA 16501
<b>161</b>	Mr. Steven Spohn		494 East Lincoln Ave Myerstown PA 17067
<b>162</b>	Mr. David Stern		250 S 9th Street DuBois PA 15801
<b>163</b>	Ms. Jennifer Steward	Steward Group Mgmt	658 Parkwood Dr York PA 17404
<b>164</b>	Ms. Elwin Stewart	Happy Valley Vineyard and Winery	576 S Foxpointe Dr State College PA 16801
<b>165</b>	Ms. Melissa Tambellini	Joseph Tambellini Restaurant	2196 Chardonnay Circle Gibsonia PA 15044
<b>166</b>	Ms. Elizabeth Todd- Keppel	PA Dutch Hotels	24 S Willowdale Dr Lancaster PA 17602
<b>167</b>	Mr. Tony Tsonis	Barcelona Nut Company & Popcorn Alley Inc	One Popcorn Lane Dover PA 17315
<b>168</b>	Mr. Randy Warren		100 Brookhollow Downingtown PA 19335
<b>169</b>	Ms. Amy Watt		100 Mount Carmel Road New Alexandria PA 15670
<b>170</b>	Mr. Dale Weiler		1657 Union Grove Rd East Earl PA 17519
<b>171</b>	Mr. Kimberly Young	Bair Foundation	245 High Street New Wilmington PA 16142
<b>172</b>	Mr. Stephen Zacherl		1399 Kimmel Road Home PA 15747

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177	Mr. Mary Suta		153 Earl Lane Hatboro PA 19040
178	Mr. Fred Gaffney	President, Columbia Montour Chamber of Commerce	238 Market Street Bloomsburg PA 17815
179	Mr. Bradely Hollabaugh		481 Carlisle Road Biglerville PA 17307
180	Mr. Douglas McBrearty	Gulph Creek Development	231 Atlee Rd Wayne PA 19087
181	Mr. Marie McClellan	Barret's Restaurant	474 N Main St Archbald PA 18403
182	Ms. Larry Rabold, CPA		129 W Lincoln Ave Myerstown PA 17067
183	Ms. Stanley Horwitz		2601 Pennsylvania Ave, Apt. 549 Philadelphia PA 19130
184	Mr. Curtis Weaver		7531 Overbrook Ave Philadelphia PA 19151
185	Mr. Robert Ivory		122 Saint Wendelin Road Butler PA 16002
186	Ms. Gregory Selke		17 Montbard Drive Chadds Ford PA 19317
187	Mr. Taylour Trostle	Harrisburg Regional Chamber & Credc.	3211 N. Front Street, Suite 201 Harrisburg PA 17110
188	Ms. Serena Waller	Gary's Homes	13270 Lincoln Highway Everett PA 15537
189	Mr. Timothy Weaver	Traveling Tap	2600 Willow Street Pike N Willow Street PA 17584
190	Mr. Pat Boyle		409 Grant Avenue Warminster TX 18874
191	Ms. Marlene Chaikin		666 West Germantown Pike Plymouth Meeting PA 19462
192	Mr. Pat Ciarlone		33 Tuxford Lane Coatesville PA 19320
193	Mr. Denny Cregut		39 Becker Street Houston PA 15342
194	Mr. Brian Gallagher		5234 Schuyler Street Philadelphia PA 19144

195	Ms. David Hinkes		845 Breckinridge Court New Hope PA 18938
196	Mr. Joselle Palacios		7450 Devon Street Philadelphia PA 19119
197	Mr. Barbra Stakes		4352 Linden Avenue Oakford PA 19053
198	Mr./Ms. Julie Wilgus		2161 E Cumberland St Philadelphia PA 19125
199	Mr. Robert Kunsak		521 Thorn Run Road Coraopolis PA 15108
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201	Mr. Thomas Trgovac	Global Data Consultants LLC	1144 Kennebec Drive Chambersburg PA 17201
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206	Mr. and Mrs. Frank and Maribeth Batcho		1865 Ambler TD Abington PA 19001
207	Ms. Deborah Bellini		436 Woodland Ave Horsham PA 19044
208	Mr. Rick Bloomingdale	AFL-CIO	600 North Second Street Harrisburg PA 17101
209	Ms. Donna Bullard		311 Harrison Ave Elkins Park PA 19027
210	Ms. Jeani Burd		1553 Highland Ave Langhorne PA 19047
211	Mr. Steve Cickay		263 Burgundy Lane Newtown PA 18940
212	Ms. Emily Cleath		280 Fisk Street Pittsburgh PA 15201
213	Ms. Gail Friedman		699A Rose Hollow Drive Yardley PA 19067
214	Ms. Cindy Hamilton		7 Hamilton Road Curwensville PA 16833
215	Ms. Michael Hodgson		1245 Main Street Akron PA 17501
216	Ms. Abigail Leaf		103 Hillborn Dr. Newtown PA 18940

