George E. Pataki
Governor

Judith A. Calogero
Commissioner

New York State Division of Housing and Community Renewal
25 Beaver Street
New York, NY 10004

DEC 22 2006

December 19, 2006

Administrative Regulations Review Commission
New York State Assembly
Albany, NY 12248

Re: Adoption of Amendment of Subchapter B of Chapter VIII of Subtitle S of Title 9 NYCRR - Rent Stabilization Code

Dear Sir or Madam,

Pursuant to Executive Law, Section 101-a, and Article 2 of the State Administrative Procedure Act, notice is hereby given of the adoption of amendments to Subchapter B of Chapter VIII of Subtitle S of Title 9 NYCRR, the Rent Stabilization Code (RSC).

1. These amendments are being adopted pursuant to the authority granted by Chapter 888 of the Laws of New York for the year 1985.

2. A public hearing was required by law before adoption of such amendments, and was held on December 4, 2006. Opportunity was made available for submission of public comments, including data, views or arguments, may be submitted to Maurice Jamison, Special Assistant to the Deputy Commissioner for the Office of Rent Administration, New York State Division of Housing and Community Renewal, 92-31 Union Hall Street, Jamaica, NY 11433, telephone number (718) 262-4816.

3. Attached are copies of:

a. Notice of Adoption

b. Assessment of Public Comments

c. Certification

d. Complete Revised Text of Proposed Rule

e. Revised Summary of Proposed Rule submitted to the State Register for publication, in lieu of the complete text, as such text exceeds 2,000 words

f. Revised Regulatory Impact Statement

g. Revised Regulatory Flexibility Analysis

h. Rural Area Flexibility Analysis

i. Job Impact Statement

Sincerely,

Paul A. Roldan
Deputy Commissioner

Enclosures

George E. Pataki
Governor

Judith A. Calogero
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
25 Beaver Street
New York, NY 10004

CERTIFICATION

I, Paul A. Roldan, Deputy Commissioner, having been duly authorized in writing filed with the New York State Department of State, hereby certify that the attached amendments to Parts 2520, 2522, 2524, 2525, 2527, 2529 and 2530 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York was duly adopted by me, on Tuesday, December 19, 2006, pursuant to authority vested in the Division of Housing and Community Renewal by the Administrative Code of the City of New York, Section 26-511(b). These amendments shall be effective upon publication of a Notice of Adoption in the State Register.

The notice of proposed rule making for these amendments was published in the State Register on October 18, 2006 under ID No. HCR-42-06-00021-P. No other publication of prior notice was required by statute.

December 19, 2006

Paul A. Roldan
Deputy Commissioner

Paul Roldan
Signature

REVISED TEXT - RENT STABILIZATION CODE

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

The Rent Stabilization Code as amended and adopted pursuant to the powers granted to the Division of Housing and Community Renewal by section 26-511(b) of the Administrative Code of the City of New York, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.0[b] as amended by Laws of 1985, Chap. 888, section 2), and section 26-518(a) of such Code, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.1[a] as added by Laws of 1985, Chap. 888, section 8), is amended to read as follows:

PART 2522 RENT ADJUSTMENTS

Section 1

Paragraph (1) of subdivision (a) of section 2522.4 of this Part is repealed, and a new paragraph (1) is hereby adopted to read as follows:

(1) An owner is entitled to a rent increase on the following grounds:

(i) Where there has been a substantial increase, other than an increase for which an adjustment may be claimed pursuant to paragraph (2) of this subdivision, of dwelling space or an increase in the services, or the installation of new equipment or improvements, or new furniture or furnishings, provided in or to the tenant's housing accommodation, on written consent of the tenant to the rent increase. In the case of vacant housing accommodations, tenant consent shall not be required.

(ii) Where work has been performed to abate lead-based paint in an unoccupied apartment subject to the requirements of Local Law 1 of 2004 of the City of New York, or of any successor thereto, regarding the prevention of childhood lead poisoning.

Section 2

Subparagraph (iii) of paragraph (2) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(iii) With the approval by the DHCR, there has been an increase in services or improvements, 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, including, but not limited to, the abatement of lead-based paint throughout the common areas of a building and any occupied apartment subject to the requirements of Local Law 1 of 2004 of the City of New York, or of any successor thereto, regarding the prevention of childhood lead poisoning.

