EMERGENCY TENANT PROTECTION REGULATIONS

Subchapter A of Chapter VIII of Subtitle S of Title 9 NYCRR

The Emergency Tenant Protection Regulations as promulgated and adopted by the Division of Housing and Community Renewal pursuant to the Emergency Tenant Protection Act of Nineteen Seventy-four, section 4 of Chap. 576, Laws of 1974, section 10(a), as amended, are amended to read as follows:

PART 2500 SCOPE

Section 1

Section 2500.1 of this Part is amended to read as follows:

Section 2500.1 Statutory authority.

This [Chapter] Subchapter is adopted and promulgated pursuant to the powers granted to the State Division of Housing and Community Renewal by the Emergency Tenant Protection Act of Nineteen Seventy-four, Chapter 576 of the Laws of New York for the year 1974, as amended. As used in this [Chapter] Subchapter, the term “act” shall mean the Emergency Tenant Protection Act of Nineteen Seventy-four. Wherever the term “Chapter” is used hereinafter to describe these regulations, it shall be deemed to mean “Subchapter.”

Section 2

Subdivision (d) of section 2500.2 of this Part is repealed, and a new subdivision (d) is adopted to read as follows:

(d) Rent. Consideration, charge, fee or other thing of value, including any bonus, benefit or gratuity demanded or received for, or in connection with, the use or occupation of housing accommodations or the transfer of a lease for such housing accommodations. Rent shall not include surcharges authorized pursuant to section 2502.9 of this Title.

Section 3

Subdivision (e) of section 2500.2 of this Part is repealed, and a new subdivision (e) is adopted to read as follows:

(e) Legal regulated rent. The rent charged on the base date set forth in subdivision (q) of this section, plus any subsequent lawful increases and adjustments.

Section 4

Subdivision (g) of section 2500.2 of this Part is repealed, and a new subdivision (g) is adopted to read as follows:

(g) Owner. A landlord, fee owner, lessor, sublessor, assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or condominium association, or an owner of a condominium unit or the sponsor of such cooperative corporation or condominium association or development, or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation, or an agent of any of the foregoing, but such agent shall only commence a proceeding pursuant to sections 2504.4(b) and (c) of this Title, in the name of such foregoing principals. Any separate entity that is owned, in whole or in part, by an entity that is considered an owner pursuant to this subdivision, and which provides only utility services shall itself not be considered an owner pursuant to this Subchapter. Wherever the term landlord is used hereinafter in this Subchapter, it shall be deemed to mean owner. Except as is otherwise provided in sections 2502.3 and 2506.1(f) of this Title, a court-appointed Receiver shall be considered an owner pursuant to this Subchapter.

Section 5

Subdivision (i) of section 2500.2 of this Part is amended to read as follows:

(i) Documents. Records, books, accounts, correspondence, memoranda and other documents, and [drafts and] copies, including microphotographic or electronically stored or transmitted copies, of any of the foregoing.

Section 6

Subdivision (l) of section 2500.2 of this Part is repealed, and a new subdivision (l) is adopted to read as follows:

(l) Final order. A final order shall be an order of a Rent Administrator not appealed to the Commissioner within the period authorized pursuant to section 2510.2 of this Title, or an order of the commissioner, unless such order remands the proceeding for further consideration.

Section 7

Subdivision (m) of section 2500.2 of this Part is repealed, and a new subdivision (m) is adopted to read as follows:

(m) Immediate family. A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the owner.

Section 8

Paragraph (1) of subdivision (n) of section 2500.2 of this Part is repealed, and a new paragraph (1) is adopted to read as follows:

(1) A husband, wife, son, daughter, Stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather,

grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant; or

Section 9

A new subdivision (q) of section 2500.2 of this Part is adopted to read as follows:

(q) Base date. For the purposes of proceedings pursuant to sections 2502.3(a) and 2506.1 of this Title, “base date” shall mean the date which is the most recent of:

(1) The date four years prior to the date of the filing of such appeal or complaint; or

(2) The date on which the housing accommodation first became subject to the act; or

(3) April 1, 1984, for complaints filed on or before March 31, 1988 for housing accommodations for which initial registrations were required to be filed by June 30, 1984, and for which a timely challenge was not filed.

Section 10

A new subdivision (r) of section 2500.2 of this Part is adopted to read as follows:

(r) Primary residence. Although no single factor shall be solely determinative, evidence which may be considered in determining whether a housing accommodation subject to this Subchapter is occupied as a primary residence shall include, without limitation, such factors as listed below:

(1) Specification by an occupant of an address other than such housing accommodation as a place of residence on any tax return, motor

vehicle registration, driver's license or other document filed with a public agency;

(2) Use by an occupant of an address other than such housing accommodation as a voting address;

(3) Occupancy of the housing accommodation for an aggregate of less than 183 days in the most recent calendar year, except for temporary periods of relocation pursuant to section 2503.5(d)(2) of this Title;

(4) Subletting of the housing accommodation.

Section 11

Section 2500.6 of this Part is amended to read as follows:

2500.6 Filing of amendments.

Such amendment or revocation shall be filed with the Secretary of State and shall take effect upon the date of filing unless otherwise specified therein or as otherwise provided by the State Administrative Procedure Act. Where implementation of a provision would require new or significantly revised filing procedures or notice requirements, the division may postpone implementation of such provision, as required, for up to 180 days after the effective date of such amendment or revocation, by an advisory opinion issued pursuant to section 2507.11 of this Title, which shall be available to the public on such effective date. Where such postponement is deemed necessary, current filing procedures, notice requirements, or forms, if any, may be utilized until revision thereof.

Section 12

Section 2500.8 of this Part is amended to read as follows:

2500.8 Local areas subject to control. Except as hereinafter provided in section 2500.9 of this Part, [these regulations] this Subchapter shall apply to housing accommodations located in the counties of Nassau, Rockland, and Westchester, which are subject to the Emergency Tenant Protection Act of 1974 pursuant to a determination of the existence of an emergency thereunder by the local legislative body of the city, town or village wherein the accommodations are situated. [Notwithstanding the above, until the Rent Stabilization Code and Hotel Stabilization Code applicable to New York City are amended to implement the provisions of chapters 102, 439 and 940 of the Laws of 1984 and chapter 403 of the Laws of 1983, sections 2502.4(d), 2502.5(c)(9), 2504.4(d) except as to the filing requirements, 2505.7, 2506.1, 2506.2(c), 2507 through 2510 of these regulations shall also apply to those housing accommodations subject to the provisions of title YY of the Administrative Code of the City of New York.]

Section 13

Paragraph (1) of subdivision (d) of section 2500.9 of this Part is amended to read as follows:

(d)(1) housing accommodations in a building containing fewer than six dwelling units, or fewer than such other, larger threshold number of units as the local legislative body, in its determination of emergency as specified in section 2500.8 of this Part, may have chosen;

Section 14

Subdivision (e) of section 2500.9 of this Part is amended to read as follows:

(e) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January 1, 1974, except such buildings which are made subject to this Subchapter by provision of the act or any other statute that meet the following criteria, which at the division's discretion, may be effectuated by Operational Bulletin:

(1) a specified percentage, not to exceed 75% of listed building-wide and apartment systems, must have been replaced;

(2) for good cause shown, exceptions to the criteria stated herein or effectuated by Operational Bulletin, regarding the extent of the rehabilitation work required to be effectuated building-wide or as to individual housing accommodations, may be granted where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded, or is structurally sound and does not require replacement, or that the preservation of a particular component is desirable or required by law due to its aesthetic or historic merit;

(3) the rehabilitation must have been commenced in a building that was in a substandard or seriously deteriorated condition. The extent to which the building was vacant of residential tenants when the rehabilitation was commenced shall constitute evidence of whether the building was in fact in such condition. Where the rehabilitation was commenced in a building in which at least 80% of the housing accommodations were vacant of residential tenants, there shall be a presumption that the building was substandard or seriously deteriorated at that time. Space

converted from non-residential use to residential use shall not be required to have been in substandard or seriously deteriorated condition for there to be a finding that the building has been substantially rehabilitated;

(4) except in the case of extenuating circumstances, the division will not find the building to have been in a substandard or seriously deteriorated condition where it can be established that the owner has attempted to secure a vacancy by an act of arson resulting in criminal conviction of the owner or the owner’s agent, or the division has made a finding of harassment, as defined pursuant to any applicable rent regulatory law, code or regulation;

(5) in order for there to be a finding of substantial rehabilitation, all building systems must comply with all applicable building codes and requirements, and the owner must submit copies of the building's certificate of occupancy, if such certificate is required by law, before and after the rehabilitation;

(6) where occupied rent regulated housing accommodations have not been rehabilitated, such housing accommodations shall remain regulated until vacated, notwithstanding a finding that the remainder of the building has been substantially rehabilitated, and therefore qualifies for exemption from regulation;

(7) where, because of the existence of hazardous conditions in his or her housing accommodation, a tenant has been ordered by a governmental agency to vacate such housing accommodation, and the tenant has received a court order or an order of the division that provides for payment by the tenant of a nominal rental amount while the vacate order is in effect, and permits the tenant to resume occupancy without interruption of the rent stabilized status of the housing accommodation upon restoration

of the housing accommodation to a habitable condition, such housing accommodation will be excepted from any finding of substantial rehabilitation otherwise applicable to the building. However, the exemption from rent regulation based upon substantial rehabilitation will apply to a housing accommodation that is subject to a right of reoccupancy, if the returning tenant subsequently vacates, or if the tenant who is entitled to return pursuant to court or division order chooses not to do so;

(8) an owner may apply to the division for an advisory prior opinion that the building will qualify for exemption from rent regulation on the basis of substantial rehabilitation, based upon the owner's rehabilitation plan;

(9) specified documentation will be required from an owner in support of a claim of substantial rehabilitation;

Section 15

Subdivision (f) of section 2500.9 of this Part is amended to read as follows:

(f) housing accommodations owned [or], operated, or leased or rented pursuant to governmental funding, by a hospital, convent, monastery, asylum, public institution, or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a nonprofit basis, other than accommodations occupied by a tenant on the date such housing accommodation is acquired by such institution, or which are occupied subsequently by a tenant [who is not affiliated with such institution at the time of his initial occupancy] whose initial occupancy is not contingent upon an affiliation with such institution. However, a

housing accommodation occupied by a non-affiliated tenant shall be subject to this Subchapter;

Section 16

Subdivision (k) of section 2500.9 of this Part is amended to read as follows:

(k) housing accommodations which are not occupied by the tenant in possession as his primary residence[.];

Section 17

A new subdivision (l) of section 2500.9 of this Part is adopted to read as follows:

(l) housing accommodations contained in buildings owned as cooperatives or condominiums, which are or become vacant on or after July 7, 1993, except that this subdivision shall not apply to units occupied by non-purchasing tenants under section 352-eee of the General Business Law until the occurrence of a vacancy:

(1) provided, however, and subject to the limitations set forth in subdivision (e) of this section, that:

(1) where cooperative or condominium ownership of such building no longer exists ("deconversion"), because the cooperative corporation or condominium association loses title to the building upon a foreclosure of the underlying mortgage or otherwise, or where the conversion of the building to cooperative or condominium ownership is revoked retroactively by the New York State Attorney General to the date immediately prior to the effective date of the Conversion Plan on the basis of fraud or on other grounds, such housing accommodations shall revert to regulation pursuant to the act and this Subchapter, and the regulated rents therefor shall be as follows:

(i) Housing accommodations not occupied at the time of deconversion.

(a) Where deconversion occurs four years or more after the effective date of the Conversion Plan, the initial regulated rent shall be as agreed upon by the parties and reserved in a vacancy lease.

(b) Where deconversion occurs within four years after the effective date of the Conversion Plan, or where deconversion occurs four years or more after the effective date of the Conversion Plan, but a rent stabilized tenant remained in occupancy to a date less than four years prior to the deconversion, the initial regulated rent shall be the most recent regulated rent for the housing accommodation increased by all lawful adjustments that would have been permitted had the housing accommodation been continuously subject to the act and this Subchapter.

(c)(1) Where the rent, as agreed upon by the parties and paid by the tenant is $2,000 or more per month, pursuant to subdivision (m) of this section, such accommodation and the rent therefor shall not revert to regulation under this Subchapter.

(2) Initial regulated rents established pursuant to clause (a) of this subparagraph (i) shall not be subject to challenge under section 2506.1(a)(2)(iii) of this Title.

(d)(1) Within 30 days after deconversion, the new owner taking title upon deconversion shall offer a vacancy lease, at an initial regulated rent established pursuant to this subparagraph (i), to the holder of shares formerly allocated to the housing accommodation in the case of cooperative ownership, or the former unit owner in the case of condominium ownership. Such shareholder or former unit owner shall have 30 days to accept such offer by entering into the vacancy lease. Failure to enter

into such lease shall be deemed to constitute a surrender of all rights to the housing accommodation.

(2) This clause (d) shall not apply where deconversion was caused, in whole or in part, by a violation of any material term of the proprietary lease by the shareholder or former unit owner.

