
Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

City Rent and Eviction Regulations

LD. No. HCR-14-00-00033-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Parts 2200, 2202, 2204, 2206-2209 of Title 9 NYCRR.

Statutory authority: Omnibus Housing Act, L. 1983, ch. 403, section 28 (not subdivided); and Administrative Code of the City of New York, section 26-405g(1)

Subject: City rent and eviction regulations.

Purpose: To conform regulations to statutes, particularly the RRRAs of 1993 and 1997, judicial determinations and incorporate agency practice.

Public hearing(s) will be held at: 10:00 a.m.-8:00 p.m. on May 25, 2000 at the Borough of Manhattan Community College, 199 Chambers St., New York, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: Substantive amendments and new provisions covered by the proposed rule are as follows:

PART 2200 - SCOPE

Sec. 2200.2 Statutory definitions.

City rent agency. Luxury decontrol; exclusion from definition of housing accommodations subject to control.

Sec. 2200.3 Additional definitions.

Primary residence.

PART 2202 - ADJUSTMENTS; DETERMINATION OF RENTS AND SERVICES

Sec. 2202.1 Maximum rents.

Adjustments either by Administrator Order or as otherwise provided by law.

Sec. 2202.4 Increased services or facilities, substantial rehabilitation, major capital or other improvements.

Notification to, instead of approval by DHCR required for individual improvement rent adjustments; amortization of increases for individual apartment improvements; major capital improvements and related improvements.

Sec. 2202.16 Rent decrease for reduction of services, etc.

Implement Rent Regulation Reform Act of 1997 (RRRA-98) regarding double rent reductions.

Sec. 2202.25 Rent adjustments upon succession (new).

Implement RRRRA-97.

PART 2204 - EVICTIONS

Sec. 2204.5 Occupancy by landlord or immediate family. Conforms class of eligible individuals with succession definition of family member.

Sec. 2204.6 Tenant not using premises for own dwelling.

Succession. Family members limited; provision for notice to DHCR of successor; implementing RRRRA-97.

Sec. 2204.7 Alteration or remodeling.

Implement RRRRA-97 standards regarding exceptions to Sound Housing Act requirements.

PART 2206 - ENFORCEMENT

Sec. 2206.3 Civil penalties.

Implement increased penalties pursuant to RRRRA-97.

PART 2207 - PROCEEDINGS BEFORE DISTRICT RENT ADMINISTRATOR

Sec. 2207.3 Notice to parties affected.

Applications to increase maximum rents. Provide for examination by affected tenants.

PART 2207-A - PROCEDURES FOR HIGH INCOME RENT DECONTROL (new)

Implement statutory procedures for high income rent decontrol.

PART 2208 - ADMINISTRATIVE REVIEW

Sec. 2208.1-A PARs, Time periods; Address of Office of Rent Administration (new).

Update time periods to conform with agency practice; update office addresses;

Sec. 2208.12 Judicial review.

Update practice pursuant to law and agency procedures. Update office address for filing of papers.

PART 2209 - MISCELLANEOUS PROCEDURAL MATTERS

Sec. 2209.1 When a notice or paper shall be deemed served.

Except for high income rent decontrol, provide for contemporaneous dispositive affidavits as proof of service on agency. Provide for electronic service.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4824

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: five days after the scheduled public hearing.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Omnibus Housing Act, Laws of 1983, Chap 403, Section 28, (not subdivided), and Section 26-405g(1) of the Administrative Code of the City of New York provide authority to the Division of Housing and

Community Renewal (DHCR) to amend the City Rent and Eviction Regulations (CRER).

2. LEGISLATIVE OBJECTIVES

Since the CRER were last substantively amended, two major pieces of legislation have been enacted, the Rent Regulation Reform Acts of 1993 and 1997 (RRRA). The proposed rule-making is necessary to realize the objectives of the Legislature and to provide specific guidance to the public.

3. NEEDS AND BENEFITS

The Legislature has made significant changes to the manner in which rent controlled housing is regulated. These amendments set forth the procedures that implement these statutory changes and make it possible for the agency to carry out its legislatively mandated responsibilities. Further, they inform the affected parties of their rights and responsibilities under the new laws. Additionally, these amendments streamline regulatory procedures, codify existing agency policies, and reflect recent judicial determinations.

4. COSTS

These amendments are expected to have no costs associated with them for either the regulated parties, or the agency, or State and local governments. To the contrary, it is anticipated that streamlined policies and procedures will result in cost savings to the regulated parties and the agency.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

These amendments create no significant paperwork burdens. The implementation of new statutory requirements for purposes of tracking "succession" rights of tenants will not add burdensome new paperwork. In fact, the implementation of the RRRAs by these amendments will result in a very significant reduction in the paperwork responsibilities of the regulated parties.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements.

8. ALTERNATIVES

The proposed amendments primarily implement statutory provisions and judicial determinations; accordingly, there were no significant viable alternatives which did not conflict with applicable law.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The City Rent and Eviction Regulations (CRER) apply only to housing units located in New York City that are subject to the City Rent and Rehabilitation Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled.

The amended regulations are expected to have no burdensome impact on such small businesses in that they codify the Rent Regulation Reform Acts of 1993 and 1997 (RRRA), existing Operational Bulletins, Policy Statements, Advisory Opinions, and established case law. The City Rent and Eviction Regulations, which apply exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

There are no new major compliance requirements in the proposed amendments. A minor new requirement that is statutorily created by the RRRRA of 1997 is the provision of data to the DHCR regarding eligibility for vacancy bonuses upon succession. The proposed amendments do not otherwise require regulated parties to perform any additional record keeping, reporting, or any other acts. There are no new compliance requirements placed on local government.

