## SECTION 1: PROFILE

1. **Agency:**
   Department of Labor and Industry

2. **Agency Number:**
   Identification Number: 12-89

3. **Short Title:**
   Uniform Construction Code

4. **PA Code Cite:**
   34 Pa. Code, Part XIV, Chapters 401 and 403.

5. **Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):**
   - **Primary Contact:** Edward L. Leister
     651 Boas St., 16th Fl., Harrisburg, PA 17121
     717-783-6304, Fax 717-787-8363, eleister@state.pa.us
   - **Secondary Contact:** Kelly K. Smith
     651 Boas Street, 10th Fl., Harrisburg, PA 17121
     717-787-4186, Fax 717-787-1303, kellysmith@state.pa.us

6. **Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:**
   (All Comments will appear on IRRC’S website)

7. **Type of Rulemaking (check applicable box):**
   - [ ] Proposed Regulation
   - [ ] Final Regulation
   - [X] Final Omitted Regulation
   - [ ] Emergency Certification Regulation;
     - [ ] Certification by the Governor
     - [ ] Certification by the Attorney General
(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This regulation updates the Uniform Construction Code (UCC) by adopting the 2009 versions of the International Code Council (ICC) codes. It also updates the regulation by incorporating the November 2006 through October 2008 statutory amendments to the Pennsylvania Construction Code Act (35 P.S. §§ 7210.101-7210.1103) (Act). Section 304 of the Act (35 P.S. § 7210.304) requires the Department of Labor and Industry (Department) by December 31 of the year of the issuance of a new triennial ICC International Building Code, or its successor building code, to promulgate regulations adopting the new code as the UCC unless the Uniform Construction Code Review and Advisory Council (Council) informs the Department that it should exclude any provisions. The Council is charged with reviewing the new and amended provisions contained in the triennial revisions of the codes issued by the ICC and informing the Department whether any provisions should be excluded. The Council informed the Department that no provisions are to be excluded. The ICC updated their national codes and issued 2009 editions early in 2009. The Act was amended by: Act 157 of 2006 (Act 157); Acts 9 and 37 of 2007 (Act 9 and Act 37)); and Act 106 of 2008 (Act 106). Acts 157, 9, 37 and 106 made numerous statutory changes which are reflected in this amendment.

(9) Include a schedule for review of the regulation including:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. The date by which the agency must receive public comments:</td>
<td>N/A</td>
</tr>
<tr>
<td>B. The date or dates on which public meetings or hearings will be held:</td>
<td>N/A</td>
</tr>
<tr>
<td>C. The expected date of promulgation of the proposed regulation as a final-form regulation:</td>
<td>N/A</td>
</tr>
<tr>
<td>D. The expected effective date of the final-form regulation:</td>
<td>12-31-2009</td>
</tr>
<tr>
<td>E. The date by which compliance with the final-form regulation will be required:</td>
<td>12-31-2009</td>
</tr>
<tr>
<td>F. The date by which required permits, licenses or other approvals must be obtained:</td>
<td>Permits and approvals are currently required by the existing regulations.</td>
</tr>
</tbody>
</table>

(10) Provide the schedule for continual review of the regulation.

The regulation will be reviewed and updated as needed.
(11) State the statutory authority for the regulation. Include specific statutory citation.

This regulation is promulgated under the authority provided in Section 301 of the Act (35 P.S. § 7210.301) which requires the Department to promulgate regulations and Section 304 of the Act (35 P.S. § 7210.304) which requires the Department by December 31 of the year of the issuance of a new triennial ICC International Building Code, or its successor building code, to promulgate regulations adopting the new code as the UCC. As noted above, the Department is also amending the regulations to conform with numerous statutory changes.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

Section 304 of the Act (35 P.S. § 7210.304) requires the Department by December 31 of the year of the issuance of a new triennial ICC International Building Code, or its successor building code, to promulgate regulations adopting the new code as the UCC. All other changes made to the regulation by this amendment are required by amendments to the Act; Act 157 of 2006, Acts 9 and 37 of 2007 and Act 106 of 2008.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The changes made by this amendment are either mandated by the Act or already made by numerous amendments to the Act. Section 304 of the Act (35 P.S. § 7210.304) requires the Department by December 31 of the year of the issuance of a new triennial ICC International Building Code, or its successor building code, to promulgate regulations adopting the new code as the UCC. The ICC updated its national codes and issued 2009 editions in early 2009. The Act was amended by Act 157 of 2006 (Act 157), Acts 9 and 37 of 2007 (Acts 9 and 37, respectively) and Act 106 of 2008 (Act 106). Acts 157, 9, 37 and 106 made numerous statutory changes which are reflected in this amendment. In 2006, the Department promulgated final-omitted regulations, as required, to incorporate the 2006 revisions to the ICC codes (36 Pa.B. 7548).
(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

Local governments and the Department are adversely affected in that they will need to absorb the cost of updating their code compliance materials, and their code enforcement staff may require training on the triennial technical code changes. These cost of new code books will be minimal (see #18), as will the cost of training employees on any changes found in the 2009 codes.