Section 3

Subparagraph (iii) of paragraph (3) of subdivision (d) of section 2522.4 of this Part is amended to read as follows:

(iii) Recipients of senior citizen rent increase exemptions (SCRIE) or disability rent increase exemptions (DRIE). For a tenant who on the date of the conversion is receiving a SCRIE or DRIE authorized by section 26-509 of the Rent Stabilization Law of Nineteen Hundred Sixty-nine, the rent is not reduced and the cost of electricity remains included in the rent, although the owner is permitted to install any equipment in such tenant's housing accommodation as is required for effectuation of electrical conversion pursuant to this paragraph.

(a) After the conversion, upon the vacancy of the tenant, the owner, without making application to DHCR, is required to reduce the legal regulated rent for the housing accommodation in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter [the] any subsequent tenant is responsible for the cost of his or her consumption of electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion.

(b) After the conversion, if a tenant ceases to receive a SCRIE or DRIE, the owner, without making application to DHCR, may reduce the rent in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter the tenant is responsible for the cost of his or her consumption of

electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion, for as long as the tenant is not receiving a SCRIE or DRIE. Thereafter, in the event that the tenant resumes receiving a SCRIE or DRIE, the owner, without making application to DHCR, is required to eliminate the rent reduction and resume responsibility for the tenant's electric bills.

PART 2524 EVICTIONS

Section 1

Subdivision (a) of section 2524.3 of this Part is amended to read as follows:

(a) The tenant is violating a substantial obligation of his or her tenancy other than the obligation to surrender possession of such housing accommodation, and has failed to cure such violation after written notice by the owner that the violations cease within ten days; or the tenant has willfully violated such an obligation inflicting serious and substantial injury upon the owner within the three month period immediately prior to the commencement of the proceeding. If the written notice by the owner that the violations cease within ten days is served by mail, then five additional days, because of service by mail, shall be added, for a total of 15 days, before an action or proceeding to recover possession may be commenced after service of the notice required by section 2524.2 of this Part.

Section 2

Subdivision (e) of section 2524.3 of this Part is amended to read as follows:

(e) The tenant has unreasonably refused the owner access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or authorized by the DHCR, or for the purpose of inspection or showing the housing accommodation to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that in the latter event such refusal shall not be a ground for removal or eviction unless the tenant shall have been given at least 5

days notice of the inspection or showing, to be arranged at the mutual convenience of the tenant and owner so as to enable the tenant to be present at the inspection or showing, and that such inspection or showing of the housing accommodation is not contrary to the provisions of the tenant's lease or rental agreement. If the notice of inspection or showing is served by mail, then the tenant shall be allowed five additional days to comply, for a total of ten days because of service by mail, before such tenant's refusal to allow the owner access shall become a ground for removal or eviction.

Section 3

Subdivision (g) of section 2524.3 of this Part is amended to read as follows:

(g) For housing accommodations in hotels, the tenant has refused, after at least 20 days' written notice, and an additional five days if the written notice is served by mail, to move to a substantially similar housing accommodation in the same building at the same legal regulated rent where there is a rehabilitation as set forth in section 2524.5(a)(3) of this Part, provided:

Section 4

A new subdivision (i) of section 2524.3 of this Part is adopted to read as follows:

(i) The tenant, not including subtenants or occupants, does not occupy the housing accommodation as his or her primary residence. Except as otherwise provided in this Code, this provision shall not preclude an owner from refusing to renew a lease pursuant to subdivision (c) of section 2524.4 of this Part.

Section 5

Subdivision (c) of section 2524.4 of this Part is amended to read as follows:

(c) *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; provided, however, that no action or proceeding shall be commenced seeking to recover possession on the ground that the housing accommodation is not occupied by the tenant as his or her primary residence unless the

owner or lessor shall have given 30 days' notice to the tenant of his or her intention to commence such action or proceeding on such grounds. Such notice may be combined with the notice required by section 2524.2(c)(2) of this [Title] Part. Except as otherwise provided in this Code, this provision shall not preclude an owner from commencing a proceeding pursuant to subdivision (i) of section 2524.3 of this Part.