3. PROFESSIONAL SERVICES

The proposed amendments should not require small businesses or local government to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will impose any significant costs upon regulated parties in general and small businesses in particular. The implementation of statutory limitations on record keeping requirements should ease administrative burdens. Additionally, there should be no costs imposed on local government resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGY FEASIBILITY

As noted above, these proposed amendments will not impose any significant cost on the regulated parties or local government. In addition, compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZE ADVERSE IMPACT

These proposed amendments codify existing agency policy and/or statutes, do not impair the rights of the regulated parties, and therefore have no adverse economic impact on such parties or local government. Consequently, it was not necessary to consider the approaches suggested in SAPA Section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided over 40 parties and organizations with a demonstrated interest in rent regulation with the opportunity to make code amendment suggestions. The DHCR provided opportunity for comment to such organizations as Small Property Owners of New York, the Rent Stabilization Association, the Community Housing Improvement Program, the Real Estate Board of New York, Eastside Tenants Coalition, Brooklyn Legal Services, Brooklyn Tenants Council, New York State Tenants and Neighbors Coalition, Stuyvesant Town Tenants Association, the Metropolitan Council on Housing, and the N.Y.S. Bar Association Task Force on Rent Regulation. In addition, Regulatory Agendas were published in the *State Register* on June 30, 1999 and January 5, 2000, indicating that the DHCR was reviewing rent regulation policies and procedures for purposes of amending the regulations, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Local government participation in New York City was effectuated by submission of the draft regulations to the New York City Department of Housing Preservation and Development.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register*, at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The proposed rules are intended to codify existing policies and/or statutes. The City Rent and Eviction Regulations apply exclusively to New York City, and therefore the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the summary and text of the rule, the purpose of which is to conform these Regulations to judicial determinations and statutes, particularly the RRRAs of 1993 and 1994, as well as to codify current agency practice and policies, that there will be no adverse impacts on jobs and employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Emergency Tenant Protection Regulations

I.D. No. HCR-14-00-00034-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Parts 2500-2510 of Title 9 NYCRR.

Statutory authority: Emergency Tenant Protection Act of 1974 (ETPA), L. 1974, ch. 576, section 10a

Subject: Emergency tenant protection regulations.

Purpose: To conform regulations to statutes, particularly the RRRAs of 1993 and 1997, judicial determinations and incorporate agency practice.

Public hearing(s) will be held at: 10:00 a.m.-8:00 p.m. on May 25, 2000 at the North Hempstead Town Hall Hearing Rm., 220 Plandome Rd., Manhasset, NY and Westchester County Ceremonial Courtroom, 111 Dr. Martin Luther King Jr. Blvd., White Plains, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable

time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: Substantive amendments and new provisions covered by the proposed rule are as follows:

PART 2500 - SCOPE

Sec. 2500.1 Statutory authority.

Chapter re-designated as Subchapter.

Sec. 2500.2 Definitions.

Rent; legal regulated rent; base date; owner; immediate family; family member; documents; final order; primary residence; housing accommodations occupied by certain employees without payment of rent; housing accommodations used exclusively for non-residential purposes; exemptions by other laws.

Sec. 2500.6 Filing of amendments.

SAPA, delayed implementation.

Sec. 2500.8 Local areas subject to control.

TPR no longer applicable in New York City.

Sec. 2500.9 Housing accommodations subject to regulation.

Threshold number of units to be set by locality; units occupied by non-affiliated tenants of nonprofit institutions; exemptions for co-op and condo units, non-residential units, and former RPTL § 421-c units; substantial rehabilitation, standards for exemption from rent regulation; stabilized rents upon reversion of former cooperative or condominium owned buildings to rent stabilization; luxury decontrol.

Sec. 2500.11 Receipt for rent paid.

Implement Real Property Law Section 235-e.

Sec. 2500.12 Waiver of benefit void.

Negotiated settlements and their effect on subsequent tenants.

Sec. 2500.13 Construction and implementation.

Purpose of Subchapter to conform with law.

PART 2501 - LEGAL REGULATED RENTS

Sec. 2501.2 Preferential rents.

Rent setting procedures.

PART 2502 - ADJUSTMENTS

Sec. 2502.2 Effective date of adjustment of rents.

Retroactive effective dates of rent adjustments; increases authorized by RRRRA-97.

Sec. 2502.3 Application for adjustment of initial legal regulated rent.

Fair Market Rent Appeals and Jurisdictional Appeals. Implement RRRRA-97, and eligibility of appeals; time limitations, and what issues may be raised on appeal; judicial sales, and liability for excess rent following such sale.

Sec. 2502.4 Applications for adjustment of legal regulated rent.

Section title amended. Individual apartment improvement increase requirements; improvements required by law and other improvements. Major capital improvement increases; standards and examples; prior opinions; challenges, municipal sign-offs and affidavits; amortization periods (including individual apartment improvements); modification of services.

Sec. 2502.5 Lease agreements.

Applicability of vacancy allowance and guidelines adjustments. Vacancy before expiration of lease term. Implement RRRRA-97 adjustments; renewal lease cancellation because of luxury decontrol.

Sec. 2502.6 Orders where the legal regulated rent or other facts are in dispute, in doubt, or not known, or where the legal regulated rent must be fixed.

Rent setting mechanism where there has been a judicial sale of the building containing the housing accommodation.