Building owners, building contractors and developers may be adversely affected, as they are required to absorb the cost of compliance with any new or altered technical standards mandated by the 2009 edition of the ICC codes.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Building contractors, design professionals, building owners, developers, local municipalities, construction code officials, third party inspection agencies and the Department must comply with this regulation.
### SECTION III: COST AND IMPACT ANALYSIS

17. Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulated community is required to absorb the cost of compliance with any new or altered technical standards mandated by the 2009 edition of the ICC codes. It is impossible to estimate the cost of compliance since the number of projects and the design of each individual project is unknown.

18. Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local municipalities that have opted to enforce the UCC will incur costs associated with updating their UCC materials to the 2009 code edition. The cost of a set of ICC 2009 edition code books is $674.75 regular price and $485.75 member price. Municipalities may need to purchase multiple sets of code books depending on the number of employees assigned to its building code program. Municipalities that contract with third-party inspection agencies may incur no additional expenses. Municipalities may also incur the cost of any training required by their code officials regarding the triennial technical code changes.

19. Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The costs will be similar to the costs incurred by the current UCC enforcement program. The Department’s FY 08-09 costs for the UCC enforcement program was approximately $7,540,072.00, $5,360,192.00 for the building code program and $2,179,880.00 for the elevator and other lifting device program.

The Department has already incurred the cost of purchasing copies of the 2009 ICC codes for the code enforcement staff at a total of $42,416.00.

The Department may incur minimal costs for staff training on the triennial technical code changes.
(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

<table>
<thead>
<tr>
<th>SAVINGS:</th>
<th>Current FY Year 08/09</th>
<th>FY +1 Year</th>
<th>FY +2 Year</th>
<th>FY +3 Year</th>
<th>FY +4 Year</th>
<th>FY +5 Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulated Community</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Local Government</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>State Government</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total Savings</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| COSTS:                    |                       |            |            |            |            |            |
| Regulated Community       | Unknown               |            |            |            |            |            |
| Local Government          | Unknown               |            |            |            |            |            |
| State Government          | $7,540,072            | 7,793,324  | 8,045,634  | 8,246,774  | 8,452,942  | 8,575,515  |
| **Total Costs**           |                       |            |            |            |            |            |

| REVENUE LOSSES:           |                       |            |            |            |            |            |
| Regulated Community       | N/A                   | N/A        | N/A        | N/A        | N/A        | N/A        |
| Local Government          | N/A                   | N/A        | N/A        | N/A        | N/A        | N/A        |
| State Government          | N/A                   | N/A        | N/A        | N/A        | N/A        | N/A        |
| **Total Revenue Losses**  | N/A                   | N/A        | N/A        | N/A        | N/A        | N/A        |

* Figures represent total UCC enforcement program costs.

(20a) Provide the past three year expenditure history for programs affected by the regulation.

<table>
<thead>
<tr>
<th>Program</th>
<th>FY -3</th>
<th>FY -2</th>
<th>FY -1</th>
<th>Current FY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings</td>
<td>$5,989,970</td>
<td>$6,445,690</td>
<td>$5,465,628</td>
<td>$5,360,192</td>
</tr>
<tr>
<td>Elevators</td>
<td>$1,907,848</td>
<td>$2,189,646</td>
<td>$2,096,226</td>
<td>$2,179,880</td>
</tr>
</tbody>
</table>
(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The Pennsylvania Construction Code Act and the statutory amendments require the Department to promulgate this regulation. The benefits of uniform standards adopting the most current ICC codes and construction techniques that increase public safety outweigh the costs to the regulated and enforcement communities.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Uniform Construction Code Review and Advisory Council (Council) is charged with reviewing the new and amended provisions contained in the triennial revisions of the codes issued by the ICC. The Council held four meetings during April 2009 to receive public input and take stakeholder testimony regarding numerous new or amended provisions in the 2009 ICC codes. In accordance with sections 107(b)(3) and 304(d) of the Act (35 P.S. §§ 7210.107(b)(3), 7210.304(d)), the Council submitted its report to the Department on May 1, 2009 indicating that the Council completed its review of the 2009 International Codes proposed for adoption in the Commonwealth. After extensive deliberations, the Council determined that no provisions should be excluded from the proposed adoption of the 2009 codes.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Pennsylvania Construction Code Act and the statutory amendments require the Department to promulgate this regulation. No alternatives can be considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal standards imposing these building codes.
(25) How does this regulation compare with those of other states? How will this affect Pennsylvania’s ability to compete with other states?

The International Building Code is adopted at the state or local level in all 50 states and Washington DC. The other ICC codes are adopted by a majority of states and Washington DC. This amendment will not affect Pennsylvania’s ability to compete with other states.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation updates the Uniform Construction Code by adopting the 2009 versions of the ICC codes and by incorporating statutory amendments. This regulation does not affect any other regulation.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The regulation will not change existing reporting, record keeping or other paperwork requirements. Current forms and permits will require updating to indicate compliance with the 2009 edition of the codes.
(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

This regulation merely updates the referenced ICC standards to the 2009 edition, updates the Pennsylvania Alternative Residential Energy Provisions to the 2009 edition and incorporates the statutory amendments.
FINAL-FORM REGULATION
PROPOSED RULEMAKING OMITTED

Title 34 Labor & Industry
Uniform Construction Code
Chapters 401 and 403
[34 Pa. Code Part XIV, Chapters 401 and 403]
FINAL RULEMAKING (Proposed Omitted)
Title 34 Labor & Industry
Uniform Construction Code

