RSA

Rent Stabilization Association | 123 William Street, New York, NY 10038 | www.rsanyc.org

ROUNDTABLE DISCUSSION ON PROPOSED DHCR AMENDMENTS TO THE RENT STABILIZATION CODE

OCTOBER 6, 2022 | 10:00 A.M.

MODERATED BY KELLY FARRELL, ESQ. AND OLGA SOMERAS, ESQ.

Introductions	Olga Someras	RSA General Counsel	osomeras@rsanyc.org
	Kelly Farrell	RSA Policy Analyst	kfarrell@rsanyc.org

Discussion with Speakers on the proposed DHCR amendments with emphasis on the more significant changes to the RSC

Jillian N. Bittner, Esq.	Horing Welikson Rosen & Digrugilliers PC	jbittner@hwrpc.com
Vladimir K. Favilukis, Esq.	Kucker Marino Winiarsky & Bittens, LLP	vfavilukis@kuckermarino.com
Alexander Fotopoulos, Esq.	Kourkoumelis & Fotopoulos, PLLC	afotopoulos@kflegalgroup.com
Zachary J. Rothken, Esq.	Rosenberg & Estis, PC	zrothken@rosenbergestis.com

Q & A – Questions will be submitted live during the event and will be asked by the moderators during the roundtable discussion

There will be a Public Hearing conducted by DHCR on the proposed amendments discussed at this event on **Tuesday, November 15, 2022** from **10:00 AM – 4:30 PM**, at the **U.S. Custom House auditorium, Alexander Hamilton U.S. Custom House, One Bowling Green, New York, New York 10004**. Those wishing to testify in-person at the hearing may pre-register by calling the office of Michael Berrios; written testimony may also submitted. More information is provided in the materials to this seminar.

Horing Welikson Rosen & Digrugilliers PC
ATTORNEYS AT LAW

Jillian N. Bittner, Esq.
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Jillian N. Bittner is a Member of the Firm whose practice area is concentrated in the Administrative Law Department. She joined the firm as an associate in January 2014 after being a law clerk for two years prior.

Jillian is a vital part of the Administrative Law Department where she has excelled in aiding clients challenge proceedings before the New York State Division of Housing and Community Renewal (DHCR), ranging from rent overcharge complaints to claims of succession. She has been extremely effective in representing building owners in matters commenced by the Tenant Protection Unit, which has conducted audits of countless residential property owners. Jillian has also succeeded in opposing DHCR's attempted, improper application of the Housing Stability and Tenant Protection Act since its enactment on June 14, 2019, in part based upon the Court of Appeals ruling in *Matter of Regina Metropolitan Co., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332 (2020), for which this firm represented the prevailing party.

Jillian is exceedingly knowledgeable in litigating Petitions for Administrative Review (PAR) before the DHCR, and Article 78 proceedings before the Supreme Court of the State of New York. She has represented owners before the Supreme Court in complex class action lawsuits, particularly those stemming from the 2009 *Roberts v. Tishman Speyer Props., L.P.*, 13 N.Y.3d 270, ruling and its progeny. Jillian also has substantial experience in appellate practice, having successfully argued appeals before the Appellate Division of the Supreme Court.

Jillian has assisted clients in the preparation of complex Substantial Rehabilitation Applications, Major Capital Improvement Rent Increase Applications, and addressing the implications of the J-51 Tax Abatement and Exemption program.

Jillian is routinely engaged in the performance of rent regulatory due diligence on behalf of potential purchasers of residential buildings, pursuant to which she consults with purchasers to assess and limit liability exposure stemming from potential overcharge and deregulation issues. She also regularly conducts record review for owners seeking to ready their residential properties for sale, as well as those attempting to obtain financing, in order to maximize the property value.

She appears before the New York City Criminal Court and the Offices of Administrative Trials and Hearings to address violations issued to building owners by a multitude of city agencies.

On March 3, 2022, Jillian lectured in the CLE seminar hosted by the Rent Stabilization Association (RSA) and the New York County Lawyers Association, "DHCR Administrative Proceedings and Appeals," speaking directly on how owners can successfully defend rent overcharge complaints filed with DHCR post-HSTPA.

On May 6, 2021, Jillian lectured in the CLE seminar hosted by the Rent Stabilization Association (RSA) and the New York County Lawyers Association, "Navigating Landlord-Tenant matters in the Aftermath of the COVID-19 Emergency Eviction and Foreclosure Prevention Act, the Tenant Safe Harbor Act and the Housing Stability and Tenant Protection Act," speaking directly on post-HSTPA caselaw, including a review of *Regina Metropolitan*.

Jillian was published in the February 2017 edition of the RSA Reporter as a co-author of "An Owner's Guide to the Fundamentals of Major Capital Improvements." She was also published in the June 2017 New York Housing Journal for her contribution to the "Housing Court Appellate Update," with colleague Jeremy Poland of the firm.

She was a co-author of "New Amendments to the Rent Stabilization Code and Recommendations" published by the New York Housing Journal in February 2014, alongside senior member and firm co-founder Niles C. Welikson, and Randi B. Gilbert.

EDUCATION
Pace University School of Law, Cum Laude, J.D. – May 2013
CUNY John Jay College of Criminal Justice, M.A. with Honors – 2009
SUNY Binghamton University, B.A. with Honors – 2007

VIRTUAL ROUNDTABLE HOSTED BY RSA
OCTOBER 6, 2022

Rent Stabilization Code Proposed Amendments – HSTPA Revisions
Base Date Rent Calculations & the Default Formula

By Jillian N. Bittner, Esq.

The Rent Stabilization Code cannot take away rights of a landlord or a tenant that are granted by the Rent Stabilization Law. Where a conflict occurs, the conflicting Code section is subject to a legal challenge.

The Base Date Rent

- The proposed amendments bifurcate rent overcharge complaints and proceedings to determine the LRR based upon whether the proceeding was filed pre-HSTPA (6/14/19), or on or after the enactment of the HSTPA (6/14/19).

    - **New** RSC § 2520.6(f): new definition of "base date", but this definition no longer applies to rent overcharge complaints or fair market rent appeals.

    - **Amended** RSC § 2526.1 (renamed): Determination of LRR (for overcharge purposes); penalties; fines; assessment of costs; attorney's fees; rent credits; **where the proceeding is commenced prior to June 14, 2019**

        New RSC § 2526.1(i) (Subdivision (i) is added): The procedures and rules set forth in this subdivision shall apply ***only to proceedings initiated prior to June 14, 2019***, except as set forth in Section 2526.7 of this Part.

    - **New** RSC § 2526.7: Determination of LRR; penalties; fines; assessment of costs; attorney's fees; rent credits; **where the proceeding is commenced on or after June 14, 2019**

        New RSC § 2526.7(a)(1) Base Date: *For the purposes of this section*, the Base Date shall be the date of the most recent reliable annual rent registration statement, filed and served upon a tenant six or more years prior to the filing of a complaint of overcharge or the initiation of a proceeding to determine the legal regulated rent of an apartment. Any registration statement filed contemporaneously with a certification of service shall be presumed to have been served upon the tenant in occupancy. ***In no event shall the base date be prior to June 14, 2015.***

        Absent an exception set forth in section 2526.1 of this Part, ***if no base date can be determined subsequent to June 14, 2015, the base date shall be June 14, 2015***.