Sec. 2502.7 Rent adjustments upon vacancy or succession (new).

Implement RRRRA-97 adjustments.

Sec. 2502.8 Surcharge for the installation and use of washing machines, dryers and dishwashers (new).

Rights of parties regarding charges upon installation and use of certain appliances.

Sec. 2502.9 Surcharges for submetered electricity or other utility service (new).

Practice regarding surcharges codified.

PART 2503 - NOTICES AND RECORDS

Sec. 2503.1 Notice of initial legal regulated rent.

Implement RRRRA-97 four-year rule.

Sec. 2503.2 Certification of services.

Restoration of services: eliminate redundant filings.

Sec. 2503.4 Failure to maintain services.

MCI collectability; collectability of increases begin prior to issuance of a rent reduction order. Required notification to owner of service conditions; notices of inspection; "de minimis" conditions; effect of failure to

complain about service conditions; certification relating to building-wide services rent reduction-restoration proceedings; implement RRRRA-97 regarding double rent reductions.

Sec. 2503.5 Renewal of lease.

Lease renewals; effect of tenant's unreasonable refusal to sign offered lease; notice to owner of potential successors and rent adjustments upon succession pursuant to RRRRA-97.

Sec. 2503.6 Notices to attorneys-at-law.

Repealed. New section adopted to conform with Rent Stabilization Code (RSC).

Sec. 2503.7 Records and record-keeping.

Implement RRRRA-97 four-year rule, and court decisions regarding judicial sales, including Receivers.

Sec. 2503.8 Notice of legal regulated rent for a vacant housing accommodation previously regulated under the act.

Repealed.

PART 2504 - EVICTIONS

Sec. 2504.2 Proceedings for eviction-wrongful acts of tenant.

Subdivision (b) repealed. Conform with RSC provision; occupancy in violation of contracts with governmental agencies; illegal sublets.

Sec. 2504.3 Notices required in proceedings under section 2504.2 of this Part.

Demolition: filing of termination notice with DHCR not required; 30 day notice period shortened to 7 days; termination notice by law enforcement agencies.

Sec. 2504.4 Grounds for refusal to renew lease and proceed for eviction.

Primary residence. Eliminate provision regarding not-for-profit hospitals and affiliated subtenants, pursuant to judicial determination; non-renewal of lease during a pending application.

PART 2505 - PROHIBITIONS

Sec. 2505.4 Security deposits.

Implement statutory protection for seniors, and conform interest payment requirements with RSC.

Sec. 2505.7 Regulation of subletting.

Amend section title and provide for availability of increases where lease is assigned with owner's consent.

Sec. 2505.8 Occupancy by persons other than tenant of record or tenant's immediate family (new).

Provide for limitations on rent that may be charged to roommates, and apply Real Property Law Section 235-f.

PART 2506 - ENFORCEMENT

Sec. 2506.1 Penalties for overcharges, assessment of costs and attorney's fees, rent offsets.

Section title amended. Treble damages not applicable solely for failure to register; implement four-year rule, and establish use of base date rent; preclude examination of rental history prior to four years before filing of overcharge complaint; provide for jurisdictional challenges in high-rent vacancy decontrol situations; judicial sales: codifying court rulings, broadening definition of "judicial sale," and extending protection from overcharge liability to court-appointed Receivers.

Sec. 2506.2 Orders to enforce the act and this chapter.

Implement RRRRA-97 increases in monetary penalties for harassment of tenants.

PART 2507 - PROCEEDINGS BEFORE DIVISION

Sec. 2507.3 Notice to the parties affected.

Conform procedures with RSC and provide for examination by affected tenants of rent increase applications.

Sec. 2507.4 Answer.

Conform procedures with RSC.

Sec. 2507.5 Action by division.

Conform procedures with RSC.

Sec. 2507.9 Judicial review.

Conform procedures with RSC; clarify where papers are to be filed.

Sec. 2507.10 Amendments to complaint or application (new).

Conform procedures with RSC.

Sec. 2507.11 Advisory opinions and operational bulletins (new).

Conform with RSC provision.

PART 2507-A - PROCEDURES FOR HIGH INCOME RENT DECONTROL (new)

Implement fully both the Rent Regulation Reform Acts of 1993 and 1997 with regard to procedures for luxury decontrol.

PART 2508 - MISCELLANEOUS PROCEDURAL MATTERS

Permit proof by dispositive, contemporaneous affidavit, except in luxury decontrol proceedings, and provide for electronic service of papers.

PART 2509 - REGISTRATION OF HOUSING ACCOMMODATIONS

Sec. 2509.1 Initial Registration.

Section updated.

Sec. 2509.3 Penalty for failure to register.

Implement RRRRA-97: limitations on examination of rental history for period prior to four years before complaint is filed. Collection of administrative fees to be solely the responsibility of the locality, without penalty under the TPR for non-payment.

PART 2510- ADMINISTRATIVE REVIEW

Sec. 2510.1 Persons who may file.

Comply with statute; review limited to rent administrator orders.

Sec. 2510.2 Time for filing a PAR.

Provide for an alternative method of service, as determined by Operational Bulletin; conform with RSC (35 days) and current practice

Sec. 2510.3 Form and content of a PAR against these regulations or portion thereof.

Repealed. Provide for scope of review, conforming with RSC.

Sec. 2510.4 Form and content of a PAR against an order of the district rent administrator.

Repealed. Conform with RSC and current practice.

Sec. 2510.5 Service and filing of a PAR.