PART 2525 PROHIBITIONS

Section 1

Section 2525.4 of this Part is amended to read as follows:

Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no owner, in addition to the authorized collection of rent, shall demand, receive or retain a security deposit or advance payment for or in connection with the use or occupancy of a housing accommodation which exceeds the rent for one month, provided however, that where a greater security deposit was paid by the tenant in continuous occupancy since the date the housing accommodation became subject to the RSL, such deposit may continue in effect during the term of such lease and any renewals thereof with the same tenant, except no owner, in addition to the authorized collection of rent, 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 65 years of age or older which exceeds the rent of one month for any lease or lease renewal entered into after July 1, 1996; further provided, however, with respect to initial leases entered into after February 1, 2007, and any renewals thereof, 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 which exceeds the rent for two months, except where the use or occupancy of a housing accommodation is by a tenant who is 65 years of age or older, the rent for such housing accommodation is paid in part or in full by a governmental entity, or the tenant is receiving disability retirement benefits or supplemental security income pursuant to the federal social security act. Under such exceptions, the security deposit shall not exceed the rent for one month, for so long as the

subject exceptions exist. Such security deposit shall be subject to the following conditions:

(a) the security deposit shall be deposited in an interest-bearing account in a banking organization in New York State;

(b) the person depositing such security money shall be entitled to receive, as administrative expenses, a sum equivalent to one percent per annum upon the security money so deposited;

(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

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

PART 2527 PROCEEDINGS BEFORE THE DHCR

Section 1

Section 2527.9 of this Part is amended by adopting new subdivisions (c) and (d) to read as follows:

(c) Unless otherwise expressly provided in this Code, no additional time is required for service by mail of any notice, order, answer, lease offer or other papers, beyond the time period set forth in this Code and such time period provided is inclusive of the time for mailing.

(d) Unless otherwise expressly provided in this Code, no additional time is required to respond or to take any action when served by mail with any notice, order, answer, lease offer, or other papers, beyond the time period set forth in this Code and the time to respond is commenced upon mailing of said notice, order, answer, lease offer, or other paper.

PART 2529 ADMINISTRTIVE REVIEW

Section 1

Section 2529.2 of this Part is amended to read as follows:

A PAR against an order of a rent administrator must be filed in person, or by mail, or otherwise as provided by operational bulletin, with the DHCR within 35 days after the [date] issuance of such order [is

issued]. Issuance date is defined as the date of mailing. A PAR served by mail must be postmarked not more than 35 days after the [date] issuance 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 35 days or the petitioner submits other adequate proof of mailing within said 35 days, such as an official Postal Service receipt or certificate of mailing.

PART 2530 JUDICIAL REVIEW

Section 1

Section 2530.1 of this Part is amended to read as follows:

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 DHCR pursuant to section 2526.2(c)(2) of this Title; or to review a final order of the commissioner pursuant to section 2529.8 of this Title; or after the expiration of the 90 day or extended period within which the commissioner may determine a PAR pursuant to section 2529.11 of this Title, and which, therefore, may be "deemed denied" by the petitioner. 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 DHCR and the Attorney General. A proceeding for judicial review of an order issued pursuant to section 2526.2(c)(2), or section 2529.8 of this Title shall be brought within 60 days after the issuance of such order. Issuance date is defined as the date of mailing of the order; no additional time is allowed by virtue of mailing. 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 2529.11 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. Service of the petition upon the DHCR shall be made by either:

(a) personal delivery of the notice of petition and petition to Counsel's Office at the DHCR's office, 25 Beaver Street, New York, New York 10004, or such other address as may be designated by the commissioner, and delivering a copy thereof to an Assistant Attorney General at an office of the New York State Attorney General within the State; or

(b) by such other method as is authorized by the Civil Practice Law and Rules.

For Department of State use only

Notice of Adoption

Division of Housing & Community Renewal
(SUBMITTING AGENCY)

ATTACHMENTS SUBMITTED [x] **E-MAIL** (nysregister@dos.state.ny.us)
[ ] **DISK**

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms and nonscannable text attachments will be cause for rejection of this notice.

1. *Action taken:*

Amendment of Parts 2522, 2524, 2525, 2527, 2529 and 2530 of Title 9 NYCRR

[ ] "X" box if the rule was originally proposed as a consensus rule making.

2. *Effective date of rule:*

[ ] Date this notice is published in the *State Register*.

[ ] This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:

[ ] Date of filing.