- **New** RSC § 2526.7(d) The DHCR shall examine the rent ***prior to the base date and subsequent to June 14, 2015*** to make a determination as to:
  (1) whether the legality of a rental amount charged or registered is reliable in light of all available evidence including, but not limited to, *whether an unexplained increase in the registered or lease rents*, or a fraudulent scheme to destabilize the housing accommodation, rendered such rent or registration unreliable.…

The Default Formula

- Default Formula: **Repealed** RSC § 2522.6(b); **New** RSC § 2522.6(b)
  RSC § 2522.6. Orders where the LRR or other facts are in dispute, in doubt, or not known, or where the LRR must be fixed.

  (b)(1) Such order shall determine such facts or establish the legal regulated rent in accordance with the provisions of this Code. Where such order establishes the legal regulated rent, it shall contain a directive that all rent collected by the owner in excess of the legal regulated rent ***shall be refunded to the tenant, or any prior tenant***, pursuant to the procedures and requirements set forth by Section 2526.1 or Section 2526.7 of this Title. Orders issued pursuant to this section shall be based upon the law and Code provisions in effect on March 31, 1984, if the complaint was filed prior to April 1, 1984.

  (2) Where either:
  (i) no base date, as defined in Section 2526.7 of this Title, can be determined, and the rent charged on June 14, 2015 cannot be determined, or
  (ii) the rent is the product of a fraudulent scheme to deregulate the apartment, or
  (iii) a rental practice proscribed under section 2525.3 (b), (c) and (d) of this Title has been committed, the rent shall be established at the lowest of the following amounts set forth in subparagraph (i), (ii), (iii), or (iv) of paragraph (3) of this subdivision, Section 2526.7 of this Title, or Section 2526.1 of this Title. Section 2526.1 of this Title shall only be applicable for complaints filed prior to June 14, 2019.

  …the rent shall be established at the lowest of the following amounts set forth in paragraph (3) of this subdivision. [DHCR omitted this statement in its Amendments]

  (3) These amounts are:
  (i) the lowest rent registered pursuant to section 2528.3 of this Code for a comparable apartment in the building in effect on the date the complaining tenant first occupied the apartment; or
  (ii) the complaining tenant's initial rent reduced by the percentage adjustment authorized by section 2522.8 of this Code; or
  (iii) the last registered rent paid by the prior tenant; or
  (iv) if the documentation set forth in subparagraphs (i) through (iii) of this paragraph is not available or is inappropriate, an amount based on data

compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations.

(4) This subdivision shall also apply where the owner purchases the housing accommodations subsequent to judicial or other sales.

Recordkeeping

- **Repealed** RSC § 2523.7(b); **New** RSC § 2523.7(b).
    - While owners must maintain records for 6-years, an owner's decision to not maintain records will not limit the DHCR or Court's authority to engage in a full examination of all available records to determine the LRR.
    - Since DHCR may look beyond 6-years in the context of an overcharge proceeding commenced on or after 6/14/19, it is imperative to retain records from June 14, 2015 forward for an indefinite period of time.

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"Rent regulation is often an impenetrable thicket. My years of practice have allowed me to provide my clients with the guidance necessary to navigate through it."

Vladimir Favilukis joined the firm as a partner in 2021. Mr. Favilukis focuses his practice on the regulatory elements surrounding multi-family dwellings in New York City, including rent regulation, zoning and tax. His expertise in the industry spans more than fifteen years, during which time Mr. Favilukis has counseled owners, developers, investors, Real Estate Investment Trusts and landlords in general, in all aspects of the New York City regulations concerning real estate, including performing due diligence review of all regulatory matters.

Mr. Favilukis has extensive experience in matters relating to J-51, 421-a, 421-c and 421-g tax benefits, the Loft Law, the Zoning Resolution and the Administrative Code of the City of New York, and has represented clients before the New York State Division of Housing and Community Renewal (DHCR), the New York City Board of Standards and Appeals (BSA), the Departments of Housing Preservation and Development (HPD), City Planning (DCP), Buildings (DOB) and the Environmental Control Board (ECB). He has represented his clients in proceedings before and against these agencies in Article 78 proceedings, involving overcharge allegations, exemption from regulation, major capital improvement projects, among other issues.

Mr. Favilukis earned his Juris Doctor from Brooklyn Law School, and his Bachelor of Arts from Brandeis University. He is admitted to practice in the States of New York and New Jersey, and has been named a Super Lawyer “Rising Star” in 2015-2021.

Mr. Favilukis is fluent in Russian.

EDUCATION

Brooklyn Law School | Juris Doctor
Brandeis University | Bachelor of Arts

ADMISSIONS

New York State Courts

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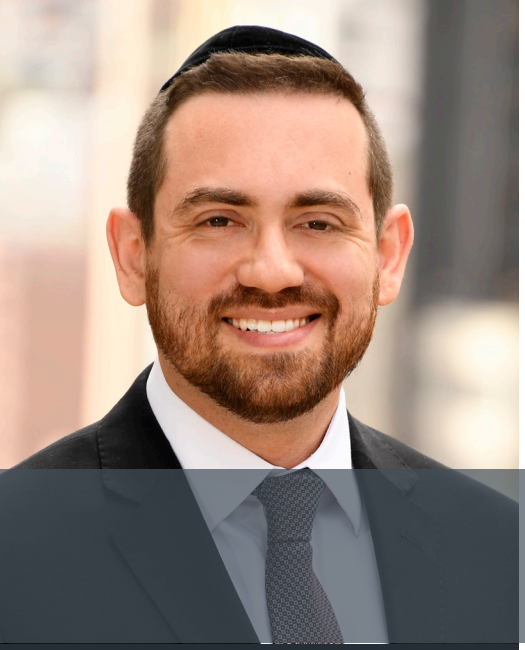
Alex Fotopoulos is the Founding Partner of Kourkoumelis & Fotopoulos, PLLC, a full-service real estate firm representing the rights of landlords both large and small. Alex counsels owners and developers through the myriad of regulations governing multi-family buildings in New York City, with particular emphasis on rent regulatory issues and matters concerning the New York State Division of Homes and Community Renewal ("DHCR").

Alex is regularly engaged to perform due diligence reviews of buildings for purchasers and sellers. These reviews include review of DHCR issues, and matters related to the Department of Buildings ("DOB") and the Department of Housing Preservation and Development ("HPD"). On the purchaser's side, Alex not only identifies potential deregulation and overcharge issues to give purchasers a clearer sense of the asset that they are purchasing, but also suggests solutions to the issues raised to help "get the deal done." On the seller's side, Alex helps sellers maximize the value of their properties by obtaining, organizing, and curating the documents necessary to prove the rents and/or regulatory statuses of their apartments. He also has extensive experience in matters relating to J-51 and 421-a tax benefits.