Repealed. Conform with RSC and current practice.

Sec. 2510.6 Time of filing answer to a PAR.

Repealed. Conform with RSC and current practice.

Sec. 2510.10 Time within which the commissioner shall take final action.

Repealed. Conform with RSC and current practice.

Sec. 2510.11 Stays.

Conform with RSC procedures; no stay on granted portion of MCI increase where owner claims a larger increase should have been granted.

Sec. 2510.12 Judicial Review.

Repealed. Conform with statute and RSC by eliminating administrative review of regulations. Updated office address for serving and filing of papers.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4824

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: five days after the scheduled public hearing.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Emergency Tenant Protection Act of 1974 (ETPA), Laws of 1974 Chap. 576, Section 10a provides authority to the Division of Housing and Community Renewal (DHCR) to amend the Emergency Tenant Protection Regulations (TPR)

2. LEGISLATIVE OBJECTIVES

Since the TPR were last substantively amended, two major pieces of legislation have been enacted, the Rent Regulation Reform Acts of 1993 and 1997 (RRRA). This proposed rule-making is necessary to realize the objectives of the Legislature and to provide specific guidance to the public.

3. NEEDS AND BENEFITS

The Legislature has made significant changes to the manner in which rent stabilized housing is regulated. These amendments set forth the procedures that implement these statutory changes and make it possible for the agency to carry out its legislatively mandated responsibilities. Further, they inform the affected parties of their rights and responsibilities under the new laws. Additionally, these amendments streamline regulatory procedures, codify existing agency policies, and reflect recent judicial determinations.

4. COSTS

These amendments are expected to have no costs associated with them for either the regulated parties, or the agency, or State and local governments. To the contrary, it is anticipated that streamlined policies and procedures will result in cost savings to the regulated parties and the agency.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

These amendments create no new paperwork burdens. The implementation of new statutory requirements for purposes of tracking "succession" rights of tenants will not add any new paperwork; the necessary informa-

tion can be captured on existing forms. In fact, the implementation of the RRRAs by these amendments will result in a very significant reduction in the paperwork responsibilities of the regulated parties.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements.

8. ALTERNATIVES

The proposed amendments primarily implement statutory provisions and judicial determinations; accordingly, there were no significant viable alternatives that did not conflict with applicable law.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules. Should the DHCR determine that delayed implementation is appropriate, proposed section 2507.11 of the TPR would authorize the agency to take such action.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Emergency Tenant Protection Regulations (TPR) apply only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own small numbers of rent stabilized units. The amended regulations are expected to have no burdensome impact on such small businesses in that they codify the Rent Regulation Reform Acts of 1993 and 1997 (RRRA), existing Operational Bulletins, Policy Statements, Advisory Opinions, and established case law.

The TPR apply only in the aforementioned communities, and are expected to have no impact on the local governments thereof.

2. COMPLIANCE REQUIREMENTS

There are no new major compliance requirements in the proposed amendments. A minor new requirement that is statutorily created by the RRRRA of 1997 is the provision of data to the DHCR regarding eligibility for vacancy bonuses upon succession. The proposed amendments do not otherwise require regulated parties to perform any additional record keeping, reporting, or any other acts. There are no new compliance requirements placed on local governments.

3. PROFESSIONAL SERVICES

The proposed amendments should not require small businesses or local governments to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will impose any significant costs upon regulated parties in general and small businesses in particular. The implementation of statutory limitations on record keeping requirements should ease administrative burdens. Additionally, there should be no costs imposed on local governments resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGY FEASIBILITY

As noted above, these proposed amendments will not impose any significant cost on the regulated parties or local governments. In addition, compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZE ADVERSE IMPACT

The regulatory amendments codify existing agency policy and/or statutes, do not impair the rights of the regulated parties, and therefore have no adverse economic impact on such parties or local governments. Consequently, it was not necessary to consider the approaches suggested in SAPA Section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided over 40 parties and organizations with a demonstrated interest in rent regulation with the opportunity to make TPR amendment suggestions. The DHCR provided opportunity for comment to such organizations as Small Property Owners of New York, the Rent Stabilization Association, the Community Housing Improvement Program, the Real Estate Board of New York, the Westchester Apartment Owners Advisory Council, the Apartment House Council of Long Island, New York State Tenants and Neighbors Coalition, the Metropolitan Council on Housing, and the N.Y.S. Bar Association Task Force on Rent Regulation. In addition, Regulatory Agendas were published in the *State Register* on June 30, 1999 and January 5, 2000, indicating that the DHCR was reviewing rent regulation

policies and procedures for purposes of amending the regulations, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register* at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The proposed rules are intended to codify existing policies and/or statutes, and are therefore not anticipated to impose any new adverse reporting, recordkeeping or other compliance requirements on public or private entities in any rural area that is subject to these regulations.

Job Impact Statement

It is apparent from the summary and text of the rule, the purpose of which is to conform these Regulations to judicial determinations and statutes, particularly the RRRAs of 1993 and 1994, as well as to codify current agency practice and policies, that there will be no adverse impacts on jobs and employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rent Stabilization Code

I.D. No. HCR-14-00-00035-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule.

Proposed action: Amendment of Parts 2520-2530 of Title 9 NYCRR.

Statutory authority: Administrative Code of the City of New York, sections 26-511(b) as recodified by L. 1985, ch. 907, section 1 (formerly section YY51-6.0(h), as amd by L. 1985, ch. 888, section 2) and 26-518(a), as recodified by L. 985, ch. 907, section 1 (formerly section YY51-6.1[a] as added by L. 1985, ch. 888, section 8)

Subject: Rent stabilization code.