[ ] Other date (*specify*): _____

[x] Other date (*specify*): January 9 2007

3. *Statutory authority under which the rule was adopted:*

Section 26-511(b) of the Administrative Code of the City of New York

4. *Subject of the rule:*

Rent Stabilization Code (RSC)

5. *Purpose of the rule:*

To conform the RSC to amendments promulgated in 2005 to the RPTL and the NYC Administrative Code adopting DRIE, and to the Court of Appeals holding in ATM v. Landaverde, 779 NYS2d 808 (2004).

6. *Terms and identification of rule:*

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: HCR-42-06-00021-P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

[ ] No changes were made to the proposed rule.

• *Do NOT attach the text of the previously published rule. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C, if applicable, as well as remaining items 7-8 and 13-14.*

[X] Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

2520	2525		

• *Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip items 9-12; revised statements or explanatory statements are required.*

[ ] Text attached.

[X] Summary attached.

[ ] This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of **revised** rule making:

Publication date: _____, I.D. No. _____

Publication date: _____, I.D. No. _____

7. *The text of the final rule and any required statements and analyses may be obtained from:*

Agency contact Maurice Jamison, Special Assistant to the Deputy Commissioner

Agency name DHCR, Office of Rent Administration

Office address 92-31 Union Hall Street

Jamaica, NY 11433

Telephone 718-262-4816 *E-mail:* _____

8. *Additional matter required by statute:*

[ ] Yes (include material required by statute).

[X] No additional material required by statute.

9. ***Revised Regulatory Impact Statement (RIS)***

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

[X] The full text of the Revised RIS.

[ ] A summary of the Revised RIS.

B. A **statement is attached** explaining why a revised RIS is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published RIS.

[ ] This is a technical amendment exempt from SAPA §202-a.

C. [ ] A revised RIS is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

10. ***Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments***
(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RFA contains:

[X] The full text of the Revised RFA.

[ ] A summary of the Revised RFA.

B. A **statement is attached** explaining why a revised RFA is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published RFA.

[ ] The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. [ ] A revised RFA is **not attached** because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

11. ***Revised Rural Area Flexibility Analysis (RAFA)***
(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RAFA contains:

[ ] The full text of the Revised RAFA.

[ ] A summary of the Revised RAFA.

B. A **statement is attached** explaining why a revised RAFA is not required (check one box):

[X] Changes made to the last published rule do not necessitate revision to the previously published RAFA.

[ ] The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. [ ] A revised RAFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

12. ***Revised Job Impact Statement (JIS)***
(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised JIS contains:

[ ] The full text of the Revised JIS.

[ ] A summary of the Revised JIS.

B. A **statement is attached** explaining why a revised JIS is not required (check one box):

[X] Changes made to the last published rule do not necessitate revision to the previously published JIS.

[ ] The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

C. A revised JIS is **not** attached because:

[ ] This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

[ ] This rule was proposed by the State Comptroller or Attorney General.

13. ***Assessment of Public Comment*** *(includes legislative comments) (check applicable box):*

A. [X] 45-day minimum comment period is complete (Full text was submitted with proposal or summary of text was submitted with the proposal and the full text was posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])

[ ] 60-day minimum comment period is complete (Summary of text was submitted with the proposal and the full text was not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])

B. (COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

[X] Attached is an **assessment of public comment.**
No particular form is required, and it need only include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.

[ ] An assessment is not attached because no comments were received.

[ ] An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. *Referenced material (check one box):*

[X] No information is being incorporated by reference in this rule.

[ ] This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

_____ _____ _____ _____

_____ _____ _____ _____

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Paul A. Roldan, Dep. Commissioner *Signature* Paul A Roldan

Address 92-31 Union Hall Street, Gertz Plaza, Jamaica, New York 11433

Telephone 718-262-4822 *E-mail* _____

Date December 19, 2006

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.

2. **Collate the original notice and attachments** as: (1) form; (2) text or summary of rule; and, *if any*, (3) regulatory impact statement, (4) regulatory flexibility analysis for small businesses and local governments, (5) rural area flexibility analysis, (6) job impact statement, (7) assessment of public comment. Submit the originals, as collated, **and ONE copy of that collated set.** When filing any type of agency adoption, also submit an original certification stapled to rule text — **and TWO copies of that set.**

3. **Mail or hand deliver hard copy of rule making package to:** Department of State, Division of Administrative Rules, 41 State Street, Suite 330, Albany, NY 12231-0001

4. **E-mail required attachments to:** nysregister@dos.state.ny.us **or attach** a disk containing required material.