At the DHCR, Alex has successfully defended clients in overcharge proceedings and regulatory coverage applications. He has also successfully represented owners in dozens of audits commenced by the DHCR's Tenant Protection Unit. Alex has also represented clients in prior opinion and exemption applications based upon substantial rehabilitation, modification of services applications, and applications to restore rents.

In the courts, Alex has advocated for owners in Housing Court, Supreme Court, the Appellate Term, and the Appellate Division. In addition to defending owners against the alleged violations of the Rent Stabilization Law and Code, the firm also represents owners in summary proceedings and proceedings to enforce their rights against tenants.

Alex earned his Juris Doctor from Fordham University School of Law and his Bachelor of Arts from New York University.



ZACHARY J. ROTHKEN

MEMBER - Administrative Law

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RATED BY Super Lawyers Rising Stars Zachary J. Rothken SuperLawyers.com

Practice Areas

Rent Regulation & Administrative Law

Due Diligence

Landlord Tenant Law

Bar Admissions

New York, 2014

New Jersey, 2013

U.S. District Court District of New Jersey

Education

Hofstra University School of Law, Hempstead, New York

- J.D. - 2013

Honors & Activities:

- Merit Scholarship; *Hofstra Labor & Employment Law Journal*, Volume 30, Articles Editor

Yeshiva University, Sy Syms School of Business

- B.S. - 2009

Honors & Activities:

- R.S. Polachek Memorial Award, 2008; Dean's List

Zachary J. Rothken joined Rosenberg & Estis, P.C. in 2018 and is a Member and Head of the firm's Administrative Law Department. His practice focuses on complex rent regulatory issues concerning rent stabilization and rent control. Rothken represents property owners in administrative proceedings before DHCR and other administrative agencies, including claims alleging rent overcharge, TPU audits, petitions for administrative review and reduction of services. His practice also focuses on counseling prospective purchasers, sellers and lenders in performing due diligence on properties subject to rent regulation. Rothken's practice also includes representing property owners in a wide variety of litigation matters, including: Article 78 proceedings, Supreme Court actions and landlord-tenant summary proceedings.

Rothken earned his J.D. at Hofstra University School of Law and received a Bachelor of Science degree from Yeshiva University, Sy Syms School of Business. While in law school, Rothken served as Articles Editor for Volume 30 of the Hofstra Labor & Employment Law Journal. He co-authored an article titled, Limits on Sovereign Immunity in the Post-NASA v. Nelson Era: Greater Government Liability for Negligent Hiring, which was published in the Summer 2013 volume of the New York State Bar Association Labor and Employment Law Journal.

In February 2020, Rothken co-authored a well-received article published in the New York Law Journal titled "Commercial Rent Control Effort Defined by Confusion and Unintended Consequences."

Notable Work

- *Armstrong, et al., v. Dumbo Lofts* (Sup. Ct. Kings Co. 2021): overcharge action brought by a number of tenants; won full summary judgment on issue of fraud and rent freeze; full summary judgment on all claims of one tenant; partial summary judgment on all claims but willfulness for remaining tenants.
- *Westchester Plaza Tenants Association v. DHCR and Westchester Plaza Holdings, LLC* (Sup. Ct. Westchester County 2021): successfully defended Article 78 proceeding brought by tenants' association in complex building-wide service reduction/modification of services proceeding.
- *Matter of Kristopher,* RA Docket No. GQ-410097-R (10/5/21): successfully defended rent overcharge complaint; utilized creative legal argument in support of deregulation despite lack of last rent stabi-

ZACHARY J. ROTHKEN

lized lease.

Published Works

- Commercial Rent Control Effort Defined by Confusion and Unintended Consequences, New York Law Journal, February 2020
- Limits on Sovereign Immunity in the Post-NASA v. Nelson Era: Greater Government Liability for Negligent Hiring, New York State Bar Association Labor & Employment Law Journal (co-authored), Summer, 2013

Professional Associations

- Alternate Member of the Village of Chestnut Ridge Planning Board, 2021-present

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NOTICE OF PUBLIC HEARING

Public Notice that the New York State Division of Housing and Community Renewal (DHCR) will conduct a public hearing to be held at the U.S. Custom House auditorium, Alexander Hamilton U.S. Custom House, One Bowling Green, New York, New York 10004 on Tuesday, November 15, 2022. The hearing will be held from 10:00 am to 4:30 pm.

This hearing is being held to give regulated parties and concerned members of the general public an opportunity to express their opinions on DHCR's proposed amendments to the New York City Rent Stabilization Code and the New York City Rent and Eviction Regulations. The sections of the respective regulations proposed to be amended are: 9 NYCRR §2200.1; §2200.2; §2200.14; §2202.1; §2202.2; §2202.4; §2202.13; §2202.16; §2202.25; §2202.27; §2203.4; §2204.3; §2204.4; §2204.5; §2204.6; §2206.7; §2208.9; §2211.2; §2211.3; §2211.4; §2211.5; §2211.6; §2211.7; §2211.8 and 9 NYCRR §2520.1; §2520.6(c), (d), (f), (k), §2520.7; §2520.8; §2520.9; §2520.11 (c),(e), (f), (j), (k), (p), (r),(s), (u); §2520.12; §2521.1 (b), (c), (d), (e), (g), (i); §2521.1 (m), (n); §2521.2 (a), (c) (d), (e); 2522.2; 2522.3 (a), (c), (e), (f); §2522.4 (a), (b), (d), (e),(g); §2522.5(a), (d), (f), (g); 2522.6 (b), §2522.7; §2522.8; §2522.9 (b); §2523.1; §2523.4 (a), (b), (f), (g); §2523.5 (b), (f); §2523.7 (b), (c); §2523.8; §2524.2 (e), §2524.4(a), (b) (c); §2524.5 (a), (b); §2525.2(b); §2525.3 (a); §2525.5; §2525.6(e),(g); §2525.7; §2526.1; §2527.2; §2527.3(a); §2527.4; §2527.5 (j), (k); §2527.5 (l), (m); §2527.7; §2527.9(a), (e); §2528.2(a)(7); §2528.4(a); §2529.6; §2529.10; §2529.12; §2531.1; §2531.2; §2531.3; §2531.4; §2531.5; §2531.6; §2531.7; §2531.8; §2531.9. These proposed amendments reflect modification of various substantive and procedural provisions with respect to such matters including but not limited to: deregulation, overcharges, substantial rehabilitation, demolition, succession rights, individual apartment improvements, and major capital improvement provisions based on The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), and Ch. 39 of the Laws of 2019 and DHCR's own experience in administration, and court cases decided since the last major set of amendments to these rules in 2014.