Purpose: To conform regulations to statutes, particularly the RRRAs of 1993 and 1997, judicial determinations and incorporate agency practice.

Public hearing(s) will be held at: 10:00 a.m.-8:00 p.m. on May 25, 2000 at the Borough of Manhattan Community College, 199 Chambers St., New York, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: Substantive amendments and new provisions covered by the proposed rule are as follows:

PART 2520 - SCOPE

Sec. 2520.6 Definitions.

Rent: legal regulated rent; base date; owner; immediate family; family member; documents; final order; primary residence.

Sec. 2520.11 Applicability.

Housing accommodations formerly regulated under laws other than RSL; substantial rehabilitation, standards for exemption from rent regulation; stabilized rents upon reversion of former cooperative or condominium owned buildings to rent stabilization; luxury decontrol.

Sec. 2520.13 Waiver of benefit void.

Negotiated settlements and their effect on subsequent tenants.

PART 2521 - LEGAL REGISTERED AND REGULATED RENTS

Sec. 2521.1 Initial legal registered rents for housing accommodations.

Term "legal registered" rent changed to "legal regulated rent" to implement Rent Regulation Reform Act of 1997 (RRRA-97).

Multi tier rents. Limitation on orders issued on and after January 1, 2000.

Sec. 2521.2 Legal regulated rents for housing accommodations.

Preferential rents. Rent setting procedures.

PART 2522 - RENT ADJUSTMENTS

Sec. 2522.2 Effective date of adjustment of legal regulated rents.

Increases authorized by RRRRA-97.

Sec. 2522.3 Fair Market Rent Appeal.

Implement RRRRA-97, and eligibility of appeals; time limitations, and what issues may be raised on appeal; judicial sales, and liability for overcharges following such sale.

Sec. 2522.4 Adjustment of legal regulated rent.

Major capital improvement (MCI); useful life schedule and waiver standards; 6% cap; reserve funds in co-ops and condos; "fast track;" challenges, municipal sign-offs; amortization periods (including individual apartment improvements); service of applications; utility charges, conversion to direct metering.

Sec. 2522.5 Lease agreements.

Vacancy before expiration of lease term. Implement RRRRA-97 adjustments; renewal lease cancellation because of luxury decontrol.

Sec. 2522.6 Orders where the legal regulated rent or other facts are in dispute, in doubt, or not known, or where the legal regulated rent must be fixed.

Rent setting mechanism where there has been a judicial sale of the building containing the housing accommodation.

Sec. 2522.7 Consideration of equities.

Conform with Sec. 2523.5 regarding exception to period of minimum required residency for succession.

Sec. 2522.8 Rent adjustments upon vacancy or succession (new).

Implement RRRRA-97 adjustments.

Sec. 2522.9 Surcharge for the installation and use of washing machines, dryers and dishwashers (new).

Rights of parties regarding charges upon installation and use of certain appliances.

Sec. 2522.10 Surcharges for submetered electricity or other utility service (new).

Practice regarding surcharges codified.

PART 2523 - NOTICES AND RECORDS

Sec. 2523.1 Notice of initial legal registered rent.

"Registered" changed to "regulated;" implement RRRRA-97 four-year rule.

Sec. 2523.3 Failure to file a certification of services.

Restoration of services; eliminate redundant filings.

Sec. 2523.4 Failure to maintain services.

MCI collectability; collectability of increases begin prior to issuance of a rent reduction order. Required notification to owner of service conditions; notices of inspection; "de minimis" conditions; effect of failure to complain about service conditions; certification relating to building-wide services rent reduction-restoration proceedings; implement RRRRA-97 regarding double rent reductions.

Sec. 2523.5 Notice for renewal of lease and renewal procedure.

Lease renewals; effect of tenant's unreasonable refusal to sign offer of lease; notice to owner of potential successors and rent adjustments upon succession pursuant to RRRRA-97; exception to minimum required period of residency for succession; "window period" for required notice of renewal offer revised to coincide with Rent Guidelines Board Orders.

Sec. 2523.7 Records and record-keeping.

Implement RRRRA-97 four-year rule, and court decisions regarding judicial sales, including Receivers.

Sec. 2523.8 Notice of change of ownership.

Conform to requirements of Real Property Law.

PART 2524 - EVICTIONS

Sec. 2524.2 Termination notices.

Procedures for processing of demolition applications.

Sec. 2524.3 Proceedings for eviction-wrongful acts of tenant.

Readoption of a currently unenforceable provision regarding wrongful acts of tenants.

Sec. 2524.4 Grounds for refusal to renew lease, or in hotels, discontinuing a hotel tenancy, without order of the DHCR.

Primary residence. Eliminate provision regarding not-for-profit hospitals and affiliated subtenants, pursuant to judicial determination.

Sec. 2524.5 Grounds for refusal to renew or discontinue hotel tenancy and evict which require approval of the DHCR. Procedures for demolition, stipends conditions and relocation.

PART 2525 - PROHIBITIONS

Sec. 2525.6 Subletting; Assignment.

Vacancy increases upon assignment. Availability of increases where lease is assigned with owner's consent. Subletting; not-for-profit hospital provision repealed, pursuant to judicial ruling.

Sec. 2525.7 Occupancy by persons other than tenant of record or tenant's immediate family (new).

Limitations on rent that may be charged to roommates.