REVISED SUMMARY - RENT STABILIZATION CODE

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

PART 2522 RENT ADJUSTMENTS

Owners would be eligible for an individual apartment improvement rent increase where lead paint is removed from a vacant apartment, and a major capital improvement rent increase where lead paint is removed from common areas and occupied apartments.

DRIE recipients would be treated as SCRIE recipients with regard to including the cost of electricity in their respective rents upon conversion to electrical exclusion. Therefore, such tenants would not be responsible for individual electrical bills.

PART 2524 EVICTIONS

Per the Court of Appeals ruling in ATM V. LANDAVERDE, 779 NYS2d 808 (2004), the period to cure would be extended five (5) days if an owner elects to serve a tenant by mail with a notice to cease violations, notice of inspection, or notice to move within a hotel.

An owner would be able to either commence a proceeding to recover possession of a housing accommodation based upon non-primary residence, without the prior approval of DHCR if notice is provided per the requirements of section 2524.2 or, in the same situation, refuse to renew the subject tenant's lease.

PART 2525 PROHIBITIONS

Owners would be able to collect up to a two-month security deposit for tenancies commenced after October 1, 2006, except where tenants are 65 or older, or where the subject rent is paid in part, or in full, by a governmental entity. Under such exceptions, the security deposit shall not exceed the rent for one month, for so long as the subject exceptions exist.

PART 2527 PROCEEDINGS BEFORE THE DHCR

No additional time is required for service by mail beyond the time period set forth in this code. Nor is any additional time required to respond or to take any action when served by mail beyond the time period set forth in this code.

PART 2529 ADMINISTRATIVE REVIEW

The issuance date of an order would be defined as the date of mailing, and a PAR served by mail must be postmarked not more than 35 days after issuance of such order to be deemed timely filed.

PART 2530 JUDICIAL REVIEW

The issuance date of an order against which an Article 78 is filed is defined as the date of mailing of the order; no additional time is allowed by virtue of mailing.

REGULATORY IMPACT STATEMENT

1. STATUTORY AUTHORITY

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

2. LEGISLATIVE OBJECTIVES

The proposed rule making is necessary to implement Chapter 188 of the Laws of 2005 (New York State) and Local Law 76 of 2005 (New York City), adopting the Disability Rent Increase Exemption (DRIE).

3. NEEDS AND BENEFITS

In addition to the Legislative Objectives detailed in item 2 above, the subject amendments are also necessary to implement the New York State Court of Appeals' holding in ATM One, LLC v. Landaverde, 2 N.Y.3d 472, 779 N.Y.S.2nd 808 (2004), wherein the Court held that a landlord's written notice of default to a rent stabilized tenant, if served by mail, must add five days to the cure period.

Affected tenants benefit from the proposed DRIE revisions because they qualify for exemption from future guidelines increases and increases based on the owner's economic hardship or major capital improvements (MCI's). Affected owners may offset any loss in rental income resulting from DRIE, through a dollar-for-dollar reduction in real estate taxes. Thus owners are not penalized in order for the exemption to be realized.

Allowing owners the option of collecting a two-month security deposit for new tenancies provides for the continued viability of the housing stock for future tenancies and will provide a tangible security deposit collectible when necessary. The present system generally results, as noted in the comments submitted, in the "living off" of

the one month security rather than it being available for actual damage or wear and tear. However, an owner would not be required to demand security deposits of up to two months and could not charge it for existing tenancies.

Where owners remove hazardous lead paint in order to meet the requirements of law, it would be equitable that the regulations be clarified to assure such projects qualify for rent increases as improvements mandated by law or individual apartment improvements. Tenants benefit because a known health hazard is eliminated rather than remediated, and the owner benefits because such projects are accorded appropriate treatment under the Code.

Tenants should not be allowed to occupy an apartment as other than his or her primary because a notice of termination it is outside the window in which a tenant would be entitled to a lease renewal. As court proceedings will still be required, such an amendment would not violate the due process rights of tenants.

4. COSTS

a. The regulated parties are residential tenants and the owners of the rent stabilized buildings in which such tenants reside.

Neither tenants nor owners are expected to experience any increase in costs associated with implementing DRIE regulations. In fact, affected tenants will experience a "rent freeze," as they would be exempt from certain rent increases. Nor are tenants or owners expected to experience any increase in costs associated with implementing regulations adding five days to certain notices sent by mail, excluding certain other notices from any additional time if mailed.