(3) No individual former owner or proprietary lessee shall be entitled to occupy more than one housing accommodation.

(ii) Housing accommodations occupied at the time of deconversion and not subject to regulation under this Subchapter at such time.

(a) Where the housing accommodation is occupied by a holder of shares formerly allocated to it in the case of cooperative ownership, or by the former owner of such unit in the case of condominium ownership, such shareholder or former unit owner shall be offered a new vacancy lease, subject to regulation under this Subchapter, by the new owner taking title upon deconversion, which lease shall be subject to all of the terms and conditions set forth in subparagraph (i) of this paragraph (1) pertaining to the establishment of initial regulated rents, lease offer, and deregulation, including subclause (2) of clause (d).

(b) Where the housing accommodation is occupied by a current renter pursuant to a sublease with the holder of shares formerly allocated to it in the case of cooperative ownership, or to the former owner of such unit in the case of condominium ownership, the new owner shall offer a vacancy lease to such holder of shares or former unit owner pursuant to all of the terms and conditions set forth in subparagraph (i) of this paragraph (1).

(c) All shareholders or former unit owners described in this subparagraph (ii) shall be offered a vacancy lease within 30 days after the deconversion, and shall have 30 days to accept such offer. However, in the event such shareholder or former unit owner does not enter into the vacancy lease, he or she shall be deemed to have surrendered all rights to the housing accommodation effective 120 days after the deconversion.

(iii) Housing accommodations occupied pursuant to regulation under this Subchapter or the State Rent and Eviction Regulations by non-purchasing tenants immediately prior to deconversion.

The regulated rents for such housing accommodations shall not be affected by the deconversion, and such accommodations shall remain fully subject to all provisions of this Subchapter or the State Rent and Eviction Regulations, whichever is applicable.

(iv)(a) Where it determines that the owner taking title at deconversion caused, in whole or in part, the deconversion to occur, the initial legal regulated rent shall be established by the division pursuant to sections 2502.3(b) and 2502.6 of this Title. In such cases, if the rent so established and paid is $2,000 or more per month, subdivision (m) of this section shall not apply.

(b) Upon deconversion, housing accommodations in localities subject to this Subchapter which were last subject to regulation pursuant to the State Rent and Eviction Regulations shall become subject to regulation under this Subchapter pursuant to this paragraph (1). In such cases, the initial legal regulated rent shall be established by the division pursuant to sections 2502.3(b) and 2502.6 of this Title.

(2) Housing accommodations that were subject to regulation under this Subchapter or the State Rent and Eviction Regulations immediately prior to conversion to cooperative or condominium ownership by virtue of the receipt of tax benefits pursuant to applicable law shall revert to regulation under this Subchapter pursuant to paragraph (1) of this subdivision only for such period of time as is required by such applicable law;

Section 18

A new subdivision (m) of section 2500.9 of this Part is adopted to read as follows:

(m) housing accommodations which:

(1) became or become vacant on or after July 7, 1993 where, at any time between July 7, 1993 and October 1, 1993, inclusive, the legal regulated rent was two thousand dollars or more per month; or

(2) became or become vacant on or after June 19, 1997, with a legal regulated rent of two thousand dollars or more per month;

(3) exemption pursuant to this subdivision shall not apply to housing accommodations which became or become subject to the act and this Subchapter solely by virtue of the receipt of tax benefits pursuant to section 489 of the Real Property Tax Law.

(4) exemption pursuant to this subdivision shall not apply to or become effective with respect to housing accommodations for which the commissioner determines or finds that the owner or any person acting on his or her behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or discontinuance of required services) which interfered with or disturbed or was intended to interfere with or disturb the comfort,

repose, peace or quiet of the tenant in his or her use or occupancy of the housing accommodations. In connection with such course of conduct, any other general enforcement provision of the act and this Subchapter shall also apply;

(5) during the period of effectiveness of an order issued pursuant to section 2503.4 of this Title for failure to maintain essential services, which lowers the legal regulated rent below two thousand dollars per month during the time period specified in this subdivision, a vacancy shall not qualify the housing accommodation for exemption under this subdivision;

(6) where an owner installs new equipment or makes improvements to the individual housing accommodation qualifying for a rent increase pursuant to subparagraph (i) of paragraph (3) of subdivision (a) of section 2502.4 of this Title, while such housing accommodation is vacant, and where the legal regulated rent is raised on the basis of such rent increase, or as a result of any rent increase permitted upon vacancy or succession as provided in section 2502.7 of this Title, or by a combination of rent increases, as applicable, to a level of two thousand dollars per month or more, whether or not the next tenant in occupancy actually is charged or pays two thousand dollars per month or more for rental of the housing accommodation, the housing accommodation will qualify for exemption under this subdivision;

(7) where, pursuant to section 2501.2 of this Title, a legal regulated rent is established by record within four years prior thereto, and a rent lower than such legal regulated rent is charged and paid by the tenant, and where, pursuant to such section, upon the vacancy of such tenant, a legal regulated rent previously established by record

within four years prior thereto, as lawfully adjusted pursuant to the act or this Subchapter, may be charged, and where such previously established legal regulated rent, as so adjusted, is two thousand dollars or more per month, such vacancy shall qualify the housing accommodation for exemption under this subdivision;

(8) where an owner substantially alters the outer dimensions of a vacant housing accommodation which qualifies for a first rent of $2,000 or more per month, exemption pursuant to this subdivision shall apply.

Section 19

A new subdivision (n) of section 2500.9 of this Part is adopted to read as follows:

(n) upon the issuance of an order by the division pursuant to the procedures set forth in Part 2507-A of this Title, including orders resulting from default, housing accommodations which:

(1) have a legal regulated rent of two thousand dollars or more per month as of October 1, 1993, or as of any date on or after June 19, 1997, and which are occupied by persons who had a total annual income in excess of two hundred fifty thousand dollars per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of one hundred seventy-five thousand dollars, where the first of such two preceding calendar years is 1996 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2507-A of this Title;

(2) exemption pursuant to this subdivision shall not apply to housing accommodations which became or become subject to the act and this Subchapter solely by virtue of the receipt of tax benefits pursuant to section 489 of the Real Property Tax Law;

(3) in determining whether the legal regulated rent for a housing accommodation is two thousand dollars per month or more, the standards set forth in subdivision (m) shall be applicable; to be eligible for exemption under this subdivision, the legal regulated rent must continuously be two thousand dollars or more per month from the owner's service of the income certification form provided for in section 2507-A.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.

Section 20

A new subdivision (o) of section 2500.9 of this Part is adopted to read as follows:

(o) housing accommodations occupied by domestic servants, superintendents, caretakers, managers or other employees to whom the space is provided as part or all of their compensation without payment of rent and who are employed for the purpose of rendering services in connection with the premises of which the housing accommodation is a part;

Section 21

A new subdivision (p) of section 2500.9 of this Part is adopted to read as follows:

(p) housing accommodations used exclusively for professional, commercial, or other nonresidential purposes;

Section 22

A new subdivision (q) of section 2500.9 of this Part is adopted to read as follows:

(q) housing accommodations in buildings completed or substantially rehabilitated as family units on or after January 1, 1974 or located in a building containing less than six housing accommodations, or fewer than such other, larger threshold number of units as the local legislative body, in its determination of emergency as specified in section 2500.8 of this Part, may have chosen, and which were originally made subject to regulation solely as a condition of receiving tax benefits pursuant to section 421-c of the Real Property Tax Law, as amended, and a period of ten years has passed;

Section 23

A new subdivision (r) of section 2500.9 of this Part is adopted to read as follows:

(r) housing accommodations exempted pursuant to any other provision of law.

Section 24

Section 2500.11 of this Part is repealed and a new section 2500.11 is adopted to read as follows:

Section 2500.11 Receipt for rent paid.

Owners shall comply with the provisions of section 235-e of the Real Property Law.

Section 25

Section 2500.12 of this Part is amended to read as follows:

2500.12 Waiver of benefit void.

An agreement by the tenant to waive the benefit of any provision of the act or this [Chapter] Subchapter is void; provided, however, that based upon a negotiated settlement between the parties and with the approval of the division, or a court of competent jurisdiction, or where a tenant is represented by counsel, a tenant may withdraw, with prejudice, any complaint pending before the division. Such settlement shall be binding upon subsequent tenants. However, where the settlement encompasses surrender of occupancy by the tenant or the tenant is no longer in possession of the housing accommodation as of the date of the settlement, such settlement shall not be binding upon any subsequent tenant, except to the extent that the complaint being settled is subject to the time limitations set forth in the act and this Subchapter.

Section 26

A new section 2500.13 of this Part is adopted to read as follows:

2500.13 Construction and implementation.

This Subchapter shall be construed so as to carry out the intent of the act to ensure that such statute shall not be subverted or rendered ineffective, directly or indirectly, and to prevent the exaction of unjust, unreasonable and oppressive rents and rental agreements, and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; and that the policy herein expressed shall be implemented with due regard for the preservation of regulated rental housing.

PART 2501 LEGAL REGULATED RENTS

Section 1

Section 2501.2 of this Part is amended to read as follows:

Section 2501.2 [Legal regulated rents for housing accommodations] Preferential Rents.

[The legal regulated rent shall be the initial regulated rent first established pursuant to section 2501.1 of this Part, and thereafter shall be the said initial legal regulated rent as it may be adjusted pursuant to the act and this Chapter; provided, however, that on or after July 1, 1984, the legal regulated rent for any housing accommodation registered pursuant to Part 2509 of this Chapter shall be the registered rent subject to any modification made pursuant to the act or this Chapter] Where the legal regulated rent is established and documented in a manner prescribed by the division, and a rent lower than such rent is charged and paid by the tenant, such lower rent shall be a preferential rent, which shall be subject to all adjustments provided by law and this Subchapter. Upon vacancy of the tenant who pays a preferential rent, the legal regulated rent shall be the legal regulated rent previously established by record within four years prior thereto, plus all intervening guidelines increases, plus such other rent increases as are authorized by law and this Subchapter.

PART 2502 ADJUSTMENTS

Section 1

Section 2502.2 of this Part is amended to read as follows:

Section 2502.2 Effective date of adjustment of rents.

[The] Except with regard to increases pursuant to sections 2502.4(a)(2)(ii), (iii) and (iv) of this Part, where the legal regulated rent shall be adjusted effective the first rent payment date occurring 30 days after the filing of the application, the legal regulated rent shall be adjusted effective the date of issuance of an order by the division, unless otherwise set forth in the order, or on the effective date of a lease or other rental agreement providing for the rent guidelines board annual rate of adjustment as filed with the division and as provided for in section 2502.5 of this Part. Adjustments shall also be made upon vacancy or succession as provided in section 2502.7 of this Part, or upon improvements to an individual housing accommodation qualifying for a rent increase pursuant to section 2502.4(a)(2)(i) of this Part.

Section 2

Subdivision (a) of section 2502.3 of this Part is amended to read as follows:

(a) Fair Market Rent Appeals and Jurisdictional Appeals.

(1) The tenant of a housing accommodation for which the initial legal regulated rent was established under section [2501.2] 2501.1 of this [Chapter] Title based upon the rent reserved in a lease or other rental agreement which became effective on or after January 1, 1974 may file within 90 days after notice has been received pursuant to section 2503.1 of this [Chapter] Title, an application on forms prescribed by the division for adjustment of the initial legal regulated rent on the

allegation that such rent is in excess of the fair market rent and presenting facts which to the best of his information and belief support such allegation. However, no fair market rent appeal may be filed after four years from the date the housing accommodation was no longer subject to the Emergency Housing Rent Control Law.

(2) [The] In determining fair market rent appeals filed pursuant to paragraph (1) of subdivision (a) of this subdivision, the division shall be guided by guidelines promulgated by the Rent Guidelines Board for the determination of fair market rents [and, upon]. Consideration of the rental history of the subject housing accommodation for the period prior to the four-year period preceding the filing of the fair market rent appeal is precluded. Upon a determination that the initial legal regulated rent is in excess of the fair market rent, the division shall establish by order a new legal regulated rent, and further order a refund of any excess rent paid since [January 1, 1974] the base date or the date of the commencement of the tenancy, whichever is later[, provided that no refund order shall relate to a period more than two years prior to the local effective date as defined in section 2500.4 of this Chapter]. The order shall direct the [landlord] affected owner to make the refund of any excess rent to the tenant in cash, check or money order, or as a credit against future rents over a period not in excess of six months, and that if the landlord does not make the refund, that the order may be enforced or the rent offset by the tenant in the same manner as a division order awarding penalties pursuant to section 2506.1(e) of this [Chapter] Title. In the absence of collusion between the present owner and any prior owner, where no records sufficient to establish the fair market rent were provided at a judicial sale, or such other sale effected in connection

with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, an owner who purchases upon such sale or subsequent to such sale shall not be liable for excess rent collected by any owner prior to such sale. An owner who did not purchase at such sale, but who purchased subsequent to such sale shall also not be liable for excess rent collected by any prior owner subsequent to such sale to the extent that such excess rent is the result of excess rent collected prior to such sale.