217	Ms. Mo Manklang		4623 E Stiles Street Philadelphia PA 19137
218	Ms. Teresa Muldrow		970 N. 7th Street, Apt. 203 Philadelphia PA 19123
219	Ms. Katy Newlon		334 Callender Lane Wallingford PA 19086
220	Ms. Kelly Parrish		15 Angus Drive Stevens PA 17578
221	Ms. Charles Peterson		1382 Newtown-Langhorne RD Newtown PA 18940
222	Ms. Claudia Silver		3914 Spruce Street Philadelphia PA 19104
223	Ms. Kathleen Siry		11 Misty Pine Road Levittown PA 19056
224	Mr. Amanda Vories		110 Crestwood Ct Sellersville PA 18960
225	Mr. Marlin Martin		606 E Evergreen Rd Lebanon PA 17042
226	Ms. Theodore Myers		600 Owen Road York PA 17403
227	Ms. Frank Pancoast	Pancoast & Clifford	206 Carter Drive West Chester PA 19382
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230	Ms. Mark Sitler		1410 McKeag Drive Williamsport PA 17701
231	Ms. Kimberly Walk		PO Box 8 Indiana PA 15701
232	Ms. Jim Westhoff	A Lock Products Inc	687 Main St, PO Box 1647 Tullytown PA 19007
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240	Mr. Jessica Williamson		502 Oreland Mill Road Oreland PA
241	Mr. Tee Jay Aikey	Central PA Chamber of Commerce	30 Lawton Lane Milton PA 17847
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243	Mr. Martin D'Urso	Youth Advocate Programs	2007 N Third Street Harrisburg PA 17102
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245	Ms. Gene Anirina		539 Croasdale Dr Langhorne PA 19047
246	Mr. Henry Arnold		arnoldhenry11@gmail.com
247	Mr. Steven Bacher		841 Dutchess Dr. Yardley PA 19067
248	Ms. Glenn Beasley		142 N. Lincoln Ave. Newtown PA 18940
249	Ms. Lori DeFinis		2460 Elfreths Alley Bensalem PA 19020
250	Ms. Lynn Dewees		1374 Queen Street Pottstown PA 19464
251	Ms. Margaret Dissinger		562 Atwood Court Newtown PA 18840
252	Ms. Kathleen Dorsey		1759 Mullberry Way Yardley PA 19067
253	Mr. Jon Eich		930 Hart Circle State College PA 16801
254	Mr. Michael Fosbenner		15000 Kovats Drive Philadelphia PA 19116
255	Ms. Stephanie Frank		272 Briggs Street Harrisburg PA 17102
256	Ms. Holly Hassler		1153 North 5th Street Reading PA 19601
257	Mr. Kathleen Hirthler		74 Ditch Drive Holland PA 18966
258	Mr. John Meyerson		508 W Mt Airy Ave Philadelphia PA 19119

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260	Ms. Ann Mitchell		172 Golfview Dr. Ivyland PA 18974
261	Ms. Sharon O'Brien	oshash@aol.com	
262	Ms. William Paci		17 South 21st Street Philadelphia PA 19103
263	Ms. James Young		2038 Susquehanna Street Harrisburg PA 17102
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267	Ms. Ted Lentz	Lentz Milling Company	2045 N 11th St Reading PA 19604
268	Mr. Barbara Sadler		542 Industrial Drive Lewisberry PA 17339
269	Ms. Scot Stambaugh		7044 Blue Hill Road Glennville PA 17329
270	Mr./Ms. Darren Weaver		169 Cedar Way Hershey PA 17033
271	Mr. Michael James	Usciences	600 South 43rd Street Philadelphia PA 19104
272	Ms. Linsie Anirina		593 Croasdale Dr. Langhorne PA 19047
273	Ms. Nancy Arnold		1382 Newtown-Langhorne RD Newtown PA 18940
274	Mr. James Erb		28 Northrup Ct, 24 Newtown PA 18940
275	Mr. Jerry Feliciano		One South Second Street Coplay PA 18037
276	Mr. and Mrs. Park and Sharon Furlong		133 E Bristol Road Feasterville Trevose PA 19053
277	Ms. Neil Jesiolowski		P.O. Box 122, 369 Lake Warren Rd Upper Black Eddy PA 18972
278	Mr. Janice MacKenzie		612 Washinton Avenue Sellersville PA 18960
279	Mr. Kimberly Minger		1629 Colonial Drive Feasterville PA 19053
280	Mr. Robin Pettit		1403 Old Jacksonville Road Warminster PA 18974