Pre-registration of speakers is advised. Those who wish to pre-register may call the office of Michael Berrios at (718) 262-4816 and state the time they wish to speak at the hearing and whom they represent. Pre-registered speakers who have reserved a time to speak will be heard at approximately that time. Speakers who register the day of the hearing will be heard in the order of registration at those times no already reserved by pre-registered speakers. Speaking time will be limited to five minutes in order to give as many people as possible the opportunity to be heard. Speakers should be prepared to submit copes of their remarks to the DHCR official presiding over the hearing. The hearing will conclude when all registered speakers in attendance at the hearing have been heard.

DHCR will also accept written testimony submitted prior to the end of the hearing. Submissions may also be sent in advance to Michael Berrios, Division of Housing and

Community Renewal, 92-31 Union Hall Street, 6th Floor, Jamaica, New York, 11433
(718) 262-4816 or by email to 2022RentRegulationComments@hcr.ny.gov.

SUMMARY OF PROPOSED AMENDMENTS TO RSA

The RSA has prepared the below summary and chart of the main changes to be found in the proposed amendments. For any additional questions, please call Olga Someras or Kelly Farrell.

The most significant changes made are:

(1) Eliminates ability to charge a first rent when combining units

- **Where 2 stabilized apartments are combined**: the LRR of the newly created unit is the combined rents of the stabilized units plus IAI allowance for each unit (i.e. $15,000 per unit). This new unit would have to be registered under the same designation as one of the prior RS units
- **Where 1 rent stabilized unit is combined with 1 unregulated unit- OR- when 1 unregulated unit is made larger by adding a portion of a rent stabilized unit**: the newly created unit is subject to rent stabilization, but it is not clear what the new rent would be. (This amendment states that the new rent would be a combination of the prior legal rents for the combined units, but there is no "legal rent" for an unregulated unit.)
- **Where the outside perimeter of a rent stabilized unit is either increased or decreased**: the new LRR would increase or decrease by a percentage that corresponds with the increase or decrease in square footage size from the original unit size.
- **The following items remain unclear**:
    - what the legal regulated rent is when combining a rent-controlled unit with another unit;
    - what the legal regulated rent or regulatory status is when combining unregulated units, dividing unregulated units, combining unregulated units with portions of the common area of the building, or creating new units in new space in a rent stabilized building.

(2) Changes to Substantial Rehabilitation

- must replace at least 75% of building-wide and individual housing accommodation systems (before it was "not to exceed 75%");
- eliminates owner's ability demonstrate good cause for replacing a building system that did not otherwise need replacement but was desirable due to its aesthetic or historic merit.
- eliminates presumption available to owner that the building is substandard/seriously deteriorated where the building is 80% vacant.

- Note: Unlike proposed legislation re: substantial rehabilitation, does not include a requirement that the owner must apply to DHCR for an exemption for substantial rehabilitation.

(3) <u>Changes to calculation of base date rent, overcharges, the default formula</u>

- An obvious result of Regina, the proposed amendments bifurcate rent overcharge complaints/proceedings to determine the legal regulated rent filed before and after June 14, 2019.
- Especially for overcharges filed after June 14, 2019, DHCR may look to the "most recent reliable annual registration statement" filed six or more years prior to the filing of a complaint for overcharge/initiation of a proceeding, but in no event shall that date be prior to June 14, 2015 (one concern is that there will not really be a "six year" look back period for any overcharge filed after June 14, 2019.)
- The default formula now applies to owners who purchase at judicial or other such sales, and proposed regulation removes the ability of an owner to offer a full rent history to preclude imposition of the default formula.
- While landlords are only required to keep records for six years (unless otherwise provided in the RSC/RSL), DHCR may examine all records available to determine the legal regulated rent regardless of whether owner elected to keep records for a longer period or not.

The chart below provides an overview of the proposed regulations that are noteworthy.

DHCR amendment – code section	**Summary of DHCR amendment**
9 NYCRR §2520.6(c)	Added to the definition of what does not constitute rent; possible overcharge if an owner collects excess fees, charges or penalties. Rent shall not include surcharges authorized pursuant to section 2522.10 of this Title <u>nor for the purposes of any summary eviction proceeding such fees, charges or penalties; however, any such excess payments even if denominated as fees, charges or penalties may be considered a violation under Part 2525 or an overcharge under Part 2526 of this Code.</u>

9 NYCRR §2520.6(d)	Added to the definition of a tenant, to include any person who "is entitled to occupy the housing accommodation as a tenant pursuant to any other provision of this Code."
9 NYCRR §2520.6(f)	Changes definition of base date for claims depending on whether the claim was filed before or after June 14, 2019: (1) For claims filed before June 14, 2019, the date four years prior to the filing date of such claim except where a special provision of this Code, the RSL or other law required maintenance of records or review for a longer period; (2) For claims filed on or after June 14, 2019, the base date shall be June 14, 2015.
9 NYCRR § 2520.6(p)	Added the following definition of Common Ownership: "any identity of interest or relationship based on family ties or financial interest between the owner/managing agent of a property and any other entity with which the owner/managing agent conducts business."
9 NYCRR §2500.9(c)	Added the following to exemption from RS based on being regulated under PHFL: "However, housing accommodations in buildings completed or substantially rehabilitated prior to January 1, 1974, and whose rentals were previously regulated under the PHFL or any other State or Federal Law, shall become subject to the ETPA and this Title, upon the termination of such regulation."
9 NYCRR § 2520.7	Adds the following language to effective date of any amendments to the Rent Stabilization Code: "all amendments to this Code shall become effective in accordance with the State Administrative Procedure Act <u>or as otherwise required by law</u>"; Also changes the number of days DHCR may postpone implementation of any such provision where its implementation would require new or significantly revised filing procedures, from 180 to <u>210</u> days.
9 NYCRR § 2520.9	Changes effective date of DHCR amendments from the date of filing to "<u>the date of publications of notice of adoption in the State Register…or otherwise required by law</u>".

9 NYCRR § 2520.11(e)	Changes (and renumbering) made to **Substantial Rehabilitation** code provision as follows: • (e)(1) specified percentage of building wide and individual housing accommodation systems that must be replaced has been changes so as to be at least 75% (as opposed to "not to exceed" 75%) • Prior (e)(2) repealed: eliminates ability of owner to demonstrate good cause for replacing a system that was recently installed or upgraded or did not otherwise need replacement, or that was desirable or required by law due to its aesthetic or historic merit. • New (e)(2): no presumption available to owner where building is 80% vacant that building is substandard or seriously deteriorated. • (e)(3) expands findings of harassment to be considered to include findings by HPD, housing court, or any other government entity other than DHCR, and provides that a finding of harassment shall be considered to be in force for three years from the date of the finding. • (e)(5) provides that occupied rent regulating apartment will remain regulated if there is a finding that the building has been substantially rehabilitated, until vacated (even if rehabilitated). • (e)(6) adds requirements that in order for exemption from regulation to apply for apartments where a prior RS tenant has a right to return: tenant must also express the intent not to return in writing, and DHCR may waive this requirement upon showing of owner good faith. • (e)(7) where an accommodation is uninhabitable and a tenant is under a "dollar order", owner must restore the building to a substantially similar building layout as before, unless it is not financially feasible, in which case tenant may choose between: (1) a demolition stipend; or (2) new rent stabilized tenancy in reconfigured apartment with a rent based on comparable RS rents in the area • NOTE: Unlike the proposed legislation, there is no requirement that an owner file with DHCR to obtain an exemption based on substantial rehabilitation.
9 NYCRR § 2520.11(f) 9 NYCRR § 2520.11(j)	Expands applicability of rent stabilization to housing accommodations owned/leased/operated pursuant to government funding by certain non-profit institutions, and also to housing accommodations operated for charitable purposes, for certain "vulnerable individuals" in occupancy.
9 NYCRR § 2520.11(k)	Adds primary residence requirement exception for: (1) D.V. victims; and, (2) tenant under a "dollar order".