(3) Court-appointed Receivers. A Receiver who is appointed by a court of competent jurisdiction to receive rent for the use or occupation of a housing accommodation shall not, in the absence of collusion or any relationship between such Receiver and any owner or other Receiver, be liable for excess rent collected by any owner or other Receiver, where records sufficient to establish the fair market rent have not been made available to such Receiver.

(4) In the case of a jurisdictional appeal, where a housing accommodation that was subject to the Emergency Housing Rent Control Law is rented pursuant to an unregulated lease pursuant to paragraph (n) of subdivision 2 of section 2 of such law, the first tenant to take occupancy upon such renting shall only file an appeal pursuant to this section within 90 days of such occupancy. The tenant may only allege that allowable adjustments to the rent do not satisfy the minimum rent level requirements for decontrol pursuant to such subdivision 2(n). Such appeal shall be dismissed if it is filed more than 90 days after the commencement date of such occupancy.

Section 3

The title of section 2502.4 of this Part is amended to read as follows:

Section 2502.4. [Applications for adjustment] Adjustment of legal regulated rent.

Section 4

Subdivision (a) of section 2502.4 of this Part is amended to read as follows:

(a) [Any landlord] (1) An owner may file an application to increase the legal regulated [rent] rents [otherwise allowable] of the building or building complex, on forms prescribed by the division, on one or more of the following grounds:

[(1) Increased service or facilities, substantial] Substantial rehabilitation, [or] major capital improvements and other adjustments.

(2) [The] Upon application by the owner, the division may grant an appropriate adjustment of a legal regulated rent where it finds that:

(i) [the landlord and tenant by mutual voluntary agreement, subject to approval by the division, agree to a substantial increase of dwelling space or an increase in the services, furniture, furnishings or equipment provided in the housing accommodations; which agreement may be established by the signatures of landlord and tenant on the prescribed application form or by corroborative proof of such earlier agreement; or

(ii)] there has been since January 1, 1974 an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodations

therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements and that the legal regulated rent has not been adjusted prior to the application based in whole or part upon the grounds set forth in the application; or

[(iii)] (ii) there has been since January 1, 1974 a major capital improvement required for the operation, preservation or maintenance of the structure; and that the legal regulated rent has not been adjusted prior to the application based in whole or part upon the grounds set forth in the application. An increase in the monthly legal regulated rent pursuant to this subparagraph and subparagraphs (iii), (iv) and (v) shall be 1/84th of the total cost of the approved items in the application. Improvements or installations for which the division may grant applications for rent increases based upon major capital improvements pursuant to this subparagraph are described on the following schedule. Other improvements or installations that are not included may also qualify, where all requirements of this subdivision have been met.

SCHEDULE OF MAJOR CAPITAL IMPROVEMENTS

l. AIR CONDITIONER:

- new central system; or individual units set in sleeves in the exterior wall of every housing accommodation; or, air conditioning circuits and outlets in each living room and/or bedroom (SEE REWIRING).

2. ALUMINUM SIDING:

- installed in a uniform manner on all exposed sides of the building (SEE RESURFACING).

3. BATHROOM MODERNIZATION:

- complete renovation including new sinks, toilets, bathtubs, and/or showers and all required trims in every housing accommodation; or any individual component or fixture if done building-wide.

4. BOILER AND/OR BURNER:

- new unit(s) including electrical work and additional components needed for the installation.

5. BOILER ROOM:

- new room where none existed before; or enlargement of existing one to accommodate new boiler.

6. CATWALK:

- complete replacement.

7. CHIMNEY:

- complete replacement, or new one where none existed before, including additional components needed for the installation.

8. COURTYARD, DRIVEWAYS AND WALKWAYS:

- resurfacing of entire original area within the property lines of the premises.

9. DOORS:

- new lobby front entrance and/or vestibule doors; or entrance to every housing accommodation, or fireproof doors for public hallways, basement, boiler room and roof bulkhead.

10. ELEVATOR UPGRADING:

- including new controllers and selectors; or new electronic dispatch overlay system; or new elevator where none existed before, including additional components needed for the installation.

11. FIRE ESCAPES:

- complete new replacement including new landings.

12. GAS HEATING UNITS:

- new individual units with connecting pipes to every housing accommodation.

13. HOT WATER HEATER:

- new unit for central heating system.

14. INCINERATOR UPGRADING:

- including a new scrubber.

15. INTERCOM SYSTEM:

- new replacement; or one where none existed before, with automatic door locks and pushbutton speakerbox and/or telephone communication, including security locks on all entrances to the building.

16. KITCHEN MODERNIZATION:

- complete renovation including new sinks, counter tops and cabinets in every housing accommodation or any individual component or fixture if done building-wide.

17. MAILBOXES:

- new replacements and relocated from outer vestibule to an area behind locked doors to increase security.

18. PARAPET:

- complete replacement.

19. POINTING AND WATERPROOFING:

- as necessary on exposed sides of the building.

20. REPIPING:

- new hot and/or cold water risers, returns, and branches to fixtures in every housing accommodation, including shower bodies, and/or

new hot and/or new cold water overhead mains, with all necessary valves in basement.

21. RESURFACING OF EXTERIOR WALLS:

- consisting of brick or masonry facing on entire area of all exposed sides of the building.

22. REWIRING:

- new copper risers and feeders extending from property box in basement to every housing accommodation; must be of sufficient capacity (220 volts) to accommodate the installation of air conditioner circuits in living room and/or bedroom.

23. ROOF:

- complete replacement or roof cap on existing roof installed after thorough scraping and leveling as necessary.

24. SOLAR HEATING SYSTEM:

- new central system, including additional components needed for the system.

25. STRUCTURAL STEEL:

- complete new replacement of all beams including footing and foundation.

26. TELEVISION SYSTEM:

- new security monitoring system including additional components needed for the system.

27. WASTE COMPACTOR:

- new installation(s) serving entire building.

28. WASTE COMPACTOR ROOM:

- new room where none existed before.

29. WATER SPRINKLER SYSTEM (FOR FIRE CONTROL PURPOSES):

- new installation(s).

30. WATER TANK:

- new installation(s) serving entire building.

31. WINDOWS:

- new framed windows; or

(iii) there has been other necessary work performed in connection with, and directly related to a major capital improvement, which may be included in the computation of an increase in the legal regulated rent only if such other necessary work was completed within a reasonable time after the completion of the major capital improvement to which it relates. Such other necessary work must:

(a) improve, restore or preserve the quality of the structure and the grounds; and

(b) have been completed subsequent to, or contemporaneously with, the completion of the work for the major capital improvement; or

(iv) there has been an increase in services or an improvement, other than repairs, on a building-wide basis, which the owner can demonstrate are necessary in order to comply with a specific requirement of law; or

(v) with approval by the division, there have been other improvements made or services provided to the building or building complex, other than those specified in subparagraphs (i)-(iv) of this paragraph (2), with the express consent of the tenants in occupancy of at least 75 per cent of the housing accommodations;

[(iv)] (vi) the division, in determining the amount or rate of appropriate adjustment of a legal regulated rent shall take into

consideration all factors bearing on the equities involved, subject to the general limitation that the adjustment can be put into effect without dislocation and hardship inconsistent with the purposes of the act, and including as a factor a return of the actual cost to the [landlord] owner, exclusive of interest or other carrying charges, and the increase in the rental value of the housing accommodations;

[(v) no adjustment of a legal regulated rent shall be granted for the replacement of equipment required to be maintained in the housing accommodations under the act or this Chapter, unless the landlord has entered a mutual voluntary agreement to such an adjustment with the tenant as provided for in subdivision (a) of this section.]

(3) An owner is entitled to a rent increase without the prior approval of the division where the owner and tenant by mutual voluntary agreement, agree to a substantial increase of dwelling space or an increase in the services, furniture, furnishings or equipment provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The permanent increase in the legal regulated rent for the affected housing accommodation shall be 1/40th of the total cost incurred by the owner in providing such increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges. Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.

Section 5

A new paragraph (4) of subdivision (a) of section 2502.4 of this Part is adopted to read as follows:

(4) An owner may apply for the division's advisory prior opinion, pursuant to section 2507.11 of this Title, as to whether the proposed work qualifies for an increase in the legal regulated rent.

Section 6

Subdivision (b) of section 2502.4 of this Part is repealed and a new subdivision (b) is adopted to read as follows:

(b) An owner may file an application to decrease essential services for a reduction of the legal regulated rent, or to modify or substitute essential services at no change in the legal regulated rent, on forms prescribed by the division on the grounds that:

(1) the owner and tenant by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment, or to a modification or substitution of the essential services provided in the housing accommodation; or

(2) such decrease, modification or substitution is required for the operation of the building in accordance with specific requirements of law; or

(3) such decrease, modification or substitution is not inconsistent with the act or this Subchapter.

No such reduction in rent or decrease in services, or modification or substitution of essential services shall take place prior to the approval of the owner's application by the division, except that a

service decrease, modification, or substitution pursuant to paragraphs (1) and (2) of this subdivision may take place prior to such approval.

Section 7

Subdivision (a) of section 2502.5 of this Part is amended to read as follows:

(a) Vacancy lease.

Upon the renting of a vacant housing accommodation after the local effective date of the act, the landlord shall provide to the tenant and execute a valid written lease for a one- or two-year period at the tenant's option at a rent which may not exceed the legal regulated rent [then in effect], provided further that for a housing accommodation subject to the Emergency Housing Rent Control Law which becomes vacant after the local effective date of the act, the lease shall not provide for any increase in said rent for a period of one year.

Section 8

The opening paragraph of subdivision (c) of section 2502.5 of this Part is amended to read as follows:

(c) Limitations. [No lease fixing a rent pursuant to a guideline issued by the applicable Rent Guidelines Board shall provide for any adjustment during its term pursuant to any surcharge, supplementary adjustment or other modification to such guideline. No provision may be made in any lease for the payment of a rent in excess of the legal regulated rent except on the following conditions] <u>The legal regulated rent established in a lease may only be adjusted as follows</u>:

Section 9

Paragraph 1 of subdivision (c) of section 2502.5 of this Part is amended to read as follows:

(1) (i) [The] For renewal leases, the legal regulated rent immediately prior to the effective date of the lease may be increased by the appropriate rate of rent adjustment as last filed with the division by the Rent Guidelines Board for the county wherein the housing accommodation is located and if the said rate has not been filed by the commencement date of the lease term, the lease may make provision for the rent increase, if any, pursuant to the said rate to become effective when filed as of the commencement date of the lease term, unless the County Rent Guidelines Board shall have fixed a later effective date for the said rate, in which event the increase may only be effective as of that later date;

(ii) for vacancy leases, in addition to the increases permitted pursuant to section 2502.7 of this Part, if an applicable Rent Guidelines Board Order has not been issued by the execution date of the vacancy lease, and such order provides for a vacancy allowance, the lease may make provision for the rent increase pursuant to such vacancy allowance when filed, to become effective as of the commencement date of the lease term, unless the County Rent Guidelines Board shall have fixed a later effective date for the said allowance, in which event the adjustment may only be effective as of that later date;

Section 10

Paragraph (2) of subdivision (c) of section 2502.5 of this Part is amended to read as follows:

(2) Where a renewal lease is entered into after the local effective date, but before the effective date of the first [application]

applicable guidelines as provided in section 4, subdivision b of the act, the lease may provide for an adjustment of rent pursuant to such guidelines, to be effective on the first day of the month next succeeding the effective date of such guidelines.

Section 11

Paragraph (3) of subdivision c of section 2502.5 of this Part is amended to read as follows:

(3) Pursuant to an order of the division, where the vacancy lease recites that:

(i) an application for a rent increase pursuant to section 2502.4(a)(2)(i)[,] or (ii) [or (iii)] of this Part is pending before the division;

(ii) a rent increase shall be payable in the amount authorized by the division in the event an application is filed pursuant to section 2502.4(a)(2)(i) [or (ii)] of this Part, based upon work having been completed to comply with new or additional requirements of law;

(iii) a rent increase shall be payable in the amount, if any, authorized by the division in the event an application is filed to establish a hardship pursuant to section 2502.4(c) of this Part.

Section 12

Paragraph 6 of subdivision c of Section 2502.5 of this Part is amended to read as follows:

(6) [Lease upon vacancy] Vacancy prior to expiration of [prior] lease term.

(i) [Where a lease] For leases that commenced on or after the local effective date, and were entered into on or before June 15, 1997, where the tenant vacates prior to the expiration of the term of the lease

and the housing accommodation is rented to [and occupied by] a new tenant [prior to the date on which the prior lease would have expired] pursuant to a lease commencing during the same guidelines period as the prior lease, [the landlord shall provide to the new tenant and execute a valid written lease for a one- or two year term, at the tenant's option] the rental provided in the new lease shall: (a) be in accordance with and at the [applicable] guideline rate of rent adjustment applicable to the new lease; (b) provided, however, that the base for computing such rent adjustment shall be set by adjusting the prior lease rent to the maximum rent that would be permissible if the last lease with the prior tenant had been for a term ending on the date such prior tenant vacated the housing accommodation; and (c) may include such other rent increases as are authorized pursuant to the act or this Subchapter.