Training and Certification Requirements for Code Administrators
Administration
Chapters 401 and 403
[34 Pa. Code Part XIV, Chapters 401 and 403]

The Secretary of Labor and Industry (Secretary), under the authority of Sections 301 and 304 of the Pennsylvania Construction Code Act ("Act" or "PCCA") (35 P.S. §§ 7210.301, 7210.304), amends §§ 401.1 (relating to definitions), 403.1 (relating to scope), 403.21 (relating to Uniform Construction Code), 403.26 (relating to swimming pools), 403.27 (relating to applicability and use of standards), 403.28 (relating to uncertified buildings), 403.42 (relating to permit requirements and exemptions), 403.42a (relating to permit application), 403.43 (relating to grant, denial and effect of permits), 403.62 (relating to permit requirements and exemptions), 403.62a (relating to permit application), 403.63 (relating to grant, denial and effect of permits), 403.65 (relating to certificate of occupancy), 403.102 (relating to municipalities electing to enforce the Uniform Construction Code), 403.121 (relating to board of appeals) and 403.122 (relating to appeals, variances and extensions of time) to read as set forth in Appendix A.

Proposed Rulemaking Omitted

The Department of Labor and Industry (Department) under section 204 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S.§1204), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4 (relating to omission of notice of proposed rulemaking), finds that notice of proposed rulemaking under the circumstance is unnecessary and impractical, and therefore may be omitted. The Department’s justification for utilizing the proposed rulemaking omitted process is that the only changes being made in this amendment are those specifically mandated by the Act or that reflect the numerous amendments to the Act.

Section 304 of the Act (35 P.S. § 7210.304) requires the Department, by December 31 of the year of the issuance of a new ICC International Building Code, to promulgate regulations adopting the new code as the Uniform Construction Code (UCC), if the Uniform Construction Code Review and Advisory Council (Council) does not inform the Department that it should exclude any provisions of the triennial code from the UCC. The International Code Council updated its national codes and issued 2009 editions in early 2009. The Council informed the Department that it should not exclude any provisions of the new triennial ICC Codes. The Act was amended by Act 157 of

Background

Under section 304 of the Act, the Department is required to promulgate regulations adopting new triennial codes issued by the International Code Council (ICC) as the UCC. 35 P.S. § 7210.304(a)(1). This was done through final-omitted rulemaking upon the issuance of an updated triennial code by the ICC. The last triennial update to this code occurred through final-omitted regulations issued in 2006. 36 Pa.B. 7548.

Act 106 of 2008 amended the PCCA to create the Uniform Construction Code Review and Advisory Council. This Council was given authority to review all new and amended provisions of the triennial International Code Council codes that comprise the UCC and to direct the Department to exclude any provision that is inconsistent with the Act’s intent and purpose or which is otherwise inappropriate for inclusion in the UCC. Otherwise, the Department shall adopt the triennial updates as the UCC through regulation. 35 P.S. §§ 7210.107, 7210.304(a)(2).

During the month of April 2009, the Uniform Construction Code Review and Advisory Council held four public meetings and accepted testimony from stakeholders regarding various new and amended provisions of the 2009 ICC codes. On April 30, 2009, the Council notified the Department that it was not directing exclusion of any new or amended provision of the 2009 ICC codes. Therefore, the Department is required by Section 304 to adopt the new triennial ICC codes as the Uniform Construction Code. 35 P.S. § 7210.304(a)(2).

Purpose of the Final-Omitted Rulemaking

The purpose of this final-omitted rulemaking is to update §§ 401.1, 403.21, 403.26 and 403.27 as required by section 304 of the PCCA (35 P.S. § 7210.304), to incorporate the new successor building codes issued by the International Code Council and ANSI, and to incorporate the 2006 through 2008 amendments to the Act in §§ 401.1, 403.1, 403.42, 403.42a, 403.43, 403.62, 403.62a, 403.63, 403.65, 403.102, 403.121 and 403.122.

Explanation of Regulatory Requirements

Section 401.1. Definitions.

The definition of agricultural building is amended to conform to Act 157. Act 157 exempted mushroom growing houses from the statutory definition of an agricultural building. 35 P.S. § 7210.103 (definition of Agricultural building).

The definition of *ICC Electrical Code* is being deleted to reflect the International Code Council’s decision not to publish a separate electric code. The definition of *NEC* is being added to reflect the decision of the International Code Council to refer to and incorporate parts of the NEC in its publications. The NEC is also referenced in Act 39. The definition of *NFPA* is also added, as the NFPA issues the NEC.

The definition of *Residential building* is updated to reflect changes to that definition made by the ICC in the new triennial version of the International Residential Code.

The definition of *Pennsylvania’s alternative residential energy provisions* is amended to reflect the most current edition issued by the PHRC and to provide that it includes errata issued by the PHRC. The publication year is changed from 2006 to 2009.

**Section 403.1. Scope.**

Subsection 403.1(a)(2) is amended to reflect the changes to the regulatory process mandated by Act 106. Act 106 provides that the December 31 deadline for the adoption of the latest triennial codes shall not apply if the Council informs the Department that it should exclude any provisions of the triennial codes from the UCC. 35 P.S. § 7210.304(a)(1).