9 NYCRR § 2520.11(l)	Adds additional protections and procedures for stabilized tenants pursuant to coop or condo deconversion in line with HSTPA.
9 NYCRR § 2520.11(p)(1)	Amends provision exempting **421-a** accommodations from regulation once the benefit expires as follows: "the housing accommodations which were subject to the RSL pursuant to section 421-a and became vacant subsequent to the end of the applicable restriction period" (this may mean to prohibit warehousing vacant apartments near expiration of 421-a benefit)
9 NYCRR § 2520.11(p)(3)	Adds provision addressing the exemption of **421-a(16)** accommodations from regulation once the benefit expires, and extends regulation of such affordable units from tenant in occupancy at the time of expiration to all successor tenants.
9 NYCRR § 2520.11(p)(4)	Adds provision re: exemption of **421-a(16)** accommodations from regulation and provides that market rate units may only be deregulated if the legal regulated rent surpassed the deregulated threshold when initially rented, or upon a permanent vacancy the next legal regulated rent surpasses the threshold at that time – this appears to be contrary to law and their fact sheet, as normally 421-a(16) market units can be deregulated upon expiration of the benefit, which is not included here.
9 NYCRR § 2520.11(r)	Repeals high rent vacancy deregulation, sets forth high rent vacancy deregulation for 421-a buildings, and states that anything deregulated before 6/14/19 shall remain deregulated.
9 NYCRR § 2520.11(s)	Repeals high rent high income deregulation
9 NYCRR § 2521.1(m) and (n)	**Apartment Combinations/Reconfigurations** (1) Where 2 stabilized apartments are combined: the LRR of the newly created unit is the combined rents of the stabilized units plus IAI allowance for each unit (i.e. $15,000 per unit). This new unit would have to be registered under the same designation as one of the prior RS units. (2) Where 1 rent stabilized unit is combined with 1 unregulated unit- OR- when 1 unregulated unit is made larger by adding a portion of a rent

	stabilized unit: the newly created unit is subject to rent stabilization, but it is not clear what the new rent would be. (This amendment states that the new rent would be a combination of the prior legal rents for the combined units, but there is no "legal rent" for an unregulated unit.) (3) Where the outside perimeter of a rent stabilized unit is either increased or decreased: the new LRR would increase or decrease by a percentage that corresponds with the increase or decrease in square footage size from the original unit size. (4) The following things remain unclear: -what the legal regulated rent is when combining a rent-controlled unit with another unit; -what the legal regulated rent or regulatory status, is when combining unregulated units, dividing unregulated units, combining unregulated units with portions of the common area of the building, or creating new units in new space in a rent stabilized building.
9 NYCRR § 2521.21(a) 9 NYCRR § 2521.21(c)	Amended to include that preferential rents may only be stripped on new vacancy leases, and requires owners to maintain records if a preferential rent is charged beyond four years (to the base date, as defined earlier).
9 NYCRR § 2522.3(a)	Statute of limitations for filing an FMLA extended to 6 years from 4.
9 NYCRR § 2522.4(a)	Adds new code provision to memorialize HSTPA changes with respect to **Individual Apartment Increases** -codifies DHCR policy that IAI work performed before June 14, 2019 is not subject to the $15,000 cap.
9 NYCRR § 2522.4(b)	Adds new code provision to memorialize HSTPA changes with respect to **Major Capital Improvements** as well as information contained in DHCR's fact sheet and operation bulletins.
9 NYCRR § 2522.5(f)	Amends code provision regarding adding spouses to a rent stabilized lease to permit tenants to also add domestic partners.
9 NYCRR § 2522.5(g)	Amends code provision regarding condo/coop conversion as per the HSTPA

9 NYCRR § 2522.6(b)	Adds new code provision re: rent overcharge orders and setting the legal regulated rent when it is not readily known/available: -creates an obligation on DHCR to order a refund not just to a current tenant, but to any prior tenant affected by a rent overcharge order; -removed provision permitting an owner to provide a full rent history from the base date to avoid imposition of the default formula; -removes exemption from this default formula for owners who bought a building from a judicial sale.
9 NYCRR § 2522.8	New code provision permitting owners to charge RBG guideline increases upon vacancy and only once per calendar year.
9 NYCRR § 2523.4(a)	Precludes collection of an MCI increase retroactively to the effective date of a rent reduction order.
9 NYCRR § 2523.5(b)	New code provision eliminates caselaw bar against a successor tenant who is claiming succession while the tenant of record has been fraudulently signing renewals/paying rent even though they already permanently vacated the apartment.
9 NYCRR § 2523.7(b)	New code provision requires landlords to keep records for 6 years, unless other parts of the code provide for keeping records for a longer period, but the owner's election not to maintain records will not be a bar to DHCR considering all records available to determine the LRR.
9 NYCRR § 2524.4(a)	Amended owner occupancy provision to comply with HSTPA re: immediate and compelling necessity, cap on taking back only 1 unit, etc.
9 NYCRR § 2524.4(c)	Amended code provision re: primary residence to exclude a D.V. victim who temporarily leaves for safety reasons or tenants under a "dollar order"
9 NYCRR § 2524.5(a)(2)	**Demolition applications** -redefines demolition as "the removal of the entire building including the foundation." -adds required compensations to be paid to rent stabilized tenant to include moving expenses, and does not permit an offset of the stipend in the event a

	tenant does not leave if the tenant is actively appealing DHCR's order. -changes formula for tenant stipend to the difference between tenant's current rent and the average rent for vacant non-regulated units as set forth in the NYC Housing and Vacancy Survey, multiplied by 72.
9 NYCRR § 2525.2(b)	Receipt requirements: -Owner required to keep receipts for cash payments for 3 years; -Owner must send a certified mail written notice when a tenant fails to pay the rent within five days of the date it is due under the lease (not sure why they added this here as it applies to all tenancies).
9 NYCRR § 2525.3(a)	Adds the improper removal of a preferential rent to the definition of "Harassment"
9 NYCRR § 2526.7(a)-(j)	New provision added regarding the determination of rents, penalties, fines, etc for proceedings commenced after 6/14/19: -Base Date – defined as the date the most recent reliable annual registration statement was filed and served upon a tenant six or more years prior to the filing of a complaint, but in no event shall it be prior to 6/14/15. -Reliable rent registration – defined as reliable if prior to that rent registration statement but after 6/14/15 the rent history does not contain any unexplained increase in the rent. -The remaining provisions codify HSTPA amendments re: overcharges, such as attorney fee awards, expanding the overcharge period to six years and permitting payment of treble damages for a six-year period, etc.
9 NYCRR § 2526.2(c)	Increases penalty scheme where DHCR finds for harassment/violation of an order
9 NYCRR § 2531.9	Repealed all code provisions re: high rent/high income deregulation and codifies DHCR policy post-HSTPA re: dismissal of pending actions and only permitting deregulation where an owner obtained an order permitting for same and the lease expiration date was prior to 6/14/19.