(ii) For leases entered into after June 15, 1997, the rental provided in the new lease shall be in accordance with section 2502.7 of this Part. The length of the occupancy by the tenant vacating prior to the expiration of the lease term shall have no bearing on the availability of lawful rent increases.

Section 13

Paragraph (7) of subdivision (c) of section 2502.5 of this Part is amended to read as follows:

(7) Same terms and conditions. (i) The lease provided to the tenant by the [landlord] owner pursuant to both paragraphs (1) and (2) of this subdivision shall be on the same terms and conditions as the last lease prior to the local effective date, except where a change is required or authorized by a law applicable to the building or to leases for housing accommodations subject to the act. Where there was no prior lease for the

housing accommodations, the lease shall be on the same terms and conditions as the last leases for the other housing accommodations in the building subject to the act, and shall otherwise provide for the maintenance by the [landlord] owner of all services and facilities required by the laws applicable to the building and housing accommodations. (ii) Where an owner has filed an Owner's Petition for Decontrol (OPD) with the division, as provided for in section 2507-A.3 of this Title, and the period during which the owner must offer a renewal lease pursuant to subdivision (a) of section 2503.5 of this Title has not expired, and the proceeding for decontrol is pending, the owner shall be permitted to attach a rider to the offered renewal lease, on a form prescribed or a facsimile of such form approved by the division, containing a clause notifying the tenant that the offered renewal lease, if accepted, shall nevertheless no longer be in effect after 60 days from the issuance by the division of an order of decontrol, or, in the event that a petition for administrative review (PAR) is filed against such order of decontrol, after 60 days from the issuance by the division of an order dismissing or denying the PAR.

Section 14

Section 2502.6 of this Part is amended to read as follows:

Section 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.

(a) Where the legal regulated rent or any fact necessary to the determination of the legal regulated rent, or the dwelling space, essential services, [furniture, furnishings] or equipment required to be provided with the accommodation, is in dispute between the [landlord] owner and the tenant, or is in doubt, or is not known, the division at any time

upon written request of either party, or on its own initiative, may issue an order in accordance with section 2506.1 of this Title, and other applicable provisions of this Subchapter, determining the facts, including the legal regulated rent, the dwelling space, essential services [furniture, furnishings] and equipment[,] required to be provided with the housing accommodations. Such order shall determine such facts or establish the legal regulated rent [as of the local effective date or the date of commencement of the tenancy, whichever is later] in accordance with the provisions of this Subchapter. Where such order establishes the legal regulated rent, it may contain a directive that all rent collected by the landlord in excess of the legal regulated rent established under this section for a period commencing with the local effective act or the date of the commencement of the tenancy, if later, be refunded to the tenant in cash or as a credit to the rent thereafter payable, and upon the failure to comply with the directive, that the order may be enforced in the same manner as prescribed in section 2506.1(e) of this Title.

(b) However, in the absence of collusion or any relationship between an owner and any prior owner, where such owner purchases the housing accommodations upon a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, and no records sufficient to establish the legal regulated rent were made available to such purchaser, such orders shall establish the legal regulated rent on the date of the inception of the complaining tenant's tenancy, or the date four years prior to the date of the filing of an overcharge complaint pursuant to section 2520.1 of this Title, whichever is most recent, based on either:

(1) documented rents for comparable housing accommodations, whether or not subject to regulation pursuant to this Subchapter, submitted by the owner, subject to rebuttal by the tenant; or

(2) if the documentation set forth in paragraph (1) of this subdivision is not available or is inappropriate, data compiled by the division for comparable housing accommodations; or

(3) in the event that the information described in paragraphs (1) or (2) of this subdivision is not available, the complaining tenant's rent reduced by the most recent guidelines adjustment.

This subdivision shall also apply where the owner purchases the housing accommodations subsequent to such judicial or other sale. Notwithstanding the foregoing, this subdivision shall not be deemed to impose any greater burden upon owners with regard to record keeping than is provided pursuant to section 12(f)(8) of the act. In addition, where the amount of rent set forth in the rent registration statement filed four years prior to the date the most recent registration statement was required to have been filed pursuant to Part 2529 of this Title is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge any time thereafter.

Section 15

A new section 2502.7 of this Part is adopted to read as follows:

Section 2502.7 Rent adjustments upon vacancy or succession.

(a) The legal regulated rent for any vacancy lease entered into after June 15, 1997 shall be as hereinafter provided in this subdivision. The previous legal regulated rent for such housing accommodation shall be increased by the following: (1) if the vacancy lease

is for a term of two years, twenty percent of the previous legal regulated rent; or (2) if the vacancy lease is for a term of one year, the increase shall be twenty percent of the previous legal regulated rent less an amount equal to the difference between (i) the two year renewal lease guideline promulgated by the Rent Guidelines Board of the county in which the housing accommodation is located, applied to the previous legal regulated rent and (ii) the one year renewal lease guideline promulgated by the Rent Guidelines Board of the county in which the housing accommodation is located, applied to the previous legal regulated rent. In addition, if the legal regulated rent was not increased with respect to such housing accommodation by a permanent vacancy allowance within eight years prior to a vacancy lease executed on or after June 15, 1997, the legal regulated rent may be further increased by an amount equal to the product resulting from multiplying such previous legal regulated rent by six-tenths of one percent and further multiplying the amount of rent increase resulting therefrom by the greater of (a) the number of years since the imposition of the last permanent vacancy allowance, or (b) if the rent was not increased by a permanent vacancy allowance since the housing accommodation became subject to the act and this Subchapter, the number of years that such housing accommodation has been subject to the act and this Subchapter. Provided that if the previous legal regulated rent was less than three hundred dollars, the total increase shall be as calculated above, plus one hundred dollars per month. Provided further, that if the previous legal regulated rent was at least three hundred dollars and no more than five hundred dollars, in no event shall the total increase pursuant to this subdivision be less than one hundred dollars per month.

All such increases shall be in lieu of any allowance authorized for the one or two year renewal component of the guideline promulgated by the Rent Guidelines Board of the county in which the housing accommodation is located, but shall be in addition to any other increases authorized pursuant to the act and this Subchapter, including adjustments pursuant to subdivision (a) of section 2502.4 of this Part, and any applicable vacancy allowance authorized by the Rent Guidelines Board.

(b) Any provision of this Subchapter to the contrary notwithstanding, where all tenants named in a lease have permanently vacated a housing accommodation, and a primary-resident family member of such tenant or tenants (first successor) is entitled to and executes a renewal lease for the housing accommodation, as provided in section 2503.5 of this Title, and thereafter permanently vacates the housing accommodation, if such housing accommodation continues to be subject to the act and this Subchapter after such first successor vacates, and a primary-resident family member (second successor) is entitled to and executes a renewal lease for the housing accommodation, as provided in section 2503.5 of this Title, the legal regulated rent shall be increased by a sum equal to the allowance then in effect for vacancy leases, including the amount allowed by subdivision (a) of this section. Such increase shall be in addition to any other increases provided for in the act and this Subchapter, including adjustments pursuant to subdivision (a) of section 2502.4 of this Part, and any applicable vacancy allowance authorized by the Rent Guidelines Board of the county in which the housing accommodation is located, and shall be applicable in like manner to the renewal lease of each second subsequent succeeding family member.

Section 16

A new section 2502.8 of this Part is adopted to read as follows:

Section 2502.8 Surcharge for the installation and use of washing machines, dryers and dishwashers.

(a) Where a tenant requests permission from the owner to install a washing machine, dryer or dishwasher, whether permanently installed or portable, and the owner consents, the owner may collect surcharges, without notification to or approval by the division in an amount specified in an Operational Bulletin to be issued by the division pursuant to section 2507.11 of this Title. The surcharges authorized by this section shall not be part of the legal regulated rent.

(b)(1) Where a prior installation by a tenant of a washing machine, dryer or dishwasher comes to the attention of the owner and the owner consents to the continued use of the washing machine, dryer or dishwasher, the surcharges provided for in this section shall only be available prospectively;

(2) Under no circumstances shall servicing or replacement of such washing machine, dryer or dishwasher become a service required to be provided by the owner pursuant to this Subchapter;

(3) Where there is in effect a prior practice of charging for installation of a tenant-owned washing machine, dryer or dishwasher, the owner may continue the charge, which may also continue to be included in the legal regulated rent, if such was the prior practice.

Section 17

A new section 2502.9 of this Part is adopted to read as follows:

Section 2502.9 Surcharges for submetered electricity or other utility service.

(a) Where an owner acts as a provider of a utility service (including, but not limited to electricity, gas, cable or telecommunications), the owner may collect surcharges which shall not be part of the legal regulated rent, and shall not be subject to this Subchapter.

PART 2503 NOTICES AND RECORDS

Section 1

Section 2503.1 of this Part is amended to read as follows:

Section 2503.1 Notice of initial legal regulated rent.

Every owner of housing accommodations subject to this [Chapter] Subchapter, which are rented to a tenant on the local effective date, shall within 30 days after the local effective date give notice in writing by certified mail to the tenant of each such housing accommodation on a form provided by the division for that purpose, reciting the initial legal regulated rent for the housing accommodation and the tenant's right to file an application for adjustment of the initial legal regulated rent within 90 days after receipt of the notice. Notwithstanding the foregoing, nothing in this section shall require an owner to serve the above notice after four years from the date of the commencement of the initial stabilized tenancy or maintain or produce any records relating to rentals of such accommodations for more than four years prior to the date the most

recent registration was required to have been filed pursuant to Part 2509 of this Title.

Section 2

Section 2503.2 of this Part is amended to read as follows:

2503.2 Certification of services.

Every owner of housing accommodations subject to this [Chapter] Subchapter shall file annually with the division, on a form which it shall provide for that purpose, a written certification that he is maintaining and will continue to maintain all services furnished on May 29, 1974, the effective date of the act, or required to be furnished by any law, ordinance or regulation applicable to the premises. Compliance with section 2509.2 of this Title shall also be compliance with this section.

Section 3

Section 2503.3 of this Part is amended to read as follows:

Section 2503.3 Failure to file a certification of services.

No [landlord] owner shall be entitled to collect a rent guidelines board rent adjustment authorized under section 2502.5 of this [Chapter] Title until the owner has filed a proper certification as required by section 2503.2 of this Part, nor shall any owner be entitled to a rent restoration upon a restoration of services unless such restoration of services has been determined by the division in a proceeding commenced by an owner's application to restore rent or a proceeding commenced pursuant to section 2506.2 of this Title, or in another proceeding pursuant to these regulations. Such restoration shall take effect on the date specified in the order of the division issued in such proceeding.

Section 4

Section 2503.4 of this Part is amended to read as follows:

Section 2503.4 Failure to maintain services as certified.

(a)(1) A tenant may apply to the division for a reduction of the legal regulated rent to the level in effect prior to the most recent adjustment under section 2502.5(c) of this [Chapter] Title, subject to the limitations of subdivisions (b) through (g) of this section, and the division may so reduce the rent where it is found that the owner has failed to maintain the services. If the division further finds that the owner has knowingly filed a false certification, it shall, in addition to abating the rent, assess the owner with the reasonable costs of the proceeding including attorney's fees, and impose a penalty not in excess of $250 for each false certification.

(2) Where an application for a rent adjustment pursuant to section 2502.4(a)(2) of this Title has been granted, and collection of such rent adjustment commenced prior to the issuance of the rent reduction order, the owner will be permitted to continue to collect the rent adjustment regardless of the effective date of the rent reduction order, notwithstanding that such date is prior to the effective date of the order granting the adjustment. In addition, regardless of the effective date thereof, a rent reduction order will not affect the continued collection of a rent adjustment pursuant to section 2502.4(a)(2)(i) of this Title, where collection of such rent adjustment commenced prior to the issuance of the rent reduction order.

(b) Before filing an application for a reduction of the legal regulated rent pursuant to subdivision (a) of this section, a tenant must have first notified the owner or the owner’s agent in writing of all

the service problems listed in such application. A copy of the written notice to the owner or agent with proof of mailing or delivery must be attached to the application. Applications may only be filed with the division no earlier than 10 and no later than 60 days after such notice is given to the owner or agent. Prior written notice to the owner or agent is not required for complaints pertaining to heat or hot water, or other conditions requiring emergency repairs. Applications based upon a lack of adequate heat or hot water must be accompanied by a report from the appropriate governmental agency finding such lack of adequate heat or hot water.

(c)(1) In the event notice of any inspection is given by the division in a proceeding commenced pursuant to this section, the inspection shall be conducted on notice to both the owner and tenant.

(2) Upon receipt of a copy of the tenant's complaint from the division, an owner shall have 45 days in which to respond. If during this period of time, an owner has attempted, but been unable to obtain access to the subject housing accommodation to correct the service or equipment deficiency, the owner should set forth such facts in the response. Upon receipt thereof, in order to facilitate the resolution of the complaint, the division may direct an inspector to accompany the owner or the owner's agent to the housing accommodation to determine whether such access is being provided. In order for the division to coordinate the inspection, the owner should indicate that access has been denied in the response submitted to the division and should include copies of two letters to the tenant attempting to arrange for access. Each of the letters must have been mailed at least 8 days prior to the date proposed for access, and must have been mailed by certified mail, return receipt requested.