A two-month security deposit for new tenancies does not affect current tenancies and therefore, is not an increase in costs for owners or tenants. Such deposits remain subject to, and refundable by, article 7 of the General Obligations Law and the subject lease agreements. The regulations reflect exceptions to two-month security deposits created by the State Legislature as well as for other tenants who need governmental assistance in order to meet their rent obligations as well as for senior citizens and grandfather in existing tenancies.

Allowing owners the option of recovering possession of an apartment not occupied by the tenant as his or her primary residence more than 150 days prior to the expiration of a lease term, ("window period") merely creates additional flexibility in the limited instances where an owner does pursue such recourse, and imposes no additional costs on owners or tenants. The additional claims of costs are largely speculative. Theoretically, an owner could bring more than one non-primary residence proceeding during a lease term. Realistically, such occasions would be limited given the length of time necessary to pursue a non-primary residence proceeding to conclusion and the Res Judicata effect given such determination if a new proceeding is commenced in close time proximity without a change in circumstances. Moreover, a tenant may often be able to recover legal fees if successful. Rent Control has long allowed for such proceedings without a window period and any owner abuse may result in court or DHCR sanctions. The present circumstances which may allow a two-year grace period for behavior violative of the rent laws (or more if the proceeding is dismissed on a technical non-meritorious ground) does not serve the purposes which the non-primary residence provisions are designed to address.

Amending the regulations to allow owners to apply or obtain an appropriate rent increase for the removal of lead paint using either a building wide or Individual Apartment Improvement formula (depending on the circumstances) will raise rent. It is impossible to compute the actual cost to a tenant as such cost would be based upon the actual substantiated cost incurred by the subject owner less offsets for forgivable loans, grants and J-51. However, New York City's Independent Budget Office and commentators estimate the cost of remediation, where required, range primarily from $1,800 to $8,000 per unit and New York City provides for forgivable loans of up to $9,000 per unit. The rent increase formula for building wide improvements (eighty four months) has ameliorative provisions to mitigate the immediate rent burden on tenants. Making the rent increases building-wide is designed to further spread the increases through the property benefiting from the abatement, while shielding those most vulnerable, in-place families in need or abetment services, from the bulk of the costs. The Individual apartment

Improvement formula will be used for vacant apartments. As with DHCR rent increases in the MCI area, these increases will also be reduced by tax benefits afforded the owner by New York City. In addition, monies available through forgivable loans or grants will not be compensable and the only work which will be compensable will be for abatement rather than remediation.

b. DHCR costs are expected to be negligible. Otherwise, no additional costs are expected to be incurred by state or local governments as a result of adopting the proposed amendments.

c. Existing laws, regulations, agency policies and procedures form the basis upon which the above analysis is based.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

It is anticipated that the proposed amendments will result in some increase in paperwork with regard to the submission of DRIE applications (the New York City Department of Finance will process DRIE applications from tenants residing within the New York City area) and forms, and rent increase applications.

7. DUPLICATION

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

8. ALTERNATIVES

The proposed amendments implement statutory provisions and court decisions not yet reflected in the regulations. Additionally, the proposed amendments preserve the housing stock, serve the interests of equal treatment, equity, and do not violate due process rights. As indicated and discussed in the "NEEDS AND BENEFITS" and "COSTS" sections, and the assessment of comments, where there were significant alternatives,

DHCR explained why it selected the alternatives it did.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules. The present submission delays the effective date of these regulations. In addition, should the DHCR determine that delayed implementation is appropriate; section 2527.11 of the RSC authorizes the agency to take such action.

REVISED - REGULATORY FLEXIBILITY ANALYSIS (FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS)

1. EFFECT OF RULE

The Rent Stabilization Code (RSC) applies only to rent stabilized housing units in New York City. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own limited numbers of rent stabilized units. The amended regulations are expected to have no burdensome impact on such small businesses.

These amendments to the RSC, which applies exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

Tenants located in New York City must submit their respective Disability Rent Increase Exemption applications to the New York City Department of Finance. With regard to major capital improvement rent increases based upon the removal of lead paint, it is expected that existing forms will be satisfactory. However, in any event, existing forms can be updated and amended where necessary.

The proposed amendments do not otherwise require regulated parties to perform any additional recordkeeping, reporting, or any other acts. There are no new compliance requirements placed on local governments.