gency regulations, which would create an abrupt halt to certain telehealth flexibilities authorized during the public health emergency and which have proven vital to Medicaid members. In consultation with the Office of Mental Health and Office of Addiction Services and Supports, the Department determined that providing continuity of care to Medicaid enrollees during the transition is a public health priority and as such, decided to move forward with these emergency regulations.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

These amendments shall be effective on filing with the Secretary of State.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose any new reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

City Rent and Eviction Regulations Governing Rent Control in New York City

I.D. No. HCR-35-22-00004-P

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

Proposed Action: Amendment of Parts 2200-2211 of Title 9 NYCRR.

Statutory authority: Omnibus Housing Act; L. 1983, ch. 403, section 28; City Rent and Rehabilitation Law, section 26-405g(1)

Subject: City Rent and Eviction Regulations governing rent control in New York City.

Purpose: To implement changes required or informed by the Housing Stability and Tenant Protection Act of 2019.

Public hearing(s) will be held at: 10:00 a.m., Nov. 15, 2022 at One Bowling Green, New York, NY; 10:00 a.m., Nov. 15, 2022 at One Larkin Center, 2nd Fl., Yonkers, NY; and 10:00 a.m., Nov. 15, 2022 at 1550 Franklin Avenue, 1st Fl., Mineola, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information): 9 NYCRR § 2200.1 adds clarifying language regarding statutory authority.

9 NYCRR § 2200.2(f)(15)(i) changes "become" to "became".

9 NYCRR § 2200.2(f)(18) adds language regarding the primary residency of a victim of domestic violence.

9 NYCRR § 2200.2(f)(19) repeals high rent vacancy deregulation to comply with HSTPA.

9 NYCRR § 2200.2(f)(20) repeals high rent/high income deregulation to comply with HSTPA.

9 NYCRR § 2200.2(i), (k), and (o) amending definitions of the terms "Maximum Rent," "Rent," and "Tenant."

9 NYCRR § 2000.3(k) and (l) adds definitions of the terms "Common Ownership" and "DHCR".

9 NYCRR § 2200.14 amendments regarding requirements for rent receipts.

9 NYCRR § 2202.1 amendments regarding the establishment of maximum rents pursuant to HSTPA.

9 NYCRR § 2202.2 amendments regarding the collectible date for maximum rents.

9 NYCRR § 2202.4 amendments largely mandated by HSTPA for Individual Apartment Improvements ("IAI") and Major Capital Improvements ("MCI"). For IAIs the amendments include: written tenant consent from tenant for IAIs; required filings with DHCR supported by before and after photographs; an itemized list of work performed and the reason for such work; limits the amount the rent can be increased to 1/168th or 1/180th of the cost of the improvement depending on the number of units in the building; no more than three separate IAI increases collected over a 15-year period and the total cost of eligible improvements cannot exceed $15,000; with limited exception, all work must be done by a licensed contractor with no common ownership between the contractor and the owner; prohibition on increases based upon the installation of similar equipment or furnishings within the useful life of such new equipment or furnishings; prohibitions on increases where there are any outstanding hazardous and immediately hazardous violations at the time of installation that pertain to the subject apartment and; new IAI increases collected for the first time after June 14, 2019, are temporary and will be removed from the rent in thirty years. For MCIs, the amendments include: definition which incorporates new "green" installation; removal of MCI increases after thirty years; amortization of costs over twelve years or twelve and a half years depending on the number of units in the building, modification of the annual cap on collectability to two percent per year; a reasonable cost schedule; prohibition of rent increases due to immediately hazardous violations and hazardous violations; MCIs are no longer allowed for work done in individual apartments that is not otherwise an improvement to the entire building; and prohibition of MCIs in buildings with 35 percent or fewer rent regulated units.

9 NYCRR § 2202.13 provides for a prohibition against fuel cost pass-alongs to rent-controlled tenants as of June 19, 2019, pursuant to HSTPA.

9 NYCRR § 2202.16(e) updates DHCR's website address and references.

9 NYCRR § 2202.25 provides a correct regulation cross-reference.

9 NYCRR § 2202.27 provides for a prohibition against fuel cost pass-alongs to rent-controlled tenants as of June 19, 2019, pursuant to HSTPA.

9 NYCRR § 2203.4 adds a requirement that apartment registrations include an "actual, physical street address" for the owner or agent.

9 NYCRR § 2204.3(c) adds the address for filing of the notice with DHCR.

9 NYCRR § 2204.4 amendments of the relocation requirements when directed by or is required pursuant to a condition for the granting of a certificate of eviction.

9 NYCRR § 2204.5(a) and (b) requirements for recovery of a rent regulated unit for owner occupancy to comply with HSTPA; amendments regarding requirements of primary residency.

9 NYCRR § 2204.6 modification and clarification of requirements for establishing succession rights.

9 NYCRR § 2206.7(e) adds that the tenant shall have a cause of action in a court of competent jurisdiction for damages, declaratory, injunctive relief against the owner where the owner fails to use the certificate of eviction for the specified purpose.

9 NYCRR § 2208.9 provides that where a code provision or applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the statute or code as it existed at the time the rent administrator's order was issued, unless the relevant law or regulation states otherwise.

9 NYCRR § 2211.2, § 2211.3, § 2211.4, § 2211.5, § 2211.6, § 2211.7 repeal of high rent/high income deregulation sections as of June 14, 2019, pursuant to HSTPA.

9 NYCRR § 2211.8 is repealed as of June 14, 2019, pursuant to HSTPA and replaced with language providing that any apartment lawfully deregulated as of June 14, 2019, remains deregulated.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Executive Assistant, DHCR Office of Rent Administration, 92-31 Union Hall Street, 6th Floor, Jamaica, NY 11433, (718) 262-4816, email: michael.berrios@hcr.ny.gov

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

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

Summary of Regulatory Impact Statement (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information):

1. STATUTORY AUTHORITY:

The Omnibus Housing Act, Laws of 1983, Chap. 403, section 28, (not subdivided), and section 26-405g(1) of the Administrative Code of the City of New York also known as the City Rent and Rehabilitation Law ("CRRL") provide authority to the Division of Housing and Community Renewal ("DHCR") to amend the City Rent and Eviction Regulations ("CRER"). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), enacted June 14, 2019, and Ch. 39 of the Laws of 2019 ("Clean-up law") further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of the HSTPA.