Exceptions to such requirements for inspection may be permitted under emergency conditions, where special circumstances exist, or pursuant to court order. The service complaint, or objection to a rent restoration application, by a tenant who fails to provide access at the time arranged by the division for the inspection will be denied.

(d) Certain conditions complained of as constituting a decrease in an essential service may be de minimis in nature, and therefore do not rise to the level of a failure to maintain an essential service for the purposes of this section. Such conditions are those that have only a minimal impact on tenants, do not affect the use and enjoyment of the premises, and may exist despite regular maintenance of services.

The following schedule sets forth conditions that will generally not constitute a failure to maintain an essential service. However, this schedule is not intended to be exclusive, and is not determinative in all cases and under all circumstances. Therefore, it does not include all conditions that may be considered de minimus, and there may be circumstances where a condition, although included on the Schedule, will nevertheless be found to constitute a decrease in an essential service.

SCHEDULE OF DE MINIMIS CONDITIONS

BUILDING-WIDE CONDITIONS

1. AIR CONDITIONING:

Failure to provide in lobby, hallways, stairwells, and other non-enclosed public areas.

2. BUILDING ENTRANCE DOOR:

Removal of canopy over unlocked door leading to vestibule; changes in door-locking devices, where security or access is not otherwise compromised.

3. CARPETING:

Change in color or quality under certain circumstances; isolated stains on otherwise clean carpets; frayed areas which do not create a tripping hazard.

4. CLOTHESLINES:

Removal of, whether or not dryers are provided.

5. CRACKS:

Sidewalk cracks which do not create a tripping hazard; hairline cracks in walls and ceilings.

6. DECORATIVE AMENITIES:

Modification (e.g., fountain replaced with rock garden); removal of some or all for aesthetic reasons.

7. ELEVATOR:

Failure to post elevator inspection certificates; failure to provide or maintain amenities (e.g., ashtray, fan, recorded music).

8. FLOORS:

Failure to wax floors; discrete areas in need of cleaning or dusting, where there is evidence that janitorial services are being regularly provided and most areas are clean (SEE JANITORIAL SERVICES, item 12).

9. GARAGE:

Any condition that does not interfere with the use of the garage or an assigned parking space (e.g., peeling paint where there is no water leak).

10. GRAFFITI:

Minor graffiti inside the building; any graffiti

outside the building where the owner submits an "affidavit of on-going maintenance" indicating a reasonable time period when the specific condition will be next addressed.

11. LANDSCAPING:

Modification; failure to maintain a particular aspect of landscaping where the grounds are generally maintained.

12. JANITORIAL SERVICES:

Failure to clean or dust discrete areas, where there is evidence that janitorial services are being regularly provided because most areas are, in fact, clean.

13. LIGHTING IN PUBLIC AREAS:

Missing light bulbs where the lighting is otherwise adequate.

14. LOBBY OR HALLWAYS:

Discontinuance of fresh cut flowers; removal of fireplace or fireplace andirons; modification of furniture; removal of some furnishings (determined on a case by case basis); removal of decorative mirrors; reduction in lobby space where reasonable access to tenant areas are maintained; elimination of public area door mat; failure to maintain a lobby directory that is not associated with a building intercom; removal or replacement of window coverings (SEE DECORATIVE AMENITIES, item 6).

15. MAIL DISTRIBUTION:

Elimination of door-to-door or other methods of mail distribution where mailboxes are installed in a manner approved by the U.S. Postal Service.

16. MASONRY:

Minor deterioration; failure to point exterior bricks where there is no interior leak damage.

17. PAINTING:

Change in color in public areas under certain circumstances; replacement of wallpaper or stenciling with paint in the public areas; isolated or minor areas where paint or plaster is peeling, or other similarly minor areas requiring repainting, provided there are no active water leaks; any painting condition in basement or cellar areas not usually meant for or used by tenants; any painting condition that is limited to the top-floor bulkhead area provided there is no active water leak in such area.

18. RECREATIONAL FACILITIES:

Modifications, such as reasonable substitution of equipment, combination of areas, or reduction in the number of items of certain equipment where overall facilities are maintained (SEE ROOF, item 19).

19. ROOF:

Discontinuance of recreational use (e.g., sunbathing) unless a lease clause provides for such service, or formal facilities (e.g., solarium) are provided by the owner; lack of repairs where water does not leak into the building or the condition is not dangerous.

20. SINKS:

Failure to provide or maintain in compactor rooms or laundry rooms.

21. STORAGE SPACE:

Removal or reduction of, unless storage space service is provided for in a specific rider to the lease (not a general clause in a standard form residential lease), or unless the owner has provided formal storage boxes or bins to tenants within four years of the filing of a tenant's complaint alleging an elimination or a reduction in storage space service.

22. SUPERINTENDENT/MAINTENANCE STAFF/MANAGEMENT:

Decrease in the number of staff, other than security, provided there is no decrease in janitorial services; elimination of on-site management office; failure to provide an on-site superintendent, provided there is no decrease in janitorial services.

23. TELEVISION:

Replacement of individual antennas with master antenna; visible cable; television wires; or other technologies.

24. TOILET IN PUBLIC AREAS:

Removal of (except in buildings containing Class B units).

25. WINDOWS:

Sealed, vented, basement or crawl space windows, other than in areas used by tenants (e.g., laundry rooms); cracked fire-rated windows; peeling paint or other non-hazardous condition of exterior window frames.

INDIVIDUAL APARTMENT CONDITIONS

1. APPLIANCES AND FIXTURES:

Chips on appliance, countertop, fixtures or tile surfaces; color-matching of appliances, fixtures or tiles.

2. CRACKS:

Hairline cracks; minor wall cracks, provided there is no missing plaster, or no active water leak.

3. DOORS:

Lack of alignment, provided condition does not prevent proper locking of entrance door or closing of interior door.

4. FLOOR:

Failure to provide refinishing or shellacking.

5. NOISE:

Caused by another tenant.

6. WINDOW FURNISHINGS:

Failure to re-tape or re-cord venetian blinds.

(e) In determining whether a condition is de minimis, the division may consider the passage of time during which a disputed service was not provided and during which no complaint was filed by any tenant alleging failure to maintain such disputed service, as evidencing that such service condition is de minimis, and therefore does not constitute a failure to maintain an essential service, provided that:

(1) for purposes of this subdivision, the passage of four years or more shall be considered presumptive evidence that the condition is de minimis, with such four-year period to be measured without reference to any changes in building ownership or the tenancy of the subject housing accommodation;

(2) services required to be provided by laws or regulations other than the act or this Subchapter shall not be subject to this subdivision.

(f)(1) Except as to complaints of inadequate heat and/or hot

water, or applications relating to the restoration of rents based upon the restoration of such services, whenever a complaint of building-wide reduction in services, or an owner's application relating to the restoration of rents based upon the restoration of such services is filed, the tenants or owner may submit with the complaint, answer or application, the contemporaneous affidavit of an independent licensed architect or engineer, substantiating the allegations of the complaint, answer, or application. The affidavit shall state that the conditions that are the subject of the complaint, answer or application were investigated by the person signing the affidavit and that the conditions exist (if the affidavit is offered by the tenants) or do not exist (if the affidavit is offered by the owner). The affidavit shall specify what conditions were investigated and what the findings were with respect to each condition. The affidavit shall state when the investigation was conducted, must be submitted within a reasonable time after the completion of the investigation, and when served by the division on the opposing party, will raise a rebuttable presumption that the conditions that are the subject of the complaint, answer or application exist (if the affidavit is submitted by the tenants), or do not exist (if the affidavit is submitted by the owner).

(2) The presumption raised by the affidavit may be rebutted only on the basis of persuasive evidence, including a counter affidavit by an independent licensed architect or engineer, or a report of a subsequent inspection conducted, or a subsequent violation imposed by a governmental agency, or an affirmation signed by 51 percent of the complaining tenants. Except for good cause shown, failure to rebut the presumption within 30 days will result in the issuance of an order without any further physical

inspection of the premises by the division.

(3) There must be no common ownership, or other financial interest, between such architect or engineer and the owner or tenants, and the affidavit shall state that there is no such relationship or other financial interest. The affidavit must also contain a statement that the architect or engineer did not engage in the performance of any work, other than the investigation, relating to the conditions that are the subject of the affidavit, and must contain the original signature and professional stamp of the architect or engineer, not a copy. The division may conduct follow-up inspections randomly to ensure that the affidavits accurately indicate the conditions of the premises. Any person or party who submits a false statement will be subject to all penalties provided by law.

(g) The amount of the reduction in rent ordered by the division pursuant to this section shall be reduced by any credit, abatement or offset in rent which the tenant has received pursuant to section 235-b of the Real Property Law, that relates to one or more conditions covered by such order.

Section 5

Subdivision (b) of section 2503.5 of this Part is amended to to read as follows:

(b)(1) Where the [landlord] owner fails to offer a renewal of the lease in accordance with subdivision (a) of this section, the tenant shall have the option of choosing [(1)](i) whether the one-or two year term of such lease whenever it is offered shall commence on the date a renewal lease would have commenced had a timely offer been made, or [(2)](ii) on the first rent payment date commencing 90 days after the date that the [landlord] owner does offer the lease to the tenant on the prescribed

notice form. The guidelines rate applicable in such cases shall be the rate in effect on the first day subsequent to the expiration of the last lease or the rate in effect when the lease is renewed, whichever is lower.

(2) Where the tenant fails to timely renew an expiring lease or rental agreement offered pursuant to this section, and remains in occupancy after expiration of the lease, such lease or rental agreement may be deemed to have been renewed upon the same terms and conditions, at the legal regulated rent, together with any guidelines adjustments that would have been applicable had the offer of a renewal lease been timely accepted. The effective date of the rent adjustment under the "deemed" renewal lease shall commence on the first rent payment date occurring no less than 90 days after such offer is made by the owner.

(3) Notwithstanding the provisions of paragraph (2) of this subdivision, an owner may elect to commence an action or proceeding to recover possession of a housing accommodation in a court of competent jurisdiction pursuant to sections 2504.2(f) and 2504.3(d)(1) of this Title, where the tenant, upon the expiration of the existing lease or rental agreement, fails to timely renew such lease in the manner prescribed by this section.

Section 6

The opening paragraph of subdivision (e) of section 2503.5 of this Part is amended to read as follows:

(e) On a form prescribed or a facsimile of such form approved by the division, a tenant may, at any time, advise the owner of, or an owner may request from the tenant at [the time a renewal lease is offered, pursuant to subdivision (a) of this section] any time but no more often than once in any twelve months, the names of all persons other than

the tenant who are residing in the housing accommodation, and the following information pertaining to such persons:

Section 7

A new subdivision (f) of section 2503.5 of this Part is adopted to read as follows:

(f) For the purpose of determining whether an owner may charge the rent increases authorized pursuant to subdivision g of section 6 of the act, every owner who enters into a renewal lease pursuant to subdivision (d) of this section, shall notify the division, in a manner prescribed by the division, whether the tenant named on the lease in effect for the housing accommodation at the time such notice is given was so named as the result of the exercise of rights pursuant to subdivision (d) of this section, together with the commencement date of the first renewal lease for the housing accommodation on which such tenant was named. Such notice shall create a rebuttable presumption that the owner is entitled to collect such sum.

Section 8

Section 2503.6 of this Part is repealed and a new section 2503.6 is adopted to read as follows:

2503.6 Notices of appearance by attorney or other authorized representative.

(a) Whenever an attorney or other authorized representative appears for a party who is involved in a proceeding before the division, such person must file a notice of appearance which shall be on a form prescribed by the division, unless the application which instituted the proceeding before the division stated the representation of such person and his or her mailing address in the space allotted for the mailing address of

the represented party. An attorney who appears for such party may instead use the letterhead stationery of his or her office as a notice of appearance if the information contained therein substantially conforms to the information required by the form. All subsequent written communications or notices to such party (other than subpoenas) shall be sent to such attorney or other authorized representative at the address designated in such notice of appearance. The service of written communications and notices upon such attorney or other authorized representative shall be deemed full and proper service upon the party or parties so represented. If an authorized representative appears, such notice of appearance must be accompanied by a written authorization, duly verified or affirmed, by the party represented.

(b) Whenever an attorney or other authorized representative shall represent the same party or parties in more than one proceeding before the division, separate notices of appearance and authorizations shall be filed in each proceeding.

(c) Any submission signed by an attorney or other authorized representative must state that such person has personal knowledge of the facts contained in such submission, or if he or she does not have such personal knowledge, the basis for such person's information.

Section 9

Subdivisions (a) and (b) of section 2503.7 of this Part are repealed, and subdivision (c) is renumbered subdivision (a).