Section 403.1(b) is amended to include exemptions to the UCC by Act 39. Section 403.1(b)(12) is added to reflect the exclusion for certain structures erected for less than 30 days contained in section 104(b)(8) of the Act. 35 P.S. § 7210.104(b)(8). This section excludes structures which are erected for the purpose of participation in a fair, flea market, arts and crafts festival or other public celebration, which are less than 1,600 square feet in size, erected for a period of less than 30 days and are not a swimming pool, spa or hot tub. Section 403.1(b)(13) is added to reflect the exclusion of pole barns at agricultural fairs that are used for agricultural purposes and animal display contained in section 901(e) of the Act. 35 P.S. § 7210.901(e).
Section 403.1(f) is amended to reflect the Act 157 exclusion of the UCC plumbing provisions as applied to dwelling units or one-room schoolhouses utilized by members of a recognized religious sect. 35 P.S. § 7210.901(b). Additionally, grammatical errors are corrected.

**Section 403.21. Uniform Construction Code.**

Subsection 403.21(a)(1) is amended to include language from Act 13 of 2004 regarding stairway riser height and tread depth in certain occupancies. 35 P.S. § 7210.301(a)(6). Act 13 established special requirements for stairways in certain residential and commercial dwelling units. When the Department submitted final-omitted regulatory changes in 2006, it included the Act’s requirements for residential buildings, but failed to include the stairway requirement applicable to certain commercial buildings.

Subsection 403.21(a)(2)-(4) are amended to delete the reference to the *International Electrical Code* in recognition of the International Code Council’s decision not to publish an electrical code and to insert the “International Performance Code” published by the International Code Council.

Subsection 403.21(a)(6)(i) is amended to reflect a change in the numbering of the referenced section of the “International Residential Code” that applies to interconnected smoke alarms.

Subsection 403.21(a)(7) is amended to reflect a change in the numbering of the referenced section of the “International Fire Code” relating to natural cut trees.

Subsection 403.21(b) is amended to conform with section 302(a)(1), which provides that the codes and standards referenced in Chapter 35 of the “BOCA National Building Code,” or its successor code, are adopted to the extent that they are referenced in Chapter 35. 35 P.S. § 7210.302(a)(1). However, the International Building Code, which is the successor code to the BOCA National Building Code, was altered so that other chapters now adopt all ICC codes in their entirety, except the International Fire Code. This section clarifies that the “International Fire Code” was not adopted in its entirety and that it is only adopted to the extent that it is referenced in Chapter 35 of the “International Building Code.”

A typographical error is corrected in § 403.21(c). The reference to subsection (a)(9) and (12)-(14) was changed to accurately reference subsection (a)(9) and (11)-(13). In addition, this subsection was amended to clarify that both appendices and resource information are adopted for use. A mistaken reference to other code appendices is also being corrected.

Subsection 403.26(a) is amended to update the references to sections of the "International Building Code" and the "International Residential Code." The sections have been renumbered or renamed in the new triennial edition of the adopted codes.

§ 403.27. Applicability and use of standards.

Subsection 403.27(a) is amended to remove the reference to the ICC Electrical Code in recognition of the International Code Council's decision not to publish an electrical code. In addition, the reference to the 2006 codes is removed as unnecessary. The definition of each listed code in § 401.1 specifies the edition of each code which is adopted.

§ 403.28. Uncertified buildings.

Subsection 403.28(b)(5) is amended to conform to section 902(c)(2), which provides that a construction code official may deny a certificate of occupancy to an uncertified building. 35 P.S. § 7210.902.(c)(2). When the current regulation was promulgated, the Department inadvertently excluded this language.

§ 403.42. Permit requirements and exemptions.

Subsection 403.42(e) is amended to conform to Act 157, which provides that a permit is not required for equipment that is under the ownership and control of a public service agency. 35 P.S. § 7210.502(a.1).

§ 403.42a. Permit application.

Subsection 403.42a(b) is amended to require that a permit application include all other permits or approvals related to construction required under § 403.102(n). This amendment reflects changes to the Act made by Act 157. 35 P.S. § 7210.502(a)(1).

Subsection 403.42a(k) is amended to revise the reference to Section 1709 to Section 1710 of the "International Building Code," due to renumbering of sections in the 2009 edition by the International Code Council.

§ 403.43. Grant, denial and effect of permits.

Subsection 403.43(a) is amended to reflect the Act 157 requirement addressing denial of a building permit. If a permit is denied, the code administrator must, in writing, identify the elements of the application which are not in compliance with the relevant
UCC provisions ordinance, as appropriate, and provide a citation to the relevant provisions of the UCC and ordinance. 35 P.S. § 7210.502(a)(2).

§ 403.62. Permit requirements and exemptions.

Subsection 403.62(e) is amended to conform to Act 157, which provides that a permit is not required for equipment that is under the ownership and control of a public service agency. 35 P.S. § 7210.502(a.1).

§ 403.62a. Permit application.

Subsection 403.62a(b) is amended to require that a permit application include all other permits or approvals related to construction required under § 403.102(n). This amendment reflects changes to the Act made by Act 157. 35 P.S. § 7210.502(a)(1).

§ 403.63. Grant, denial and effect of permits.

Subsection 403.63(a) is amended to reflect the Act 157 requirement that, when drawings are prepared by design professionals who are licensed or registered and contain a certification that the plans meet the applicable UCC standards and ordinance, as appropriate, a building permit must be granted or denied within five business days of the date of filing or the application is deemed approved. It also reflects the Act 157 requirement that reasons for denial must identify the elements of the application which are not in compliance with the relevant provisions of the UCC and ordinance and provide a citation to the relevant provisions of the UCC and ordinance. 35 P.S. § 7210.502(a)(2).

