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July 11, 2018

The Honorable George D. Bedwick
 Chairman
 Independent Regulatory Review Commission
 333 Market Street, 14th Floor
 Harrisburg, PA 17101



RE: Proposed Rulemaking
Title 34 Labor & Industry
Regulations for Minimum Wage
34 Pa. Code Part XII, Chapter 231
Agency Number 12-106

Dear Mr. Bedwick:

On behalf of the Franklin County Area Development Corporation (FCADC), I am writing in opposition to the overtime rule as proposed by the Wolf Administration. As a matter of background, the FCADC is a 501 (c)(6) non-profit corporation whose mission is to formulate, implement, and promote a comprehensive economic development strategy focused on the creation of a competitive environment that leads to the creation and retention of family sustaining employment opportunities. Our strategy is centered on the delivery of economic development services that support the retention and expansion of existing businesses, the selective attraction of new industries, and the start-up of new companies. Over the last 32 years the FCADC has facilitated more than 750 projects that have resulted in more than \$2 billion of capital investments and which, most importantly, have impacted more than 48,000 jobs.

Situated in the quad state region of Pennsylvania, Maryland, West Virginia, and Virginia along I-81 ("four states, four counties, forty miles"), we understand the competitive pressures of attracting and retaining businesses. With that background, the FCADC is in opposition to the proposed rule making for the following reasons:

- Pennsylvania's body of law in this subject area is long overdue for an overhaul since the law and the accompanying regulations have not been revised for nearly 40 years. Federal law in the area of overtime has been amended multiple times between 1980 and present day, so there is a significant delta between the existing Federal body of overtime law & regulations and the Pennsylvania body of law and

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regulations. Moreover, all the states that surround Pennsylvania have followed the Federal amendments by enacting amendments that mirrored the Federal Law (with a few state specific revisions to match state priorities). The net effect of Pennsylvania's inaction in this subject area has resulted in Pennsylvania employers having, in effect, two distinctly different sets of rules when it comes to overtime. As such, overtime compliance and predictability by Pennsylvania employers is incredibly and needlessly difficult. In Pennsylvania, an employer can be fully compliant with Federal overtime laws and find itself badly exposed with the State law, which makes Pennsylvania employers a prime target for overtime lawsuits. Moreover, the vast delta between Federal and Pennsylvania law has made it difficult for the State of Pennsylvania to attract businesses that are seeking to relocate. Employers seeking to relocate to Pennsylvania want to know that they will have one set of rules to follow when it comes to overtime eligibility - that is not something Pennsylvania has been able to offer. However, Governor Wolf's proposed overtime revision does not address the key problem with Pennsylvania's overtime laws – **there will still be two distinctly different sets of rules to follow when it comes to overtime law, but now the situation will be even worse since Pennsylvania's overtime laws and regulations will be dramatically more onerous than the surrounding states, with the possible exception of New York.**

- In addition to analyzing the impact of competitiveness through the prism of businesses seeking to relocate to Pennsylvania, they will need to account for how the salary test differential will impact a Pennsylvania business's ability to compete with like businesses in the surrounding states. The single highest expense item for virtually all companies is payroll. If enacted, the amended rule will negatively impact the competitiveness of Pennsylvania businesses and their ability to set themselves apart from and compete with companies in surrounding states.
- To make the statement that the proposed regulation "will have a small impact on Pennsylvania's ability to compete and potentially have a net positive impact" is simply inconsistent with our experience in evaluating site location decisions. The proposed regulation will more than double the salary level threshold to be declared exempt from the overtime requirements (from \$23,660 to \$47,476). If the proposed regulation goes into effect, the salary threshold to be deemed exempt from the overtime requirements will be \$23,660 in the Federal Government and in the states of New Jersey, Delaware, Maryland, Virginia, West Virginia, and Ohio -- but in the state of Pennsylvania the salary threshold will be \$47,476. It would clearly place Pennsylvania at a competitive disadvantage.
- Businesses will basically have four options when confronted with the proposed rule: (1) keep staffs at present levels and reduce sales or production expectations for its

salaried staff to match the fewer numbers of hours being worked; (2) retain present production expectations and increase payroll expenses for salaried employees by paying them at a level that is equal to or above \$47,476 (increase salaries to avoid paying overtime); (3) retain present production expectations and increase payroll expenses by giving overtime pay to salaried employees that were not previously entitled to overtime pay (pay more overtime rather than increase salaries); or (4) retain present production expectations and hire more employees to meet present production expectations (this will limit overtime pay, but increase straight time payroll and employee benefits expenses). All of these options will dramatically increase the cost of doing business and/or dramatically decrease profitability for Pennsylvania businesses.

- While the proposed rule-making eliminates the short test and long test for overtime exemption categories in favor of the Fair Labor Standards Act (FLSA) "duties" test, it does not include adding the Computer Employee exemption category, which is a stand-alone exemption category in the FLSA (and is included in the overtime laws of every State surrounding Pennsylvania). So once again, Pennsylvania businesses that employ highly skilled computer employees, and businesses whose core business is information technology, will not have a specific overtime exemption available to them that is available to competitors in every state surrounding Pennsylvania. By failing to add the Computer Employee exemption, the proposed revision would not remedy a substantial and glaring omission in Pennsylvania law.

In conclusion, for Pennsylvania businesses to remain competitive, they need to operate under the same regulations as their competitors. To that point, the overtime rule threshold needs to be consistent with the Federal Standard or, in the alternative, with the most competitive states bordering Pennsylvania. Your consideration of the FCADC position is greatly appreciated.

Sincerely,

L. Michael Ross
President

- C: Representative Rob Kauffman, Chair, Labor & Industry Committee
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Representative Paul Schemel, 90th District
Representative Adam Harris, 82nd District
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