Section 10

Subdivision (a) is amended to read as follows:

(a) [Notwithstanding any other provision of this Chapter, any] <u>An</u> [landlord] <u>owner</u> [who has duly registered a housing accommodation

pursuant to Part 2509 of this Chapter,] shall [not be required to] maintain [or produce any] records relating to [rentals] rents of [such accommodation] housing accommodations [more than] for four years prior to the date the most recent registration [or annual statement] for such accommodation was required to have been filed. An owner shall not be required to produce any records in connection with proceedings under sections 2502.3(a) and 2506.1 of this Title relating to a period that is prior to the base date. Notwithstanding the above, such owner shall continue to maintain such records for all housing accommodations for which a complaint of overcharge or a fair market rent appeal has been filed by a tenant until a final order of the division is issued.

Section 11

Section 2503.7 of this Part is amended by adopting a new subdivision (b) to read as follows:

(b)(1) In the absence of collusion or any relationship between a prior owner and an owner who purchases upon a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, such purchaser shall not be required to provide records for the period prior to such sale, except where records sufficient to establish the legal regulated rent are available to such purchaser. This subdivision shall apply to an owner who purchases subsequent to such judicial or other sale.

(2) Court-appointed Receivers. A Receiver who is appointed by a court of competent jurisdiction to receive rent for the use or occupation of a housing accommodation shall not, in the absence of collusion or any relationship between such Receiver and any owner or other

Receiver, be required to provide records for the period prior to such appointment, except where records sufficient to establish the legal regulated rent are available to such Receiver. This subdivision (b) shall not be construed to waive the purchaser's obligation to register pursuant to Part 2529 of this Title.

Section 12

Section 2503.8 of this Part is repealed.

PART 2504 EVICTIONS

Section 1

Subdivision (b) of section 2504.2 of this Part is repealed, and a new subdivision (b) is adopted to read as follows:

(b) The tenant is committing or permitting a nuisance in such housing accommodation or building containing such housing accommodation; or is maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or the tenant engages in a course of conduct, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety. The exercise by a tenant of any rights pursuant to any law or regulation relating to occupancy of a housing accommodation, including the act or this Subchapter, shall not be deemed a ground for eviction pursuant to this subdivision (b).

Section 2

Subdivision (c) of section 2504.2 of this Part is amended to read as follows:

(c) Occupancy of the housing accommodation[s] by the tenant is illegal because of the requirements of law, and the [landlord] <u>owner</u> is

subject to civil or criminal penalties therefor, or both, or such occupancy is in violation of contracts with governmental agencies.

Section 3

Section 2504.2 of this Part is amended by adopting a new subdivision (g) to read as follows:

(g) In the event of a sublet, an owner may terminate the tenancy of the tenant if the tenant is found to have violated the provisions of section 2505.7 of this Title.

Section 4

The title of section 2504.3 of this Part is amended to read as follows:

Section 2504.3 Notices required in proceedings under [section] sections 2504.2 and 2504.4(b)-1) of this Part.

Section 5

Subdivision (c) of section 2504.3 of this Part is repealed, and subdivision (d) is renumbered subdivision (c).

Section 6

Paragraph (2) of subdivision (c) of section 2504.3 of this Part is amended to read as follows:

(2) in the case of a notice on any other ground pursuant to section 2504.2 of this Part, at least [one month] 7 calendar days prior to the date specified therein for the surrender of possession; and, in any event, prior to the commencement of any proceeding for removal or eviction. Such notice may be combined with a notice to cure if required by section 2504.1 of this Part and, in such case, the [one-month] 7-day period provided herein may, if the notice so provides, [include] be included in the 10-day period specified in the notice to cure.

Section 7

Subdivision (c) of section 2504.3 of this Part is amended by adopting a new paragraph (3) to read as follows:

(3) in the case of a notice pursuant to subdivision (b-1) of section 2504.4 of this Part, at least 90 and not more than 120 days prior to the expiration of the lease term.

Section 8

Section 2504.3 of this Part is amended by adopting a new subdivision (d) to read as follows:

(d) All notices served pursuant to subdivision (b-1) of section 2504.4 of this Part shall state:

(i) that the owner will not renew the tenant’s lease because the owner has filed an application pursuant to section 2504.4(b-1) for permission to recover possession of all of the housing accommodations in the building for the purpose of demolishing them, for which plans and financing have been obtained, or are in the process of being obtained, as stated in the application;

(ii) that while the application is pending, the tenant may remain in occupancy;

(iii) that the tenant shall not be required to vacate until the division has issued a final order approving the application and setting forth the time for vacating, stipends and other relocation conditions; and

(iv) that the tenant must be offered a prospective renewal lease if the application is withdrawn or denied.

Section 9

A new subdivision (e) of section 2504.3 of this Part is adopted to read as follows:

(e) The provisions of this section shall not apply to eviction proceedings commenced by, on behalf of, a law enforcement agency pursuant to section 715 of the Real Property Actions and Proceedings Law.

Section 10

Section 2504.4 of this Part is amended by adopting a new subdivision (b-1) to read as follows:

(b-1) Demolition.

(1) The owner seeks to demolish the building. Until the owner has submitted proof of its financial ability to complete such undertaking to the division, and plans for the undertaking have been approved by the appropriate governmental agency, an order approving such application shall not be issued.

(2) Terms and conditions upon which orders issued pursuant this paragraph authorizing refusal to offer renewal leases may be based:

(i) The division shall require an owner to pay all reasonable moving expenses and afford the tenant a reasonable period of time within which to vacate the housing accommodation. If the tenant vacates the housing accommodation on or before the date provided in the division’s final order, such tenant shall be entitled to receive all stipend benefits pursuant to subparagraph (ii) of this paragraph. In addition, if the tenant vacates the housing accommodation prior to the required vacate date, the owner may also pay a stipend to the tenant that is larger than the stipend designated in a Demolition Stipend Chart to be issued pursuant to an Operational Bulletin authorized by section 2507.11 of this Title. However, at no time shall an owner be required to pay a stipend in excess of the stipend set forth in such schedule. If the tenant does not vacate the housing accommodation on or before the required vacate

date, the stipend shall be reduced by one-sixth of the total stipend for each month the tenant remains in occupancy after such vacate date.

(ii) The order granting the owner's demolition application shall provide that the owner must either:

(a) relocate the tenant to a suitable housing accommodation, as defined in paragraph (3) of this subdivision, at the same or lower legal regulated rent in a closely proximate area, or in a new residential building if constructed on the site, in which case suitable interim housing shall be provided at no additional cost to the tenant; plus in addition to reasonable moving expenses, payment of a five thousand dollar stipend, provided the tenant vacates on or before the vacate date required by the final order; or

(b) where an owner provides relocation of the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant's reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to the difference in rent, at the commencement of the occupancy by the tenant of the new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, multiplied by seventy-two months, provided the tenant vacates before the vacate date required by the final order; or

(c) pay the tenant a stipend which shall be the difference between the tenant's current rent and an amount calculated using the Demolition Stipend Chart, at a set sum per room per month multiplied by the actual number of rooms in the tenant's current housing accommodation, but no less than three rooms. This difference is to be multiplied by seventy-two months.

(iii) Wherever a stipend would result in the tenant losing a subsidy or other governmental benefit which is income dependent, the tenant may elect to waive the stipend and have the owner at his or her own expense, relocate the tenant to a suitable housing accommodation at the same or lower legal regulated rent in a closely proximate area.

(iv) In the event that the tenant dies prior to the issuance by the division of a final order granting the owner's application, the owner shall not be required to pay such stipend to the estate of the deceased tenant.

(v) Where the order of the division granting the owner's application is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

(vi) Noncompliance by the owner with any term or condition of the administrator's or commissioner's order granting the owner's application shall be brought to the attention of the division's ETPA Bureau for appropriate action. The division shall retain jurisdiction for this purpose until all moving expenses, stipends, and relocation requirements have been met.

(3) Comparable housing accommodations and relocation.

In the event a comparable housing accommodation is offered by the owner, a tenant may file an objection with the division challenging the suitability of an housing accommodation offered by the owner for relocation within 10 days after the owner identifies the housing accommodation and makes it available for the tenant to inspect and consider the suitability thereof. Within 30 days thereafter, the division shall inspect the housing accommodation, on notice to both parties, in order to

determine whether the offered housing accommodation is suitable. Such determination will be made by the division as promptly as practicable thereafter. In the event that the division determines that the housing accommodation is not suitable, the tenant shall be offered another housing accommodation, and shall have 10 days after it is made available by the owner for the tenant's inspection to consider its suitability. In the event that the division determines that the housing accommodation is suitable, the tenant shall have 15 days thereafter within which to accept the housing accommodation. A tenant who refuses to accept relocation to any housing accommodation determined by the division to be suitable shall lose the right to relocation by the owner, and to receive payment of moving expenses or any stipend.

"Suitable housing accommodations" shall mean housing accommodations which are similar in size and features to the respective housing accommodations now occupied by the tenants. Such housing accommodations shall be freshly painted before the tenant takes occupancy, and shall be provided with substantially the same required services and equipment the tenants received in their prior housing accommodations. The building containing such housing accommodations shall be free from violations of law recorded by the governmental agency having jurisdiction, which constitute fire hazards or conditions dangerous or detrimental to life or health, or which affect the maintenance of required services.

The division will consider housing accommodations proposed for relocation which are not presently subject to rent regulation, provided the owner submits a contractual agreement that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant requests a shorter lease period in

writing.

Section 11

Subdivision (d) of section 2504.4 of this Part is amended to read as follows:

(d) Primary residence. The housing accommodation is not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction. [For the purpose of this subdivision, where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants. No action or proceeding shall be commenced seeking to recover possession on such ground unless the landlord shall have given 30 days' notice to the tenant of his intention to commence such action or proceeding on such ground. Within seven days after the notice is served on the tenant, an exact copy thereof, with an affidavit of service, shall be filed with the division.]

Section 12

Section 2504.4 of this Part is amended by adopting a new subdivision (e) to read as follows:

(e) Election not to renew. Once an application is filed under this section, with notification to all affected tenants pursuant to section 2504.3 of this Part, the owner may refuse to renew all tenants' leases until a determination of the owner's application is made by the division. For the purposes of subdivisions (b), (b-1), and (c) of this section, service of the application at any time shall be considered sufficient compliance with such section 2504.3. If such application is denied, or withdrawn, prospective renewal leases must be offered to all

affected tenants within such time and at such guidelines rates as directed in the division’s order of denial or withdrawal.

PART 2505 PROHIBITIONS

Section 1

The opening paragraph of section 2505.4 of this Part is amended to read as follows:

Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall demand, receive or retain a security deposit for or in connection with the use or occupancy of housing accommodations, which exceeds the rent for one month in addition to the authorized collection of rent; provided, however, that where a lease in effect on December 1, 1983 validly required a greater security deposit, such requirement may continue in effect during the term of such lease and any renewals thereof with the same tenant. However, no owner shall demand, receive or retain a security deposit or advance payment for or in connection with the use or occupancy of a housing accommodation by any tenant who is sixty-five years of age or older, which exceeds the rent for one month for any lease or lease renewal entered into after July 1, 1996. Such security deposits shall be subject to the following conditions:

Section 2

Subdivision (c) of section 2505.4 of this Part is repealed, and a new subdivision (c) is adopted to read as follows:

(c) at the tenant's option, the balance of the interest paid by the banking organization shall be applied for the rental of the housing accommodation, or held in trust until repaid, or annually paid to the tenant; and

Section 3

Subdivision (d) of section 2505.4 of this Part is repealed, and a new subdivision (d) is adopted to read as follows:

(d) the owner otherwise complies with the provisions of Article 7 of the General Obligations Law.

Section 4

The title of section 2505.7 of this Part is amended to read as follows:

Section 2505.7 [Regulation of subletting] <u>Subletting; Assignment</u>.

Section 5

Subdivision (f) of section 2505.7 of this Part is repealed and a new subdivision (f) is adopted to read as follows:

(f) Upon the consent of an owner to an assignment, regardless of whether or not the lease is a renewal lease, the legal regulated rent payable to the owner effective upon the date of such assignment may be increased by (1) the increase provided for in section 2502.7 of this Title; and (2) which may be further increased by the vacancy allowance, if any, provided in the Rent Guidelines Board order in effect at the time of the commencement date of the lease. Such increases shall remain part of the legal regulated rent for any subsequent renewal lease.

Section 6

A new section 2505.8 of this Part is adopted to read as follows:

Section 2505.8 Occupancy by persons other than tenant of record or tenant’s immediate family.

(a) Housing accommodations subject to the act and this

Subchapter may be occupied in accordance with the provisions and subject to the limitations of section 235-f of the Real Property Law.

(b) The rental which a tenant may charge a person in occupancy pursuant to section 235-f of the Real Property Law shall not exceed such occupant's proportionate share of the legal regulated rent for the subject housing accommodation. The charging of a rental to such occupant that exceeds that amount shall be deemed to constitute profiteering in violation of section 2500.13 of this Title.

PART 2506 ENFORCEMENT

Section 1

The title and paragraph (1) of subdivision (a) of section 2506.1 of this Part are amended to read as follows:

Section 2506.1 [Penalties for overcharges, assessment of costs and attorney's fees, rent offsets] Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits.