§ 403.65. Certificate of occupancy.

Subsection 403.65(b) is amended to require that a building code official issue a certificate of occupancy after receipt of a final inspection report that indicates compliance with the UCC and ordinance within ten business days in cities of the first class and within five business days in all other jurisdictions. This amendment reflects changes made by Act 157. 35 P.S. § 7210.502(a)(1).

§ 403.102. Municipalities electing to enforce the Uniform Construction Code.

Subsection 403.102(i) is amended to conform to changes in Act 157 requiring that a municipality seeking to enact an ordinance containing standards that equal or exceed the UCC include in its submission to the Department a detailed statement containing the differences between the proposed ordinance and the UCC that includes code sections affected by the changes and the time and place of public hearing. 35 P.S. § 7210.502(f). Subsection 403.102(k) is amended to provide that an aggrieved party shall serve a copy of any challenge to an ordinance upon the municipality. 35 P.S. § 7210.502(j).
Subsection 403.102(n) is amended to include the Act 157 requirement that a municipality provide a list of all other required permits necessary prior to the issuance of a building permit. 35 P.S. § 7210.502(a)(1). The existing subsections 403.102(n) and (o) are now renumbered to 403.102(o) and (p).

Subsection 403.102(q) is added to provide that a municipality may enact an ordinance imposing code requirements on structures exempted under § 403.1(b)(12). This provision is required by Act 39.

§ 403.121. Board of appeals.

Subsection 403.121(h) is added pursuant to Act 157, which provides that the fee for an appeal to a board of appeals shall not exceed the actual costs of publishing the hearing notice, court reporter services and all other necessary administrative services. 35 P.S. § 7210.501(c)(4).

§ 403.122. Appeals, variances and extensions of time.

Subsection 403.122(e) is amended to include the Act 157 requirement that in cases before a board of appeals involving a residential building, the board of appeals must convene a hearing within 30 days of the appeal. Subsection 403.122(j) is also amended pursuant to Act 157, to require that appeals involving residential buildings shall be heard within 30 days and the board shall render a written decision to the parties within five business days, or within ten business days in cities of the first class. Failure by the board to act within the time period results in the appeal being deemed granted. 35 P.S. § 7210.501(c)(5).

Fiscal Impact

There is no fiscal impact on the Department. Compliance with updated building codes may have some fiscal impact on the regulated community.

Paperwork

The final-omitted rulemaking will not generate additional paperwork for the public or the Commonwealth.

Sunset Date

The final-omitted rulemaking will become effective on December 31, 2009. The regulation is scheduled for review within 3 years of final publication. No sunset date has been assigned.
Contact Person

The contact person is Edward L. Leister, Director, Bureau of Occupational and Industrial Safety, Labor and Industry Building, 651 Boas Street, 16th Floor, Harrisburg, PA 17120. E-mail: eleister@state.pa.us.

Regulatory Review

Under Section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on October 25, 2009, the Department submitted a copy of the final-form regulation, proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. In addition to submitting the final-form regulation, the Department also provided the IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

Under Section 5.1(j.1)-(j.3) of the Regulatory Review Act (71 P.S. § 745.5a(j.1)-(j.3)), these final-form regulations were approved/deemed approved by the House and Senate Committees on _______________________. IRRC met on ______________________, 2009 and approved the regulations in accordance with Section 5.1(e) of the Regulatory Review Act (71 P.S § 745.5a(e)).

Findings

The Department finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the Commonwealth Documents Law, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite this amended regulation.

Order

The Department, acting under authorizing statute, orders that:

(a) The regulations of the Department 34 Pa. Code Chapter 401 and 403, are amended by amending §§ 401.1, 403.1, 403.21, 403.26, 403.27, 403.28, 403.42, 403.42a, 403.43, 403.62, 403.62a, 403.63, 403.65, 403.102, 403.121 and 403.122 as set forth in Annex A.
(b) The Secretary of the Department shall submit this order and Annex A at to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall become effective on December 31, 2009.

SANDI VITO
Secretary

FISCAL NOTE
§ 401.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

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Agricultural Building –

i. A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals, [and] a milk house and a structure used to grow mushrooms.

ii. The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies.

iii. The term shall not include habitable space or spaces in which agricultural products are processed, treated or packaged and shall not be construed to mean a place of occupancy by the general public.

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[ICC Electrical Code – The “ICC Electrical Code-Administrative Provisions 2006” (first printing) issued by the ICC. The term includes all errata issued by the ICC.]

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International Building Code – Chapters 2-29 and 31-35 of the “International Building Code [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.


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International Fire Code – The “International Fire Code [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.
International Fuel Gas Code – The “International Fuel Gas Code [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

International Mechanical Code – The “International Mechanical Code [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

International Performance Code – The “International Performance Code for Buildings and Facilities [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

International Plumbing Code – The “International Plumbing Code [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

International Residential Code – The “International Residential Code for One- and Two-Family Dwellings [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

International Wildland-Urban Interface Code – The “International Wildland-Urban Interface Code [2006] 2009” (first printing) issued by the ICC. The term includes all errata issued by the ICC.