PART 2526 - ENFORCEMENT

Sec. 2526.1 Overcharge penalties; assessment of costs; attorney's fees; rent credits.

Section title revised for determination of rents and penalties. Treble damages not applicable solely for failure to register; implement four-year

rule, and establish use of base date rent; preclude examination of rental history prior to four years before filing of overcharge complaint; provide for jurisdictional challenges in high-rent vacancy decontrol situations; judicial sales: codifying court rulings, broadening definition of "judicial sale," and extending protection from overcharge liability to Court-Appointed Receivers.

Sec. 2526.2 Orders to enforce the RSL and this Code. Implement RRRRA-97 increases in monetary penalties for harassment of tenants.

PART 2527 - PROCEEDINGS BEFORE THE DHCR

Sec. 2527.3 Notice to the parties affected.

Provided for examination by affected tenants of rent increase applications.

Sec. 2527.9 When a notice or paper shall be deemed served.

Provision for electronic service of papers. Provide for proof of service by dispositive, contemporaneous affidavit, except in luxury decontrol proceedings.

PART 2527-A - PROCEDURES FOR HIGH INCOME RENT DECONTROL (new)

Implement fully both the Rent Regulation Reform Acts of 1993 and 1997 with regard to procedures for luxury decontrol.

PART 2528 - REGISTRATION OF HOUSING ACCOMMODATIONS

Sec. 2528.2 Initial registration requirements.

Term of Notice changed from "legal registered" to "legal regulated rent."

Sec. 2528.4 Penalty for failure to register.

Implement RRRRA-97: limitations on examination of rental history for period prior to four years before complaint is filed. Collection of administrative fees to be solely the responsibility of New York City, without penalty under the Code for non-payment.

PART 2529 - ADMINISTRATIVE REVIEW

Sec. 2529.2 Time for filing a PAR.

Provide for an alternative method of service, as determined by Operational Bulletin.

Sec. 2529.12 Stays.

No stay on granted portion of MCI increase where owner claims a larger increase should have been granted.

PART 2530 - JUDICIAL REVIEW

Sec. 2530.1 Commencement of proceeding.

Updated office address for serving and filing of papers.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4824

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: five days after the scheduled public hearing.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 26-511(b) of the Administrative Code of the City of New York, as recodified by the Laws of 1985, Chap. 907, Section 1 (formerly Section YY51-6.0[b]), as amended by Laws of 1985, Chap. 888, Section 2) and Section 26-518(a) of such Code, as recodified by the Laws of 1985, Chap. 907, Section 1 (formerly Section YY51-6.1[a]) as added by the Laws of 1985, Chap. 888, Section 8) provides authority to the Division of Housing and Community Renewal (DHCR) to amend the Rent Stabilization Code (RSC) "from time to time."

2. LEGISLATIVE OBJECTIVES

The RSC, since its promulgation in 1987, has undergone only one minor amendment. Since then two major pieces of legislation have been enacted, the Rent Regulation Reform Acts of 1993 and 1997 (RRRA). The proposed rule-making is necessary to realize the objectives of the Legislature and to provide specific guidance to the public.

3. NEEDS AND BENEFITS

The Legislature has made significant changes to the manner in which rent stabilized housing is regulated. These amendments set forth the procedures that implement these statutory changes and make it possible for the agency to carry out its legislatively mandated responsibilities. Further, they inform the affected parties of their rights and responsibilities under the new laws. Additionally, these amendments streamline regulatory procedures, codify existing agency policies, and reflect recent judicial determinations.

4. COSTS

These amendments are expected to have no costs associated with them for either the regulated parties, or the agency, or State and local govern-

ments. To the contrary, it is anticipated that streamlined policies and procedures will result in cost savings to the regulated parties and the agency.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

These amendments create no new paperwork burdens. The implementation of new statutory requirements for purposes of tracking "succession" rights of tenants will not add any new paperwork; the necessary information can be captured on existing forms. In fact, the implementation of the RRRAs by these amendments will result in a very significant reduction in the paperwork responsibilities of the regulated parties.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements.

8. ALTERNATIVES

The proposed amendments primarily implement statutory provisions and judicial determinations; accordingly, there were no significant viable alternatives which did not conflict with applicable law.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules. Should the DHCR determine that delayed implementation is appropriate, section 2527.11 of the RSC authorizes the agency to take such action.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Rent Stabilization Code (RSC) applies only to rent stabilized housing units in New York City. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own limited numbers of rent stabilized units. The amended regulations are expected to have no burdensome impact on such small businesses in that they codify the Rent Regulation Reform Acts of 1993 and 1997 (RRRA), existing Operational Bulletins, Policy Statements, Advisory Opinions, and established case law.

The proposed amendments to the Rent Stabilization Code, which applies exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

There are no new major compliance requirements in the proposed amendments. A minor new requirement that is statutorily created by the RRRRA of 1997 is the provision of data to the DHCR regarding eligibility for vacancy bonuses upon succession. The proposed amendments do not otherwise require regulated parties to perform any additional record keeping, reporting, or any other acts. There are no new compliance requirements placed on local government.

3. PROFESSIONAL SERVICES

The proposed amendments should not require small businesses or local government to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will impose any significant costs upon regulated parties in general and small businesses in particular. The implementation of statutory limitations on record keeping requirements should ease administrative burdens. Additionally, there should be no costs imposed on local government resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGY FEASIBILITY

As noted above, these proposed amendments will not impose any significant cost on the regulated parties or local government. In addition, compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

These proposed amendments codify existing agency policy and/or statutes, do not impair the rights of the regulated parties, and therefore have no adverse economic impact on such parties or the local government. Consequently, it was not necessary to consider the approaches suggested in SAPA section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided over 40 parties and organizations with a demonstrated interest in rent regulation with the opportunity to make Code amendment suggestions.