(a)(1) Any [landlord] owner who is found by the division, after a reasonable opportunity to be heard, to have collected any rent or other consideration in excess of the legal regulated rent shall be ordered to pay to the tenant a penalty equal to three times the amount of such excess, except as provided under subdivision (f) of this section. In no event shall such treble damage penalty be assessed against an owner based solely upon the owner's failure to file any timely or proper rent registration statement. If the [landlord] owner establishes by a preponderance of the evidence that the overcharge was neither willful nor attributable to [his] negligence, the division shall establish the penalty as the amount of the overcharge, plus interest, which interest shall accrue

from the date of the first overcharge on or after the base date, at the rate of interest payable on a judgment pursuant to section 5004 of the Civil Practice Law and Rules, and the order shall direct such a payment to be made to the tenant.

Section 2

Paragraph (2) of subdivision (a) section 2506.1 of this Part is amended to read as follows:

(2) A complaint pursuant to this section must be filed with the division within four years of the first overcharge alleged, and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed[, provided that]; additionally:

(i) no penalty of three times the overcharge may be based upon an overcharge having occurred more than two years before the complaint is filed or upon an overcharge which occurred prior to April 1, 1984; [and]

(ii) [any complaint based upon overcharges occurring prior to the date of filing of the initial rent registration for a housing accommodation pursuant to Part 2509 of this Title shall be filed within 90 days of the mailing of notice to the tenant of such registration] an overcharge complaint with respect to a housing accommodation which, at the time of the filing of such complaint, is rented pursuant to an unregulated lease pursuant to subdivision (m) of section 2500.9 of this Title, may only be filed by the first tenant to take occupancy upon such renting, and shall be filed within 90 days of such tenant taking occupancy;

(iii) The rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section, and section 2502.3 of this Title shall not be examined. This subparagraph shall preclude examination of a rent registration for any year commencing prior to the base date, as defined in section 2500.2(q) of this Title, whether filed before or after such base date. Except as provided in subparagraph (ii) of this paragraph, and section 2502.3(a)(4) of this Title, nothing contained herein shall limit a determination as to whether a housing accommodation is subject to the act and this Subchapter, nor shall there be a limit on the continuing eligibility of an owner to collect rent increases pursuant to section 2502.4 of this Title which may have been subject to deferred implementation.

Section 3

Subparagraph (i) of paragraph (3) of subdivision (a) of section 2506.1 of this Part is amended to read as follows:

(3)(i) [Except as to complaints filed pursuant to subparagraph (ii) of this paragraph, the] The legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent [shown in the annual registration statement filed four years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement)] charged on the base date, plus in each case any subsequent lawful increases and adjustments.

Section 4

Subparagraph (ii) of paragraph (3) of subdivision (a) of section 2506.1 of this Part is repealed, and a new subparagraph (ii) is adopted to read as follows:

(ii) Where the rent charged on such dates cannot be

established, the rent shall be determined by the division in accordance with section 2502.6 of this Title.

Section 5

Paragraph (3) of subdivision (a) of section 2506.1 of this Part is amended by adopting a new subparagraph (iii) to read as follows:

(iii) Where a housing accommodation is vacant or temporarily exempt from regulation pursuant to section 2500.9 of this Title on the base date, the legal regulated rent shall be the rent agreed to by the owner and the first rent stabilized tenant taking occupancy after such vacancy or temporary exemption, and reserved in a lease or rental agreement; or in the event a lesser amount shown is in the first registration for a year commencing after such tenant takes occupancy, the amount shown in such registration, as adjusted pursuant to this Subchapter.

Section 6

Subdivisions (f) and (g) of section 2506.1 of this Part are renumbered subdivisions (g) and (h), respectively.

Section 7

Section 2506.1 of this Part is amended by adopting a new subdivision (f) to read as follows:

(f) Responsibility for overcharges. (1) A current owner shall be responsible for all overcharge penalties, including penalties based upon overcharges collected by any prior owner. However, in the absence of collusion or any relationship between such owner and any prior owner, where no records sufficient to establish the legal regulated rent were provided at a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, an owner who purchases

upon such sale or subsequent to such sale shall not be liable for overcharges collected by any owner prior to such sale, and treble damages upon overcharges that he or she collects which result from overcharges collected by any owner prior to such sale. An owner who did not purchase at such sale, but who purchased subsequent to such sale, shall also not be liable for overcharges collected by any prior owner subsequent to such sale to the extent that such overcharges are the result of overcharges collected prior to such sale. (2) Court-appointed Receivers. A Receiver who is appointed by a court of competent jurisdiction to receive rent for the use or occupation of a housing accommodation shall not, in the absence of collusion or any relationship between such Receiver and any owner or other Receiver, be liable for overcharges collected by any owner or other Receiver, and treble damages upon overcharges that he or she collects which result from overcharges collected by any owner or other Receiver, where records sufficient to establish the legal regulated rent have not been made available to such Receiver. Penalties pursuant to this subdivision shall be subject to the time limitations set forth in paragraph (2) of subdivision (a) of this section.

Section 8

Paragraph (2) of subdivision (c) of section 2506.2 of this Part is amended to read as follows:

(2) to have harassed a tenant to obtain <u>a</u> vacancy of [his] <u>a</u> housing accommodation, the division may impose by administrative order after hearing, a civil penalty [for any such violation. Such penalty shall be] in the amount of<u>:</u>

<u>(i) where the offense was committed prior to July 19, 1997,</u> up to $1,000 for a first such offense and up to $2500 for each

subsequent offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation; or

(ii) where the offense is committed on or after July 19, 1997, not less than $1000 nor more than $5000 for each such offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation.

PART 2507 PROCEEDINGS BEFORE DIVISION

Section 1

Subdivision (a) of section 2507.3 of this Part is amended to read as follows:

(a) (1) [Where] Except as provided by paragraph (2) of this subdivision, where the application is made by [a landlord] an owner or tenant, the division shall forward, as promptly as possible, a copy of such application [by mail] to all parties adversely affected thereby.

(2) Where an application is filed, pursuant to section 2502.4(a)(2)(ii), (iii), (iv) or (v) of this Title, to increase the legal regulated rent, the division shall notify all parties adversely affected thereby, and shall afford such parties the opportunity to submit written responses thereto. The owner shall maintain a copy of the application, with supporting documentation, on the premises so that tenants may examine it, or in the alternative, a copy of the application, with supporting documentation, shall be made available by the division for tenant examination upon prior request. Tenants' written responses shall be considered by the division prior to a final determination of the application.

Section 2

Section 2507.4 of this Part is amended to read as follows:

2507.4 Answer.

A person who has been served with a [copy of] notice of a proceeding accompanied by an application or [a notice of a proceeding] complaint shall have [seven] no less than 20 days from the date of mailing in which to answer or reply, except that in exceptional circumstances, the division may require a shorter period. Every answer or reply must be verified or [certified] affirmed, and an original and one copy shall be filed with the division.

Section 3

Section 2507.5 of this Part is amended by adopting a new subdivision (j) to read as follows:

(j) on its own initiative, or at the request of a court of competent jurisdiction, or for good cause shown upon application of any affected party, expedite the processing of a matter; and

Section 4

Section 2507.5 of this Part is amended by adopting a new subdivision (k) to read as follows:

(k) sever issues within a proceeding for purposes of issuing an Order and Determination with respect to certain issues while reserving other issues for subsequent determination.

Section 5

Section 2507.9 of this Part is repealed and a new section 2507.9 is adopted to read as follows:

2507.9 Judicial review.

(a) A proceeding for judicial review pursuant to article 78 of the Civil Practice Law and Rules may be instituted only to review a final order of the division pursuant to section 2506.2 of this Title. Such proceeding shall be brought within 60 days after the issuance of the order. The issuance date shall be defined as the date of the mailing of the order, plus five days.

(b) The petition for judicial review shall be brought in the supreme court in the county in which the subject housing accommodation is located and shall be served upon the division and the Attorney General. Service of the petition upon the DHCR shall be made by personal delivery of a copy thereof to Counsel's Office at the division's office, 25 Beaver Street, New York, New York 10004, or such address as may be designated by the commissioner, and to an Assistant Attorney General at an office of the New York State Attorney General in the City of New York.

Section 6

A new section 2507.10 of this Part is adopted to read as follows:

2507.10 Amendments to complaint or application.

(a) Right to amend. The division may authorize an amendment to a complaint or application at any time on good cause shown, except that an applicant or complainant shall have the right to amend the application or complaint in writing prior to the time within which an answer may be filed.

(b) Service. Any amendment to an application or complaint shall be served upon all affected parties in the same manner as the original application or complaint.

(c) Amended answer or reply. When an application or complaint is amended after an answer has been filed, all affected parties may file an amended answer or reply within the time provided for the answer or reply.

Section 7

A new section 2507.11 of this Part is adopted to read as follows:

2507.11 Advisory opinions and operational bulletins.

(a) The division may render advisory opinions as to the division's interpretation of the act, this Subchapter or procedures, on the division's own initiative or at the request of a party.

(b) In addition to the advisory opinion issued under subdivision (a), the division may take such other required and appropriate action as it deems necessary for the timely implementation of the act and this Subchapter and for the preservation of regulated rental housing in accordance with section 2500.13 of this Title. Such other action may include the issuance and updating of schedules, forms, instructions, and the official interpretative opinions and explanatory statements of general policy of the Commissioner, including Operational Bulletins, with respect to the act and this Subchapter.

Part 2507-A

Section 1

A new Part 2507-A of this Title is adopted to read as follows:

Part 2507-A PROCEDURES FOR HIGH INCOME RENT DECONTROL

Section 2507-A.1 Definitions.

(a) Annual income. For the purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York State income tax return.

(b) Total annual income. For the purposes of this section, total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section 226-b of the Real Property Law. Where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.

Section 2507-A.2 Income Certification Forms (ICFs).

On or before the first day in May in each calendar year, commencing with May 1, 1994, the owner of each housing accommodation for which the legal regulated rent is two thousand dollars or more per month may provide the tenant or tenants residing therein with an income certification form (ICF) prepared by the division on which such tenant or tenants shall identify all persons referred to in subdivision (b) of section 2507-A.1 of this Part and shall certify whether the total annual income is in excess of two hundred fifty thousand dollars in each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and one hundred seventy five thousand dollars where the first of such two preceding calendar years is 1996 or later. Such ICF shall not require disclosure of any income

information other than whether the aforementioned threshold has been exceeded.

(a) Such ICF form shall state that:

(1) the income level certified to by the tenant may be subject to verification by the Department of Taxation and Finance (DTF) pursuant to section 171-b of the Tax Law;

(2) only tenants residing in housing accommodations which have a legal regulated rent of two thousand dollars or more per month are required to complete the certification form;

(3) tenants have protections available to them which are designed to prevent harassment;

(4) tenants are not required to provide any information regarding their income except that which is requested on the form.

(b) Such ICF form may:

(1) require tenants to state whether an occupant, such as a minor child, is not required to file a New York State income tax return;

(2) provide that the operative date for the determination of who is a tenant, co-tenant or occupant who must be identified on the ICF, and whose income, if any, will be included in total annual income, will be the date of service of the ICF upon the tenant;

(3) require the tenant to list all tenants, co-tenants, and other occupants whose incomes may be included in total annual income, and who vacated the housing accommodation within the calendar year in which the ICF is served, or within the two calendar years preceding the service of the ICF, and the dates on which such persons vacated the housing accommodation;

(4) require the tenant to include in total annual income the income of any such person who vacated the housing accommodation temporarily;

(5) request such other information as the division deems appropriate.

(c) Section 2508.1 of this Title to the contrary notwithstanding, the owner must serve the ICF by at least one of the following methods: personal delivery, certified mail, regular first class mail, or as otherwise provided in an Operational Bulletin issued pursuant to section 2507.11 of this Title. The owner shall obtain and retain, the following proofs of service:

(1) for personal delivery, a copy of the ICF signed and dated, by the tenant acknowledging receipt; or

(2) for certified mail, a United States Postal Service receipt stamped by the United States Postal Service; or

(3) for regular first class mail, a United States Postal Service Certificate of Mailing stamped by the United States Postal Service.

(d) The tenant or tenants shall return the completed certification to the owner within 30 days after service upon the tenant or tenants.

Section 2507-A.3 Procedure where total annual income as certified on ICF exceeds threshold.

In the event that the total annual income as certified is in excess of two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each such year, whichever applies, as provided in section 2507-A.2 of this Part, the owner may file an owner’s petition for

deregulation (OPD), accompanied by the ICF, with the division on or before June 30 of such year. The division shall issue within 30 days after the filing of such OPD, an order providing that such housing accommodation shall not be subject to the provisions of the act and this Subchapter upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner. Service shall be deemed to be complete upon mailing by the division.

Section 2507-A.4 Procedure where tenant fails to return ICF or owner disputes certification.

(a) In the event that the tenant or tenants either fail to return the completed ICF to the owner on or before the date required by subdivision (d) of section 2507-A.2 of this Part or the owner disputes the certification returned by the tenant or tenants, the landlord may, on or before June 30 of such year, file an owner's petition for deregulation (OPD) which petitions the division to verify, pursuant to section 171-b of the Tax Law, whether the total annual income exceeds two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each of the two preceding calendar years, whichever applies, as provided in section 2507-A.2 of this Part.