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NEC – NFPA-70, the “National Electrical Code 2008” issued by the NFPA on July 26, 2007. The term includes all errata issued by the NFPA.

NFPA – The National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169.

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Pennsylvania’s alternative residential energy provisions – The “Pennsylvania Alternative Residential Energy Provisions” issued in [2006] 2009 by the PHRC. This term includes all errata issued by the PHRC.

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Residential building – Detached one-family and two-family dwellings and [multiple single-family dwellings] townhouses which are not more than three stories above grade plane in height with a separate means of egress [which includes the] and their accessory structures.

***
§ 403.1. Scope.

(a) Application.

(2) The Department will promulgate regulations adopting the new triennial BOCA National Building Code, or its successor building code as the Uniform Construction Code by December 31 of the year of the issuance under section 304(a)(1) of the act (35 P.S. § 7210.304(a)(1)). This deadline will not apply if the Uniform Construction Code Review and Advisory Council established under 35 P.S. § 7210.107 informs the department that it should exclude any provisions of the triennial codes from the Uniform Construction Code. New buildings or renovations to existing buildings for which a design or construction contract was executed before the effective date of the regulatory amendment adopting the latest triennial versions of the construction codes and standards shall comply with the codes and standards in effect at the time that the design or construction contract was executed.

(b) Exclusions and exemptions.

The Uniform Construction Code does not apply to:

12. Structures which are:
   (i) Erected for the purpose of participation in a fair, flea market, arts and crafts festival or other public celebration.
   (ii) Less than 1,600 square feet in size.
   (iii) Erected for a period of less than 30 days.
   (iv) Not a swimming pool, spa or hot tub.
13. A pole barn that is constructed on agricultural fairgrounds and is only used for agricultural purposes and animal display. If an exempted pole barn has electrical service, a permit and inspections to determine compliance with the electrical provisions of the UCC are required.
(f) The electrical [provision], plumbing and lumber and wood provisions, [not relating to] except for the wood provisions related to pressure treatment, of the Uniform Construction Code do not apply to a dwelling unit or one-room school house utilized by a member or members of a recognized religious sect if a code administrator grants an exemption under section 901(b) of the act (35 P.S. § 7210.901(b)) as follows:

(1) The permit applicant shall file an application with the code administrator stating the manner in which an electrical provision, a plumbing provision [and the] or a lumber and wood provision [unrelated to pressure treatment] of the Uniform Construction Code conflicts with the applicant’s religious beliefs. The application must also contain an affidavit by the applicant stating:

(i) The permit applicant is a member of a religious sect.
(ii) The religious sect has established tenets or teachings which conflict with an electrical [provision], a plumbing [and] or a lumber and wood provision[s unrelated to pressure treatment] of the Uniform Construction Code.
(iii) The permit applicant adheres to the established tenets or teachings of the sect.

(A) For a dwelling unit, the dwelling will be used solely as a residence for the permit applicant and the applicant’s household.
(B) For a one-room school house, the school house will be used solely by members of the religious sect.

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(a) The Department adopts and incorporates by reference the following codes as the Uniform Construction Code:

(1) The provisions of Chapters 2-29 and 31-35 of the “International Building Code,” except that in occupancies in Use Group R-3 and within dwelling units in occupancies in Use Group R-2 the maximum riser height shall be 8 ¼ inches (210 mm) and the minimum tread depth shall be 9 inches (229 mm). A 1-inch (25 mm) nosing shall be provided on stairways with solid risers.
(2) [The “ICC Electrical Code.”] The “International Mechanical Code”.
(3) [The “International Mechanical Code.”] The “International Fuel Gas Code”.
(4) [The “International Fuel Gas Code.”] The “International Performance Code”.

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(6) The “International Residential Code,” except that:
(i) The provisions of R[313.1.1] 314.4 requiring interconnected smoke alarms do not apply to one-family and two-family dwellings undergoing alterations, repairs or additions. Noninterconnected battery operated smoke alarms shall be installed in these dwellings.
(7) The “International Fire Code.” Section 804.1.1 of the International Fire Code (relating to natural cut trees) is not adopted under this chapter. A municipality that elects to adopt an ordinance for the administration and enforcement of the Uniform Construction Code may, by ordinance, restrict the placement of natural cut trees in an occupancy group. The ordinance restricting the placement of natural cut trees is not subject to section 503(b)-(k) of the act (35 P.S. § 7210.503(b)-(k)) and § 403.102(i)-(k) (relating to municipalities electing to enforce the Uniform Construction Code).

(b) The code[s and standards] adopted under subsection (a) (7) [are] is part of the Uniform Construction Code to the [prescribed] extent [of each code or standard] that it is referenced in Chapter 35 of the “International Building Code” under section 302(a)(1) of the act (35 P.S. § 7210.302(a)(1)). The provisions of the Uniform Construction Code apply if there is a difference between the Uniform Construction Code and the codes or standards adopted in subsection (a). This chapter’s administrative provisions govern under § 403.27(e) (relating to applicability and use of standards) if there is a conflict with the provisions of the codes relating to administration incorporated under subsection (a).

(c) Appendices to a code or standard listed in subsection (a) are not adopted in the Uniform Construction Code except for the [provisions adopted in subsection (a)(9)] appendices and resource information found in the “International Existing Building Code” and the appendices found in (a) ([12]11)-(14)13).