281	Mr. Donald Rowat		1913 Carter Rd Folcroft PA 19032
282	Ms. Jeffrey Smith		6020 Bridget Street Philadelphia PA 19144
283	Mr. Laura Smith		5355 Knox Street Philadelphia PA 19144
284	Mr. Daniel Staab		1480 Blossomhill Road Pittsburgh PA 15234
285	Mr. Bill Covaleski	Victory Beer	28 Walnut Bank Rd Glenmoore PA 19343
286	Ms. Ethelind Baylor		1105 Allengrove Street Philadelphia PA 19124
287	Mr. Omeed Firouzi		1030 East Lancaster Ave Rosemont PA 19010
288	Mr. Stephen Gothreau	<a href="mailto:sbgothreau@live.com">sbgothreau@live.com</a>	(by email only)
289	Mr. Ruth Jampol		456 Lafayette Street Newtown PA 18940
290	Ms. Barbra Simmons		46 Sterling Street Newtown PA 18940
291	Ms. Casey Smith		548 4th Street Verona PA 15747
292	Ms. Sandra Strauss	Pennsylvania Council of Churches	900 Arlington Ave, Suite 211A Harrisburg PA 17109-5024
293	Ms. Patricia Williamson		401 Ascot Road Oreland PA 19075
294	Ms. Gail Wolfberg		1342 Cory Drive Fort Washington PA 19034
295		<a href="mailto:xelbita@hotmail.com">xelbita@hotmail.com</a>	(by email only)
296		<a href="mailto:sarah.jan.roberts@gmail.com">sarah.jan.roberts@gmail.com</a>	(By email only)
297	Mr. Bernard Banks		298 Old Caverton Road Shavertown PA 18708
298	Mr. Edmund Mann		1521 Bustleton Pike Southampton PA 18966
299	Ms. Mark Sauder	RW Sauder Inc	570 Furnace Hills Pike Lititz PA 17543
300	Ms. Michelle Smith, SPHR	Salisbury Management Inc	1150 Wyoming Ave Wyoming PA 18644
301	Ms. Karen Willar		11049 N Eagle Valley Rd Howard PA 16841
302	Ms. Kevin Young		400 Howell Street Bristol PA 19007

303	Mr. Jeff	harley3161@verizon.net	(By email only)
304	Mr. Samya Abu-Orf		2336 Reed Street Philadelphia PA 19146
305	Mr. Randee Block		408 West Court Street Doylestown PA 18901
306	Ms. Precious Bonney		12C Midland Road Springfield PA 19064
307	Mr. John Brittain		391 Lake Warren Rd Upper Black Eddy PA 18972
308	Mr. William Brosius		178 Green Street Sellersville PA 18960
309	Ms. Catherine Burnside		28298 Bond Way Silverado CA 92676
310	Ms. Jacalyn Cohen		5110 Euston Ct. Bensalem PA 19020
311	Ms. Lisa Collins		42 Short Road Perkasie PA 18944
312	Ms. Carole Cribb		402 Preston Lane Hatboro PA 19040
313	Ms. Erin Dooley		12 Elm Avenue Rockledge PA 19046
314	Mr. Tyler Earnest		328 York Rd Willow Grove PA 19090
315	Ms. Ann Evans		38 South Second Street Lewisburg PA 17837
316	Ms. Barbra Felicetti		606 Woodcrest Ave Ardmore PA 19003
317	Ms. Rose Flood		31 Idlewild Road Levittown PA 19057
318	Ms. Deborah Freedman	Community Legal Services	1424 Chestnut Street Philadelphia PA 19102
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335	Ms. David Tilli		75 Four Leaf Road Levittown PA 19056
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673	Ms. Michelle Nelson		4523 Rose Drive Emmaus PA 18049
674	Mr. Pat Newcomb		2540 S Alder Street Philadelphia PA 19148
675	Ms. Ellen Poist		9701 Germantown Ave Philadelphia PA 19118
676	Ms. Micki Reese		207 N 25th Street Reading PA 19601
677	Mr. Jeff Sievert		731 Fulton Street Philadelphia PA 19147
678	Mr. Dave Vinski		78 Wilson Street Pittsburgh PA 15223
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684	Ms. Lisa Allarde		129 Milan Way Green Lane PA 18054
685	Mr. Matthew Demers		828 Ramsey Street Wilkinsburg PA 15221