(b) Within 20 days after the filing of such request with the division, the division shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the division with such information as the division and the DTF shall require to verify whether the total annual income exceeds two hundred fifty thousand dollars or one hundred seventy-five thousand dollars, whichever applies, in each such year.

(1) The tenant or tenants are required to submit a photocopy of either the preprinted mailing labels used on the New York State income tax returns for the applicable years, or the first page of the New York State income tax returns for the applicable years, for each tenant or occupant whose income is to be included in the total annual income pursuant to subdivision (b) of section 2507-A.1 of this Part, or in the event neither is available, a written explanation indicating why such income tax returns were not filed for the applicable years.

(2) The tenant or tenants shall delete all social security numbers and income figures from all preprinted mailing labels or tax returns submitted. For any tenant or occupant who the tenant reports did not file a New York State income tax return for any applicable year, the tenant or occupant's name and address must be supplied on an appropriate form prescribed by the division as it would have appeared had that tenant or occupant filed such return.

(3) The tenant or tenants shall provide the information to the division within 60 days of service of the notice upon such tenant or tenants, which notice shall include a warning in bold faced type setting forth the requirement that failure to respond by not providing any information requested by the division will result in an order being issued by the division providing that such housing accommodation shall not be subject to the provisions of the act and this Subchapter. Section 2508.1 of this Title to the contrary notwithstanding, the tenant or tenants shall be required to retain proof of the delivery of such information to the division, which proof shall consist of either, where delivery is made personally, a copy of the response with a timely DHCR date stamp acknowledging receipt, or where delivery is made by certified mail, a

United States Postal Service receipt stamped by the United States Postal Service, or where delivery is made by regular first class mail, a United States Postal Service Certificate of Mailing, stamped by the United States Postal Service; or as otherwise provided in an Operational Bulletin issued pursuant to section 2507.11 of this Title. Service shall be deemed to be complete upon mailing in accordance with Section 2507-A.7 of this Part.

Section 2507-A.5 Determination by Department of Taxation and Finance (DTF).

If the DTF determines that the total annual income is in excess of two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each of the two preceding calendar years, whichever applies as provided in section 2507-A.2 of this Part, the division shall, on or before November 15 of the year in which DTF makes such determination, notify the landlord and tenants of the results of such verification. Both the landlord and the tenants shall have 30 days within which to comment on such verification results. Within 45 days after the expiration of the comment period, the division shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of the act upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner. Where the DTF determines that the income threshold has not been met, the division shall issue an order denying the OPD. If the DTF cannot ascertain whether the threshold has been met, the division may issue an order denying the OPD, or request additional information.

Section 2507-A.6 Procedure where tenant fails to provide information for determination by Department of Taxation and Finance (DTF).

In the event the tenant or tenants fail to provide the information required pursuant to section 2507-A.4 of this Part, the division shall, on or before the next December 1, issue an order providing that such housing accommodation shall not be subject to the provisions of the act and this Subchapter upon the expiration of the current lease. A copy of such order of decontrol shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

Section 2507-A.7 Mailing of submissions relating to high-income decontrol.

Where a deadline for submission is specified in this paragraph for submissions by owner or tenant to the division, such submission must be filed in person or by mail, or as otherwise provided in an Operational Bulletin issued pursuant to section 2507.11 of this Title, by such deadline. If the submission is filed by mail, it must be postmarked no later than such deadline. If the prepaid postage on the envelope in which the submission is mailed is by private postage meter, and the envelope does not have an official United States Postal Service postmark, then the submission will not be considered timely filed unless received by such deadline, or other adequate proof that the submission was mailed by the date specified, such as an official Postal Service receipt or certificate of mailing is submitted.

Section 2507-A.8 Lease riders regarding high-income decontrol.

Where a lease rider regarding decontrol on the basis of high income, as provided for in subdivision (c)(7) of section 2502.5 of this Title is used, an order of decontrol shall take effect upon the date

specified in such rider.

Section 2507-A.9 Jurisdictional authority.

The expiration of the time periods prescribed in this Part for action by the division shall not divest the division of its authority to process petitions filed pursuant to this Part in accordance with the above procedures, and to issue final determinations pursuant to this Part.

PART 2508 MISCELLANEOUS PROCEDURAL MATTERS

Section 1

Subdivision (a) of section 2508.1 of this Part is amended to read as follows:

(a) Notices, orders, [protests] petitions for administrative review, answers and other papers may be served personally [or], by mail, or electronically, as provided in an Operational Bulletin issued pursuant to section 2507.11 of this Title. [When] Except as otherwise provided by section 2510.2 or Part 2507-A of this Title, when service other than by the division, is made personally or by mail, [an] a contemporaneous affidavit providing dispositive facts by the person making the service or mailing shall constitute sufficient proof of service. When service is by registered or certified mail, the [return] stamped post office receipt shall constitute sufficient proof of service. Once sufficient proof of service has been submitted to the division, the burden of proving non-receipt shall be on the party denying receipt.

PART 2509 REGISTRATION OF HOUSING ACCOMMODATIONS

Section 1

Subdivisions (a) and (b) of section 2509.1 of this Part are repealed, and subdivisions (c) and (d) are renumbered subdivisions (a) and (b), respectively.

Section 2

Section 2509.3 of this Part is amended to read as follows:

Section 2509.3 Penalty for failure to register.

(a) The failure to [file a proper and timely initial or annual rent registration statement as required by] properly and timely comply, on or after the base date, with the rent registration requirements of this Part shall, until such time as such registration is [filed] completed, bar an owner from applying for or collecting any rent in excess of [the legal regulated rent in effect on the date of the last preceding registration statement or, if no such statements have been filed, the legal regulated rent on the date that the housing accommodation became subject to the registration requirements of this Part] the base date rent, plus any increases allowable prior to the failure to register. The filing of a late registration shall result in the prospective elimination of such sanctions, and for proceedings commenced on or after July 1, 1991, provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, an owner, upon the service and filing of a late registration, shall not be found to have collected rent in excess of the legal regulated rent at any time prior to the filing of the late registration.

Nothing herein shall be construed to permit the examination of a rental history for the period prior to four years before the commencement of a proceeding pursuant to sections 2502.3 and 2506.1 of this Title.

(b) The failure to pay any administrative fees imposed by the act shall constitute a charge due and owing the city, town or village that has imposed such fees, and no penalty for such failure to pay shall be imposed pursuant to this Subchapter.

PART 2510 ADMINISTRATIVE REVIEW

Section 1

Subdivision (a) of section 2510.1 of this Part is amended to read as follows:

(a) Any person aggrieved by [these regulations or by] an order issued by a district rent administrator may file a petition for administrative review (PAR) to the commissioner in the manner provided in this Part.

Section 2

Section 2510.2 of this Part is repealed and a new section 2510.2 is adopted to read as follows:

2510.2 Time for filing a PAR.

A PAR against an order of a rent administrator must be filed in person, by mail, or as otherwise provided by Operational Bulletin with the division within thirty-five days after the date such order is issued. A PAR served by mail must be postmarked not more than thirty-five days after the date of such order, to be deemed timely filed. If the prepaid postage on the envelope in which the PAR is mailed is by private postage meter, and the envelope does not have an official U.S. Postal Service

postmark, then the PAR will not be considered timely filed unless received within the aforementioned thirty-five days or the petitioner submits other adequate proof of mailing within said thirty-five days, such as an official Postal Service receipt or certificate of mailing.

Section 3

Section 2510.3 of this Part is repealed and a new section 2510.3 is adopted to read as follows:

Section 2510.3 Scope of Review.

Review pursuant to this Part shall be limited to the facts or evidence before a district rent administrator as raised in the petition. Where the petitioner submits with the petition certain facts or evidence which he or she establishes could not reasonably have been offered or included in the proceeding prior to the issuance of the order being appealed, the proceeding may be remanded for determination to the district rent administrator to consider such facts or evidence.

Section 4

Section 2510.4 of this Part is repealed and a new section 2510.4 is adopted to read as follows:

2510.4 Form and content of a PAR.

A PAR may be filed only on a form prescribed by the division, which shall be verified or affirmed by the party filing same, or his or her duly designated representative, and which shall have attached thereto a complete copy of the order to be reviewed.

Section 5

Section 2510.5 of this Part is repealed and a new section 2510.5 is adopted to read as follows:

2510.5 Service and filing of a PAR.

(a) Each PAR shall be filed in an original and one copy at the Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall Street, Jamaica, New York 11433, unless otherwise provided on the form prescribed by the commissioner for such PAR.

(b) A copy of the PAR shall be served by the division upon the adverse party.

(c) A PAR will not be accepted for filing unless accompanied by a complete copy of the order to be reviewed.

Section 6

Section 2510.6 of this Part is repealed and a new section 2510.6 is adopted to read as follows:

2510.6 Time of filing an answer to a PAR.

Any person served with a PAR as provided in subdivision (b) of section 2510.5 of this Part, may, within twenty days from the date of mailing of a copy of the PAR by the division pursuant to section 2510.5(b) of this Part, file a verified or affirmed answer thereto, by filing the same with the division. A copy of such answer to the PAR shall be served by the division upon the adverse party. The commissioner may, in his discretion, and for good cause shown, extend the time within which to answer.

Section 7

Section 2510.10 of this Part is repealed and a new section 2510.10 is adopted to read as follows:

2510.10 Time within which the commissioner shall take final action.

If the commissioner does not act finally within a period of ninety days after a PAR is filed, or within such extended period as provided for herein, the PAR may be "deemed denied" by the Petitioner for the purpose of commencing a proceeding pursuant to section 2510.12 of this Part. The commissioner may, however, grant one such extension, not to exceed thirty days, with the consent of the party filing the PAR; any further extension may only be granted with the consent of all parties to the PAR. Unless a proceeding for judicial review pursuant to article 78 of the Civil Practice Law and Rules has been commenced, the commissioner shall determine a PAR notwithstanding that such ninety day or extended period has elapsed.

Section 8

Section 2510.11 of this Part is repealed and a new section 2510.11 is adopted to read as follows:

2510.11 Stays.

The filing of a PAR against an order, other than an order adjusting, fixing or establishing the legal regulated rent, shall stay such order until the final determination of the PAR by the commissioner. Notwithstanding the above, that portion of an order fixing a penalty pursuant to subdivision (a) of section 2506.1 of this Title, that portion of an order resulting in a retroactive rent adjustment pursuant to section 2503.4 of this Title, that portion of an order resulting in a retroactive

rent decrease pursuant to section 2502.3 of this Title, and that portion of an order resulting in a retroactive rent increase pursuant to section 2502.4(a)(1), (c) and (d) of this Title, shall also be stayed by the timely filing of a PAR against such orders until sixty days have elapsed after the determination of the PAR by the commissioner. However, an order granting a rent adjustment pursuant to paragraph (2) of subdivision (a) of section 2502.4 of this Title, against which there is no PAR filed by a tenant that is pending, shall not be stayed. Nothing herein contained shall limit the commissioner from granting or vacating a stay under appropriate circumstances, on such terms and conditions as the commissioner may deem appropriate.

Section 9

Section 2510.12 of this Part is repealed and a new section 2510.12 is adopted to read as follows:

2510.12 Judicial review.

(a) A proceeding for judicial review pursuant to article 78 of the Civil Practice Law and Rules may be instituted only to review a final order of the commissioner pursuant to section 2510.8 of this Part, or after the expiration of the 90 day or extended period within which the commissioner may determine a PAR pursuant to section 2510.10 of this Part, and which, therefore, may be "deemed denied" by the petitioner. For the purposes of this section, an order of remand to a district rent administrator, unless for limited or ministerial purposes only, and which the commissioner has designated as a final determination, and orders reopening a PAR proceeding, are not final orders. The petition for judicial review shall be brought within 60 days after the issuance of such order, in the supreme court in the county in which the subject housing

accommodation is located and shall be served upon the division and the Attorney General. Issuance date is defined as the date of mailing of the order, plus 5 days.

(b) Judicial review of a PAR order shall be limited (1) to the party who filed the PAR or, if the PAR determination modified or reversed the district rent administrator's order, anyone aggrieved thereby, and (2) to issues raised in the PAR, or which are directly related to any modification of the administrator's order. A party aggrieved by a PAR order issued after the 90 day or extended period of time within which the petitioner could deem his or her petition denied pursuant to section 2510.10 of this Title, shall have 60 days from the date of such order to commence a proceeding for judicial review, notwithstanding that 60 days have elapsed after such 90 day or extended deemed denial period has expired.

(c) Service of the petition upon the DHCR shall be made by personal delivery of a copy thereof to Counsel's Office at the DHCR’s [principal] office, [One Fordham Plaza, Bronx, New York 10458] 25 Beaver Street, New York, New York 10004, or such other address as may be designated by the commissioner, and to an Assistant Attorney General at an office of the New York State Attorney General in the City of New York.