3. PROFESSIONAL SERVICES

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

4. COMPLIANCE COSTS

There is no indication that this action will impose any significant costs upon small businesses or upon local governments.

5. ECONOMIC AND TECHNOLOGY FEASIBILITY

Compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

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

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided several parties and organizations with a demonstrated interest in rent regulation with the opportunity to make code amendment suggestions. The DHCR provided opportunity for comment to such organizations as the London Terrace Tenants Association, Community Housing Improvement Program, Inc., Legal Services of New York City, New York City Commission on Human Rights, City-Wide Tenants Coalition, and the Council of New York Cooperatives.

In addition, a Regulatory Agenda was both published in the State Register on June 29, 2005, and placed on DHCR's website, indicating that the agency was considering this proposed rule making, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Finally, a public hearing was held on December 4, 2006, at FIT, C Bldg, 27th St., between 7th and 8th Aves., New York, NY 10001-5992, and all interested parties were given an opportunity to comment, and all such comments were reviewed.

RURAL AREA FLEXIBILITY ANALYSIS - UNREVISED

Changes made to the last published rule do not necessitate revision to the previously published RAFA.

JOB IMPACT STATEMENT

Changes made to the last published rule do not necessitate revision to the previously published JIS.

RENT STABILIZATION CODE (RSC)

ASSESSMENT OF PUBLIC COMMENTS

The following assessment specifies the major substantive ISSUES raised in submissions on the amendments to the RSC, SIGNIFICANT ALTERNATIVES suggested, and sets forth DHCR's COMMENTARY in response thereto (which includes statements as to why any significant alternatives were not incorporated).

The period for the submission of public comments on these amendments ended December 11, 2006, and the assessment of comments received through that date is as follows:

TOPIC - LUXURY DECONTROL OF ACCOMMODATIONS IN RECEIPT OF RPTL 421-A and J-51 TAX BENEFITS

Issue: Promulgation of this rule change, subjecting accommodations in receipt of tax benefits pursuant to RPTL Sec. 421-a to luxury decontrol, usurps the power of the New York City Council by seeking to amend, by regulation, what the Council has established by local law, and is therefore ultra vires. The statement provides inadequate notice of the regulatory change as it failed to advise that the proposed change applied to J-51 as well as 421-a.

Significant Alternative: Generally, there were no significant alternatives suggested, other than DHCR should not promulgate this rule change.

Commentary: The regulatory change is in conformance with the 421-a and J-51 laws which provide for an exception from "luxury decontrol" provisions for those buildings subject to the rent stabilization law "by virtue" of these laws. If the buildings are independently subject to the RSL, due to their pre-1974 construction date for example, then the receipt of these benefits does not affect the applicability of the deregulation provisions. Accordingly, since 421-a generally involves new construction, this provision has limited applicability with respect to those

buildings. As implied in some of the comments the greater applicability with J-51. DHCR's position with respect to both 421-a and J-51 is in conformance with long standing DHCR interpretation, first established by opinion letter in 1996 and is reflected in the present regulation, even without the amendment as well in parallel provisions dealing with high rent/vacancy decontrol. DHCR believes that when the parties read the SAPA submissions as a whole, there was adequate notice to the public. However, in light of this issue and the concern that the amendment itself may create greater confusion rather than clarity, DHCR will withdraw it.

TOPIC - LEAD PAINT RENT INCREASES

Issue: Maintaining safe housing is the owner's responsibility. Owners should not benefit from a program in which there are forgivable government loans and grants to assist landlords in removing lead paint violations. Local Law 1 of 2004 does not require that owners abate lead paint on a building-wide basis, but to maintain the building, inspect them regularly for deterioration, and remediate any lead paint hazards. Passing on the costs will discourage complaints by tenants whose apartments need remediation. Remediation would not be depreciable under the Internal Revenue Code (IRC) as required for a Major Capital Improvement (MCI) and remediation is nothing more than required maintenance of services. The J-51 tax abatement program permits owners a tax credit when they permanently abate lead paint.

Significant Alternative: One significant alternative suggested was that DHCR not promulgate this rule change. Another was that DHCR substitute the term "remediation" for "abatement" in the proposed regulation.