686	Ms. Adrienne Gunter		4949 Chestnut Street Philadelphia PA 19139
687	Mr. Kevin Hefty		401 Reading Ave West Reading PA 19611
688	Mr. James Myers		993 Wayfield Drive Jeffersonville PA 19403
689	Mr. Scott Spreat	Woods Services	40 Martin Gross Drive Langhorne PA 19047
690	Ms. Tina Goodrich		2849 Reach Road Williamsport PA 17701
691	Ms. Phyllis Hartman		715 Roosevelt Blvd Freedom PA 15042
692	Ms. Charissa Krumenacker		3101 Beale Ave Altoona PA 16601
693	Mr. David Martin		P.O. Box 818 Chadds Ford PA 19317
694	Mr. Jake Witherell		220 W Station Square Pittsburgh PA 15219
695	Ms. Jennifer Gallup		73 Sutton Rd Dallas PA 18612
696	Ms. Megan Coveleski		618 Ford Street Conshohocken PA 19428
697	Rep. Matthew Dowling		53B East Wing, PO Box 202051 Harrisburg PA 17120
698	Rep. Cris Dush		161A East Wing, PO Box 202066 Harrisburg PA 17120
699	Ms. Margaret Geist		820 N 25th St Allentown PA 18104
700	Mr. Jim Gratton	Pennsylvania Restaurant and Lodging Association	100 State Street Harrisburg PA 17101
701	Ms. Beth Greenburg	LeadingAge PA	1100 Bent Creek Boulevard Mechanicsburg PA 17055
702	Rep. Seth Grove		7 East Wing, PO Box 202196 Harrisburg PA 17120
703	Rep. Kristin Hill		123B East Wing, PO Box 202093 Harrisburg PA 17120
704	Ms. Deana Hollister		613 Shadetree Blvd Marietta PA 17547
705	Ms. Kathy Josephson		190 Huff Street Dunlo PA 15930
706	Rep. Jerry Knowles		155A East Wing, PO Box 202124 Harrisburg PA 17120
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<b>711</b>	Mr. Mike Perry	Army Heritage Center	PO Box 839 Carlisle PA 17013
<b>712</b>	Rep. Brad Roae		162B East Wing, PO Box 202006 Harrisburg PA 17120
<b>713</b>	Rep. Frank Ryan		149A East Wing, PO Box 202101 Harrisburg PA 17120
<b>714</b>	Rep. Rick Saccone		430 Irvis Office Building, PO Box 202039 Harrisburg PA 17120
<b>715</b>	Rep. Tommy Sankey		149B East Wing, PO Box 202073 Harrisburg PA 17120
<b>716</b>	Mr. Alex Seltzer		4201 2nd Ave. Altoona PA 16602
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<b>718</b>	Mr. Craig Steeves		475 Riverfront Drive Reading PA 19602
<b>719</b>	Mr. Marcos Turner		4934 Peach Street Erie PA 16509
<b>720</b>	Rep. Justin Walsh		B12 Main Capitol Building, PO Box 202058 Harrisburg PA 17120
<b>721</b>	Rep. Judy Ward		413 Irvis Office Building, PO Box 202080 Harrisburg PA 17120
<b>722</b>	Ms. Anita Wessner		5 Wilson Ave. Ivyland PA 18974
<b>723</b>	Rep. Jeff Wheeland		415 Irvis Offic Building, PO Box 202083 Harrisburg PA 17120
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<b>726</b>	Ms. Beth Collins		256 Frederick Road Havertown PA 19083
<b>727</b>	Mr. Bruce McKillip		207 West Burke Street Easton PA 18042
<b>728</b>	Ms. Ann Shenkle		9 Belmont Square Doylestown PA 18901
<b>729</b>	Mr./Ms. Rocio Suayfeta		82 Honey Locust Ln Newtown PA 18940
<b>730</b>	Ms. Barbara Young		77 Walter Rd Chalfont PA 18914
<b>731</b>	Ms. Amy Hanrahan		502 Keystone Drive Warrendale PA 15086

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793	Ms. Karen Vander Laan		724 Chestnut Lane Yardley PA 19067
794	Mr. Ivan Winegar		47 Gaylord Court Newtown PA 18940
795	Mr. Philip Wion		3012 Shady Ave. Pittsburgh PA 15217

796	Ms. Sally Witt		122 Walnut Lane Yardley PA 19067
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