The DHCR provided opportunity for comment to such organizations as Small Property Owners of New York, the Rent Stabilization Association, the Community Housing Improvement Program, the Real Estate Board of New York, Eastside Tenants Coalition, Brooklyn Legal Services, Brooklyn Tenants Council, New York State Tenants and Neighbors Coalition, Stuyvesant Town Tenants Association, the Metropolitan Council on Housing, and the N.Y.S. Bar Association Task Force on Rent Regulation. In addition, Regulatory Agendas were published in the *State Register* on June 30, 1999 and January 5, 2000, indicating that the DHCR was reviewing rent regulation policies and procedures for purposes of amending the regulations, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Local government participation in New York City was effectuated by submission of the draft regulations to the New York City Department of Housing Preservation and Development.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register*, at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The proposed rules are intended to codify existing policies and/or statutes. The Rent Stabilization Code applies exclusively to New York City, and therefore the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the summary and text of the rule, the purpose of which is to conform these Regulations to judicial determinations and statutes, particularly the RRRAs of 1993 and 1994, as well as to codify current agency practice and policies, that there will be no adverse impacts on jobs and employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

State Rent and Eviction Regulations

I.D. No. HCR-14-00-00036-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Parts 2100, 2102, 2104, 2107-2109 of Title 9 NYCRR.

Statutory authority: Emergency Housing Rent Control Law, L. 1946, ch. 274, subd. 4(a), as amd. by L. 1950, ch. 250, as amd., as transferred to the Division of Housing and Community Renewal (DHCR) by L. 1964, ch. 244

Subject: State rent and eviction regulations.

Purpose: To conform regulations to statutes, particularly the RRRAs of 1993 and 1997, judicial determinations and incorporate agency practice.

Public hearing(s) will be held at: 10:00 a.m.-8:00 p.m. on May 25, 2000 at the North Hempstead Town Hall Hearing Rm., 220 Plandome Rd., Manhasset, NY and Westchester County Ceremonial Courtroom, 111 Dr. Martin Luther King Jr. Blvd., White Plains, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: Substantive amendments and new provisions covered by the proposed rule are as follows:

PART 2100 - SCOPE

Sec. 2100.3 Additional definitions.

Primary residence.

Sec. 2100.9 Housing accommodations not subject to rent control.

Luxury decontrol; exclusion from definition of housing accommodations subject to control.

PART 2102 - ADJUSTMENTS

Sec. 2102.1 Maximum rents.

Adjustments either by Administrator Order or as otherwise provided by law.

Sec. 2102.3 Grounds for increase of maximum rent.

Notification to, instead of approval by DHCR required for individual improvement rent adjustments; amortization of increases for individual apartment improvements.

Sec. 2102.4 Grounds for decrease of maximum rent.

Implement Rent Regulation Reform Act of 1997 (RRRA-98) regarding double rent reductions.

Sec. 2102.8 Rent adjustments upon succession (new).

Implement RRRA-97.

PART 2104 - EVICTIONS

Sec. 2104.5 Occupancy by landlord or immediate family.

Conforms class of eligible individuals with succession definition of family member.

Sec. 2104.6 Tenant not using premises for own dwelling

Succession. Family members limited; provision for notice to DHCR of successor; implementing RRRA-97.

PART 2107 - PROCEEDINGS BEFORE LOCAL RENT ADMINISTRATOR

Sec. 2107.3 Notice to the parties affected.

Applications to increase maximum rents. Provide for examination by affected tenants

PART 2107-A - PROCEDURES FOR HIGH INCOME RENT DECONTROL (new)

Implement statutory procedures for high income rent decontrol.

PART 2108 - PROTESTS

Sec. 2108.1 - A PARs; Time periods; Address of Office of Rent Administration (new)

Title of Part revised; protest defined as PAR; update time periods to conform with agency practice; update office addresses.

Sec. 2108.13 Judicial review.

Update practice pursuant to law and agency procedures. Update office address for filing of papers.

PART 2109 - MISCELLANEOUS PROCEDURAL MATTERS

Sec. 2109.1 When a notice or paper shall be deemed served.

Except for high income rent decontrol, provide for contemporaneous dispositive affidavits as proof of service on agency. Provide for electronic service.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4824

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: five days after the scheduled public hearing.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Emergency Housing Rent Control Law, Laws of 1946, Chap. 274, Subdivision 4(a), as amended by the Laws of 1950, Chap. 250, as amended, as transferred to the Division of Housing and Community Renewal (DHCR) by the Laws of 1964, Chap. 244, provides authority to the DHCR to amend the State Rent and Eviction Regulations (SRER).

2. LEGISLATIVE OBJECTIVES

Since the SRER were last substantively amended, two major pieces of legislation have been enacted, the Rent Regulation Reform Acts of 1993 and 1997 (RRRA). The proposed rule-making is necessary to realize the objectives of the Legislature and to provide specific guidance to the public.

3. NEEDS AND BENEFITS

The Legislature has made significant changes to the manner in which rent controlled housing is regulated. These amendments set forth the procedures that implement these statutory changes, and make it possible for the agency to carry out its legislatively mandated responsibilities. Further, they inform the affected parties of their rights and responsibilities under the new laws. Additionally, these amendments streamline regulatory procedures, codify existing agency policies, and reflect recent judicial determinations.