(a) A swimming pool, hot tub and spa which is accessory to a one- or two-family dwelling shall comply with all of the following:
   (1) Chapter [41] 42 of the “International Residential Code.”
   (2) Appendix G of the “International Residential Code.”
   (3) Section [2406.2] 2406.4, paragraph 9 of the International Building Code (glazing in walls and fences enclosing indoor and outdoor swimming pools, hot tubs and spas).
   (4) Section 3109.4 of the “International Building Code” (residential swimming pools [enclosures]).

§ 403.27. Applicability and use of standards.

(a) Portions of this chapter designate and incorporate portions of the following ICC [2006] copyrighted works:
§ 403.28. Uncertified Buildings.

(b) Under section 902(b) of the act, uncertified buildings within the Department’s jurisdiction must meet the following requirements which do not apply to uncertified buildings under subsection (a):

(5) A construction code official may deny the issuance of a certificate of occupancy if the official deems that a building is unsafe because of inadequate means of egress, inadequate lighting and ventilation, fire hazards or other dangers to human life or to public welfare.

§ 403.42. Permit requirements and exemptions.

(e) A permit is not required for the installation, alteration or repair of generation, transmission, distribution, metering or other related equipment [that is, by established right,] under the ownership and control of [a public utility as the term “public utility” is defined in 66 Pa.C.S. § 102 (relating to definitions).] public service agencies.

§ 403.42a. Permit application.

(b) A permit applicant shall submit an application to the building code official and attach construction documents, including plans and specifications, and information concerning special inspection and structural observation programs, Department of Transportation highway access permits, all other permits or approvals related to the construction required under § 403.102(n) (relating to municipalities electing to enforce the Uniform Construction Code) and other data required by the building code official with the permit
application. The applicant shall submit three sets of documents when the Department conducts the review.

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(k) The permit applicant shall describe an inspection program, identify a person or firm who will perform special inspections and structural observations if section 1704 or [1709] 1710 of the “International Building Code” requires special inspections or structural observations for the construction.

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§ 403.43 Grant, denial and effect of permits.

(a) A building code official shall grant or deny a permit application, in whole or in part, within 30 business days of the filing date. Reasons for the denial shall be in writing, identifying the elements of the application which are not in compliance with the relevant provisions of the Uniform Construction Code and ordinance as appropriate and providing a citation to the relevant provisions of the Uniform Construction Code and ordinance as appropriate, and sent to the applicant. The building code official and the permit applicant may agree in writing to extend the deadline by a specific number of days. A building code official may establish a different deadline to consider applications for a permit in an historic district.

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§ 403.62. Permit requirements and exemptions.

***

(e) A permit is not required for the installation, alteration or repair of generation, transmission, distribution, metering or other related equipment [that is, by established right,] under the ownership and control of [a public utility as the term “public utility” is defined in 66 Pa.C.S. § 102 (relating to the definitions)] public service agencies.

***

§ 403.62a. Permit application.

***

(b) A permit applicant shall submit an application to the building code official and attach construction documents with plans and specifications[.] and all other permits or approvals related to the construction required by § 403.102(n) (relating to municipalities electing to enforce the Uniform Construction Code).

***
§ 403.63. Grant, denial and effect of permits.

(a) A building code official shall grant or deny a permit application, in whole or in part, within 15 business days of the filing date or the application is deemed approved. If the drawings were prepared by a design professional who is licensed or registered under the laws and regulations of the Commonwealth and the application contains a certification by the licensed or registered design professional that the plans meet the applicable standards of the Uniform Construction Code and ordinance as appropriate, a building code official shall grant or deny a permit application, in whole or in part, within 5 business days of the filing date or the application is deemed approved. Reasons for denial must be in writing, identifying the elements of the application which are not in compliance with the relevant provisions of the Uniform Construction Code and ordinance as appropriate and providing a citation to the relevant provisions of the Uniform Construction Code and ordinance as appropriate, and sent to the permit applicant. The building code official and the applicant may agree in writing to extend the deadline by a specific number of days.

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§ 403.65 Certificate of occupancy.

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(b) A building code official shall issue a certificate of occupancy after receipt of a final inspection report that indicates compliance with the Uniform Construction Code and ordinance within 5 business days or within 10 business days in cities of the first class. The certificate of occupancy shall contain all of the following information:

(1) The permit number and address of the residential building.
(2) The name and address of the owner of the residential building.
(3) A description of the portion of the residential building covered by the occupancy permit.
(4) A statement that the described portion of the residential building was inspected for compliance with the Uniform Construction Code.
(5) The name of the building code official who issued the occupancy permit.
(6) The construction code edition applicable to the occupancy permit.
(7) If an automatic sprinkler system is provided.
(8) Any special stipulations and conditions relating to the building permit.

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§ 403.102. Municipalities electing to enforce the Uniform Construction Code.

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(i) A municipality may enact an ordinance containing standards that equal or exceed the Uniform Construction Code as adopted by § 403.21 (relating to the Uniform Construction Code) under section 503 of the act (35 P. S. § 7210.503) after Department review and approval. A municipality may enact ordinances under this section which adopt additional code requirements for alterations or repairs to residential buildings. A municipality may
enact ordinances under this section which adopt stricter code requirements than required by the act for the regulation of utility and miscellaneous use structures. The municipality shall notify the Department of the proposed ordinance and submit the following to the Department for its review:

(1) The complete ordinance.
(2) The information required in subsection (c).
(3) A detailed statement containing the differences between the proposed ordinance and the Uniform Construction Code including code sections affected by the changes and how the ordinance will equal or exceed the Uniform Construction Code.
(4) Time and place of public hearing.