Commentary: DHCR believes that many of the objections are in part based on either a misunderstanding of the regulation as proposed, or incorrect assumptions with respect to DHCR's intended method of implementation. DHCR acknowledges that there are alternative

methods of remediation other than abatement. Several objectors therefore believed that DHCR's use of the term abatement was therefore not accurate. This is incorrect; compensation under the regulation is limited to abatement rather than other forms of remediation. To the extent that such abatement is funded through forgivable loans or grants, increases should not be granted by DHCR or taken from tenants. Where there are tax abatements through J-51, available and received, any increases ordinarily allowed under these regulations should be modified to reflect the receipt of those benefits, just as it is under long standing DHCR policies and practices with respect to Major Capital Improvements. In addition to the above, DHCR's proposed method of compensation is designed to lessen the rent burden on any tenant who makes a complaint about lead paint by the use of a building wide compensation formula. Increase for Abatement in vacant apartments may only be added to the vacant apartment's rent. The IRC depreciability standards are not necessarily applicable as regulations being amended refer to improvements required by law rather than the MCI provisions.

TOPIC – TWO-MONTH SECURITY DEPOSIT

Issue: This rule change would impose a heavy burden on tenants, as rents have never been higher. Building owners agreed to limit the collection of security deposits to one month when they created the first code with the approval of the New York City Department of Housing Preservation and Development. This rule change provides owners more devices to harass tenants, and makes moving into rent-regulated housing less affordable, which is contrary to the very purpose of rent regulation. Owners have not asserted a compelling need for the additional monies. The regulation should also reflect that in the event that a tenant falls into the class exempted from the collection of two month security, that the owner should refund the collection of the second month.

Significant Alternative: With the exception of the final comment above, there were no significant alternatives suggested, other than DHCR should not promulgate this rule change.

Commentary: Recent amendments to the Emergency Tenant Protection Act more carefully delineate what limitations the legislature may have intended as to collection of security deposits. Security deposits for anyone already in occupancy prior to the effective date of the amendment, is still limited to one month. A two-month security deposit going forward for new tenants is more in keeping with present industry standards. DHCR sought to ameliorate the effects on the poorer tenants by excepting from the provisions of the amended regulation any tenancy where the rent, in whole or in part, is assisted by a government subsidy such as under the SCRIE and DRIE Program as well as exempting elderly and the disabled. The effective date of this provision has been changed to more accurately reflect the time of the promulgation. The suggested amendment is unnecessary as the proposed regulation already prohibits an owner from retaining the second month security deposit in the event that the tenant subsequently falls into the exceptions from its collection.

TOPIC – NON-PRIMARY RESIDENCE

Issue: To allow owners the option of bringing court cases is an open invitation to harass tenants through the legal system. DHCR lacks authority to promulgate this regulation under the Rent Stabilization Law. Case law suggests that behavior during the entire lease term needs to be evaluated on a non primary residence case. It is inequitable to make these grounds for eviction since tenants are obligated to pay rent for the entire lease term.

Significant Alternative: Generally, there were no significant alternatives suggested, other than DHCR should not promulgate this rule change.

Commentary: The option to bring a non-primary residence proceeding, at any time, has been in effect for rent controlled tenancies since the inception of primary residence deregulation. The separate rule for rent stabilized tenancies has been in place because it was cast as ground for a determination not to renew a lease, rather than a ground for eviction. It was not based on any policy grounds that greater rights inure to rent stabilized tenants than rent controlled tenants to be non-primary residents of their apartments. The Rent Stabilization Law does place a limit on commencing such proceedings only where the apartment is sublet. A reasonable statutory construction is that the legislature did not intend to limit DHCR's authority where there is no such sublet. In the event of a sublet; an innocent third party might be adversely affected by a mid-lease eviction. There are separate and independent provisions of the rent stabilization law and code to deter and punish harassment in the event of the abuse of these provisions.

TOPIC - PROMULGATION OF REGULATIONS

Issue: The timing of promulgation suggests that this is a last effort by the present administration to impose its policy choices with respect to Rent Stabilization Law.

Significant Alternative: Generally, there were no significant alternatives suggested, other than DHCR should not promulgate these rule changes.

Commentary: The regulatory changes contemplated are considered policy determinations which reflect what DHCR believes to be a proper balance among the legitimate concerns of owners, tenants and the public. However, the commentators are correct that implementation would fall within the purview of a new administration which was not involved in proposing these changes. Because of this, DHCR will create a brief delayed effective date.