4. COSTS

These amendments are expected to have no costs associated with them for either the regulated parties, or the agency, or State and local governments. To the contrary, it is anticipated that streamlined policies and procedures will result in cost savings to the regulated parties and the agency.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

These amendments create no significant paperwork burdens. The implementation of new statutory requirements for purposes of tracking "succession" rights of tenants will not add any burdensome paperwork. In fact, the implementation of the RRRAs by these amendments will result in a very significant reduction in the paperwork responsibilities of the regulated parties.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements.

8. ALTERNATIVES

The proposed amendments primarily implement statutory provisions and judicial determinations; accordingly, there were no significant viable alternatives which did not conflict with applicable law.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The State Rent and Eviction Regulations (SRER) apply only to housing units located in those communities outside New York City that are subject to the Emergency Housing Rent Control Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled.

The amended regulations are expected to have no burdensome impact on small businesses in that they codify the Rent Regulatory Reform Acts of 1993 and 1997 (RRRA), existing Operational Bulletins, Policy Statements, Advisory Opinions, and established case law.

The State Rent and Eviction Regulations, which apply exclusively in the aforementioned communities, are expected to have no impact on the local governments thereof.

2. COMPLIANCE REQUIREMENTS

There are no new major compliance requirements in the proposed amendments. A minor new requirement that is statutorily created by the RRRA of 1997 is the provision of data to the DHCR regarding eligibility for vacancy bonuses upon succession. The proposed amendments do not otherwise require regulated parties to perform any additional record keeping, reporting, or any other acts. There are no new compliance requirements placed on local governments.

3. PROFESSIONAL SERVICES

The proposed amendments should not require small businesses or local governments to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will impose any significant costs upon regulated parties in general and small businesses in particular. The implementation of statutory limitations on record keeping requirements should ease administrative burdens. Additionally, there should be no costs imposed on local governments resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGY FEASIBILITY

As noted above, these proposed amendments will not impose any significant cost on the regulated parties or local governments. In addition, compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZE ADVERSE IMPACT

The regulatory amendments codify existing agency policy and/or statutes and do not impair the rights of the regulated parties and therefore they shall have no adverse impact on such parties or local governments. Consequently, it was not necessary to consider the approaches suggested in SAPA Section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided over 40 parties and organizations with a demonstrated interest in rent regulation with the opportunity to make code amendment suggestions. The DHCR provided opportunity for comment to such organizations and individuals as Small Property Owners of New York, the Rent Stabilization Association, the Community Housing Improvement Program, the Real Estate Board of New York, the Westchester Apartment Owners Advisory Council, the Apartment House Council of Long Island, New York State Tenants and Neighbors Coalition, the Metropolitan Council on Housing, and the N.Y.S. Bar Association Task Force on Rent Regulation. In addition, a Regulatory Agenda was published in the *State Register* on June 30,

1999, indicating that the DHCR was reviewing rent regulation policies and procedures for purposes of amending the regulations, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register*, at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The proposed rules are intended to codify existing policies and/or statutes, and are therefore not anticipated to impose any new adverse reporting, recordkeeping or other compliance requirements on public or private entities in any rural area that is subject to these regulations.

Job Impact Statement

It is apparent from the summary and text of the rule, the purpose of which is to conform these Regulations to judicial determinations and statutes, particularly the RRRAs of 1993 and 1994, as well as to codify current agency practice and policies, that there will be no adverse impacts on jobs and employment opportunities.

Insurance Department

EMERGENCY RULE MAKING

Derivative Transactions

I.D. No. INS-05-00-00002-E

Filing No. 351

Filing date: March 15, 2000

Effective date: March 15, 2000

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 175 (Regulation 111) and Part 177 (Regulation 142) and addition of Part 178 (Regulation 163) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1401, 1403, 1405, 1407, 1410 and 1413; and L. 1998, chs. 650 and 651

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The changes effected by L. 1998, chs. 650 and 651 regarding the authority of licensed insurers to engage in derivative transactions go into effect July 1, 1999. The law provides that regulations necessary to implement its provisions shall be promulgated by the Superintendent of Insurance on or before the effective date of the law, and the law mandates specific matters that must be addressed. The first amendments to Regulations 111 and 142 and Regulation 163 were originally promulgated on an emergency basis on July 1, 1999, Sept. 28, 1999, Dec. 20, 1999. In order to continue their provisions, they must be now promulgated again on an emergency basis. The first amendments to Regulations 111 and 142 suspend Regulations 111 and 142 because the new law repeals (subject to a sunset provision) the statutory authority upon which these regulations are based, and it is therefore necessary to coordinate the applicability of the new regulation and the previously applicable regulations and to set forth transition provisions. The provisions of Regulation 163, define certain terms; establish the content of the derivative use plan; establish effective management oversight standards; require that the insurer establish adequate systems of internal control; establish documentation and reporting requirements; and establish appropriate accounting standards. If the regulation is not adopted prior to July 1, 1999 there would not be adequate or sufficient regulatory controls established over these derivative use plans. Insurers must be advised of the standards necessary for the approval of derivative use plans submitted to the Insurance Department under the new law effective July 1, 1999. For the reasons stated above, this rule must be promulgated on an emergency basis for the preservation of the general welfare.

Subject: Derivative transactions.

Purpose: To implement, interpret and clarify L. 1998, chs. 650 and 651 in connection with derivative transactions.