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(k) A written challenge of an ordinance is governed by the following:
(1) An aggrieved party may file a written challenge of an ordinance within 30 days of its enactment with the Department and shall serve a copy of the challenge upon the municipality under section 503(j) of the act.
(2) The Secretary will issue a ruling on the challenge within 45 days of receipt of the filing of the last challenge to the ordinance or within 30 days of the Department hearing on the challenge, whichever occurs last, under section 503(k) of the act.

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(n) [The Department will enforce Chapter 11 (Accessibility) of the Uniform Construction Code and other accessibility requirements contained in or referenced by the Uniform Construction Code until a municipality employs or contracts with a code administrator certified as an accessibility inspector/plans examiner under this part.] A municipality will provide a list of all other required permits necessary before issuance of the building permit. A municipality will not be liable for the completeness of any list.

(o) [A municipality may observe Department inspections of State-owned buildings in its jurisdiction under section 105(b)(1) of the act (35 P. S. § 7210.105(b)(1)). A municipality may review all building plans and plan review documents for State-owned buildings in the Department’s custody.] The Department will enforce Chapter 11 (Accessibility) of the Uniform Construction Code and other accessibility requirements contained in or referenced by the Uniform Construction Code until a municipality employs or contracts with a code administrator certified as an accessibility inspector/plans examiner under this part.

(p) A municipality may observe Department inspections of State-owned buildings in its jurisdiction under section 105(b)(1) of the act (35 P. S. § 7210.105(b)(1)). A municipality may review all building plans and plan review documents for State-owned buildings in the Department’s custody.

(q) A municipality may enact an ordinance imposing the code requirements spelled out in 35 P.S. § 7210.503 (a) (2) on the structures exempted under § 403.1 (b) (12).

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§ 403.121. Board of appeals.

(h) The fee for an appeal in a municipality which has adopted an ordinance for the administration and enforcement of the Uniform Construction Code or is a party to an agreement for the joint administration and enforcement of the Uniform Construction Code shall not exceed the actual costs of publishing the hearing notice, court reporter services and other necessary administrative services under section 501(c) of the act (35 P.S. § 7210.501(c)(4)).

§ 403.122. Appeals, Variances and extensions of time.

(e) A board of appeals shall hold a hearing within 60 days from the date of an applicant's request unless the applicant agreed in writing to an extension of time. A board of appeals shall convene a hearing within 30 days of receipt of an appeal or request for variance or extension of time involving the construction of a one- or two-family residential building.

(j) The board of appeals shall provide a written notice of its decision to the owner and to the building code official. A board of appeals shall render a written decision regarding an appeal or request for variance or extension of time involving the construction of a one- or two-family residential building within 5 business days, or within 10 business days in cities of the first class, of the latest hearing. The appeal shall be deemed granted if a board of appeals fails to act within this time period.
The Honorable Arthur Coccodrilli  
Chairman, Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

Re: Final-omitted Rulemaking  
Labor & Industry  
Uniform Construction Code, Document No. 12-89

Dear Chairman Coccodrilli:

Enclosed is a regulatory package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry for this final-omitted regulation. This regulation is required by Section 304 of the Pennsylvania Construction Code Act (35 P.S. § 7210.304). This regulation will amend 34 Pa. Code, Part XIV, Chapters 401 and 403.

Please feel free to contact Edward L. Leister, Director of the Bureau of Occupational and Industrial Safety (Telephone: 717-787-6304/Fax: 717-787-8363) if you have any questions. The Department’s staff will provide your staff with any assistance needed to facilitate a thorough review of this final-omitted regulation.

Sincerely,

Sandi Vito  
Acting Secretary

Enclosures

cc: Jane Pomerantz, Chief Counsel  
Robert V. O’Brien, Executive Deputy Secretary  
Neil E. Cashman, Jr., Senior Advisor for External Affairs  
Daniel Ruzansky, Director of Legislative Affairs
**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT**

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<tr>
<th>I.D. NUMBER:</th>
<th>12-89</th>
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<tr>
<td>SUBJECT:</td>
<td>UNIFORM CONSTRUCTION CODE</td>
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<tr>
<td>AGENCY:</td>
<td>DEPARTMENT OF LABOR &amp; INDUSTRY</td>
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**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation  
  - a. With Revisions  
  - b. Without Revisions

**FILING OF REGULATION**

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<td>Danielle Conley</td>
<td>HOUSE COMMITTEE ON LABOR RELATIONS</td>
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<td>Ennie Ottenga</td>
<td>SENATE COMMITTEE ON LABOR &amp; INDUSTRY</td>
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<td>10/23/09</td>
<td>Jennifer Kow</td>
<td>MAJORITY CHAIRMAN John R. Gordner</td>
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<td>10/23/09</td>
<td>Kathy Cooper</td>
<td>INDEPENDENT REGULATORY REVIEW COMMISSION</td>
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<tr>
<td>10-23-09</td>
<td>M. Mommeit</td>
<td>ATTORNEY GENERAL (for Final Omitted only)</td>
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October 21, 2009