2. LEGISLATIVE OBJECTIVES:

The CRRL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health safety and general welfare. The CRRL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See CRRL § 26-401(a). DHCR is specifically authorized to promulgate regulations by CRRL § 26-405 (g)(1) and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up bill.

3. NEEDS AND BENEFITS:

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there was a significant amendment to the rent laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed. The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Individual Apartment Improvements (IAIs)

HSTPA itself mandated most of the regulatory amendments made with respect to this section.

b. Major Capital Improvements (MCIs)

These provisions are another area that HSTPA changed and directed that DHCR promulgate regulations.

c. High Rent/High Income Deregulation

HSTPA repealed the high rent/high income provisions of the rent laws with an exception with respect to the rules governing Real Property Tax Law § 421-a(16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated. Modifications to the regulations on this topic are required by HSTPA.

d. Maximum Rent

HSTPA made changes with respect to the establishment of the maximum rent. The proposed regulations reflect those changes.

e. Fuel Costs

HSTPA made prohibited fuel cost pass-alongs. The proposed regulations are amended to reflect that as of June 14, 2019, fuel pass-along to tenants under rent control is prohibited. Notwithstanding any other provision of law, rule, regulation, charter or administrative code, tenants of housing accommodations which are subject to rent control under this chapter shall not be subject to a fuel adjustment or pass-along increase in rent and any such increase to such tenant shall be null and void.

f. Succession Rights

Family members remaining in a rent-controlled unit after the vacatur of the named lease holder have the right to remain in the apartment. HSTPA made no changes to the statutory provisions regarding succession. However, DHCR has always been empowered to promulgate regulations, first by its general rent stabilization rule making authority, see, Rent Stabilization Association v. Higgins, 83 N.Y.2d 156, 608 N.Y.S.2d 930 (1993) and subsequently by Public Housing Law § 14. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacatur of the named leaseholder (9 NYCRR § 2204.6).

DHCR determined that clarification for rent-controlled tenants that the period of actual physical vacatur of the named lease holder controls. DHCR's regulations that true fraud and an extended period of misrepresentation will not be rewarded, however, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated difficult and problematic interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

g. High Rent Vacancy Deregulation

HSTPA eliminates high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with the exceptions previously noted.

h. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless the equities or undue hardship require otherwise. The regulation also allows DHCR, when a new rule requires a higher rent and is imposed, to make the increase prospective, rather than from the initiation of the RA proceeding. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to equitable and hardship exception. The rule change conforms with the major implementation requirements of the HSTPA based on Regina Metropolitan.

i. Actual Physical Address for Registration

Part of the requirements of the CRER is that each owner registers their building upon change of ownership. The proposed regulation requires owners to provide an actual physical address instead of utilizing a post office box address.

4. COSTS:

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at $20 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their compliance with changes and the changes themselves in many instances do require additional filings by owners. For example, IAIs now require contemporaneous filing with DHCR of certain proof that was only necessary to produce previously in the context of an overcharge case or a direct demand by the tenant closely associated with the lease execution. The proof is of a kind an owner looking to establish the propriety of the IAI increase would have maintained prior to HSTPA in the event of a subsequent overcharge claim. Compliance costs are already a generally accepted expense of owning regulated housing. In general, as in the example provided above, the increased compliance costs are less a product of the promulgation of these regulations, but the enactment of the HSTPA.

There are increased penalties in some instances if the regulations are violated.

However, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur any additional direct costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional record retention. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION:

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent-controlled property participates in another State, City or Federal housing program. In those instances, there may be a need to comply with the CRER requirements as well as the mandates of that City, State or Federal program.

8. ALTERNATIVES:

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing, much examination of alternatives. Nevertheless, DHCR considered a variety of alternatives to certain rules which were not exactly proscribed by the HSTPA. Most often however, the choices were questions of appropriate statutory interpretation rather than policy choices. A more detailed discussion of the alternatives for the proposed amendments is contained in the full Regulatory Impact Statement available on DHCR's website at: https://hcr.ny.gov/regulatory-information

9. FEDERAL STANDARDS:

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally presently are the subject of litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE:

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The City Rent and Eviction Regulations ("CRER") apply only to housing units located in New York City that are subject to the City Rent and Rehabilitation Law. The class of small businesses affected by these proposed amendments would be limited to certain small property owners, who own limited numbers of rent regulated units. Given that rent control units are subject to vacancy decontrol, the number of units are limited and have decreased over time and will continue to do so. DHCR has sought to provide alternative and tailored methods of compliance with the requirements to provide options to small businesses to limit any additional regulatory burden. These amendments are expected to have no impact on local governments.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would require small businesses that own regulated residential housing units to perform some additional recordkeeping and reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES

The proposed amendments may require small businesses to obtain new or additional professional services in the form of architecture or engineering services if it seeks a waiver of the reasonable cost schedule, which was previously promulgated and is now being incorporated into the larger major capital improvement ("MCI") regulation. However, such services are often already used with respect to a contested MCI application. Further, the regulation will require review of costs for MCIs when contracting for the services to comply with the reasonable cost schedule.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose significant costs upon small businesses or upon the local government that were not anticipated by the passage of HSTPA. Small business owners of regulated housing accommodations will need to be more vigilant to assure their compliance with these changes. Compliance costs are already a generally accepted expense of owning regulated housing. There are also increased penalties in some instances if the regulations are violated. However, the costs of conforming present business practices to the change in standards are not substantial. In addition, these consequences are consistent with existing law or otherwise necessary to secure compliance.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

6. MINIMIZING ADVERSE IMPACT

The proposed regulations have no adverse impact on local government. They may have some costs to businesses which must be weighed against the fact that the rule is required by statute and necessary to enforce statutes designed to protect the public health safety and welfare. The regulations do not create different regulatory standards for small businesses. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses, but the regulations do allow small businesses to use exceptions available to owners under certain circumstances. Outside of the administrative proceedings themselves, where complaints and applications are reviewed on an individual basis, it is difficult to ascertain the size of the businesses subject to these regulations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The rent laws and regulations empower DHCR to enforce the law. Meetings have been held with both business owners and affected tenant interest groups, including but not limited to: CHIP (Community Housing Improvement Program), Legal Services NYC, Brooklyn Legal Services, the Legal Aid Society, REBNY (Real Estate Board of New York), SHNNY (Supportive Housing Network of New York), RSA (Rent Stabilization Association of NYC, Inc.), UHAB (Urban Homesteading Assistance Board), HCC (Housing Conservation Coordinators), Tenants & Neighbors, as well as with members of the state senate and assembly. In addition, the Office of Rent Administration's Office of Public Information has attended at least twenty-five community meetings per year since 2019. While many of these meetings have been geared primarily for tenant-based audiences, owners and owner groups are entitled to attend and there have been meetings more directed to owners and their representatives. DHCR has also issued fact sheets and operational bulletins prior to this regulatory process to inform the public as to how HSTPA impacted many of the processes and procedures of the Office of Rent Administration. The New York legislature itself held public hearings prior to the passage of the HSTPA. At the outset of this regulatory process, the Office of Rent Administration sent out an email advising all those on the email distribution list of the regulatory process and the opportunity to participate in this process. DHCR's email distribution list consists of owners, tenants and their representatives. In addition, all interested parties will have an opportunity to comment as part of this SAPA process and all issues raised by concerned parties will be carefully reviewed and considered by DHCR prior to final promulgation. This process will include public hearings.

8. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES ASSOCIATED WITH A VIOLATION

DHCR has not by these regulations increased the penalties on violations or added additional penalties except beyond those mandated by statute.

Rural Area Flexibility Analysis

The proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is not anticipated that there will be an adverse impact on jobs and employment opportunities by the promulgation of these regulations. To the extent that there is any impact, these regulations are, in large part, mandated by statute.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Emergency Tenant Protection Regulations Regulating Residential Rents and Evictions

I.D. No. HCR-35-22-00005-P

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

Proposed Action: Amendment of Parts 2500-2511 of Title 9 NYCRR.

Statutory authority: Emergency Tenant Protection Act of 1974 (McKinney Unconsol. Law 8621, et seq.); L. 1974, ch. 576, section 10a

Subject: Emergency Tenant Protection Regulations regulating residential rents and evictions.

Purpose: To implement changes required or informed by the Housing Stability and Tenant Protection Act of 2019.

Public hearing(s) will be held at: 10:00 a.m., Nov. 15, 2022 at One Bowling Green, New York, NY; 10:00 a.m., Nov. 15, 2022 at 1 Larkin Center, 2nd Fl., Yonkers, NY; and 10:00 a.m., Nov. 15, 2022 at 1550 Franklin Avenue, 1st Fl., Mineola, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information): 1. 9 NYCRR § 2500.2(d), (h), (o), (q) definitions of the terms "Rent," "Tenant,", "Senior citizen" and "Base date".

2. 9 NYCRR § 2500.5 adds language that DHCR shall follow the law in absence of regulation or where a conflicting code provision has not been amended or revoked.

3. 9 NYCRR § 2500.6 adds clarifying language regarding the filing of amendments.

4. 9 NYCRR § 2500.9(c) clarifies applicability of rent stabilization to housing accommodations for which rentals are fixed by DHCR and other agencies or public benefit corporations.

5. 9 NYCRR § 2500.9(e) codifies and clarifies the requirements for establishing substantial rehabilitation of a building. For example, requires a minimum of seventy-five percent of the buildings' systems be replaced, not including systems that are not in need of replacement; repeals a presumption regarding the deteriorated condition of the premises due to being a least 80% vacant, broadens exception based on findings of harass-

ment to include findings of other agencies or courts, provides that regulated tenants who remain in their apartments during rehabilitation shall be regulated until they vacate, provides that the burden of establishing substantial rehabilitation is on the owner, codifies the circumstances and procedures surrounding "dollar orders" where a tenant seeks to preserve their right of return where an apartment is destroyed by fire or similar circumstance.

6. 9 NYCRR § 2500.9(f) and (j) provides for rent stabilization for supportive housing units to comply with the Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA").

7. 9 NYCRR § 2500.9(k) adds language regarding the determination of primary residency for domestic violence victims and tenants paying a nominal rent pursuant to part 2500.9 (e)(6).

8. 9 NYCRR § 2500.9(l) adds language regarding the applicability of rent stabilization upon "deconversion" of cooperatives.

9. 9 NYCRR § 2500.9(m) repeals high rent vacancy deregulation to comply with HSTPA.

10. 9 NYCRR § 2500.9(n), repeals high rent/high income deregulation to comply with HSTPA.

11. 9 NYCRR § 2500.9(s), adds clarifying language regarding notice of deregulation.

12. 9 NYCRR § 2500.14 adds language allowing for certain municipalities to "opt-in" to the ETPA upon the meeting of specified conditions.

13. 9 NYCRR § 2501.1 new section (c) adds requirements pertaining to the combination of two or more vacant apartments or other apartment reconfigurations and the resulting legal regulated rent.

14. 9 NYCRR § 2501.2(c), adds clarifying base date language.

15. 9 NYCRR § 2501.2 new section (d) and (e) added to provide requirements for guidelines increases.

16. 9 NYCRR § 2502.2 amends corresponding section numbers and adds language prohibiting mid-lease increases with certain exceptions.

17. 9 NYCRR § 2502.3(a) amends time limits for Fair Market Rent Appeals to six years to comply with HSTPA.

18. 9 NYCRR § 2502.4 amendments largely mandated by HSTPA for Individual Apartment Improvements ("IAI") and Major Capital Improvements ("MCI"). For IAIs the amendments include: requiring written tenant consent from tenant for IAIs; required filings with DHCR supported by before and after photographs; an itemized list of work performed and the reason for such work; limits the amount the rent can be increased to 1/168th or 1/180th of the cost of the improvement depending on the number of units in the building; does not allow more than three separate IAI increases collected over a 15-year period and the total cost of eligible improvements cannot exceed $15,000; with limited exception, all work must be done by a licensed contractor with no common ownership between the contractor and the owner; a prohibition on increases based upon the installation of similar equipment or furnishings within the useful life of such new equipment or furnishings; prohibitions on increases where there are any outstanding hazardous and immediately hazardous violations at the time of installation that pertain to the subject apartment and; new IAI increases collected for the first time after June 14, 2019, are temporary and will be removed from the rent in thirty years. For MCIs, the amendments include: definition which incorporates new "green" installation; removal of MCI increases after thirty years; amortization of costs over twelve years or twelve and a half years depending on the number of units in the building, modification of the annual cap on collectability to two percent per year; a reasonable cost schedule; prohibition of rent increases due to immediately hazardous violations and hazardous violations; MCIs are no longer allowed for work done in individual apartments that is not otherwise an improvement to the entire building; and prohibition of MCIs in buildings with 35 percent or fewer rent regulated units.

19. 9 NYCRR § 2502.5(d)(1)(ii) repealed to remove vacancy increase language and (d)(6) amended to add that a tenant shall have the right to have a spouse added to the lease and adds repeals sub-section (d)(8) regarding leases for housing accommodations in cooperative or condominium-owned buildings.

20. 9 NYCRR § 2502.6 amendment regarding determinations of the legal regulated rent.

21. 9 NYCRR § 2502.7 is amended to remove language regarding vacancy increases.

22. 9 NYCRR § 2502.8(b)(3) revokes the inclusion of the surcharge for washing machine/dryer/dishwasher in the legal regulated rent.

23. 9 NYCRR § 2503.1 repeals language which limited the time for filing the notice of the initial legal regulated rent and time for maintenance of rental records.

24. 9 NYCRR § 2503.4 (a) adds clarifying language regarding rent reduction orders and the collection of MCI rent increases, (f) clarifies the use of affidavits in complaints relating to maintenance of services.

25. 9 NYCRR § 2503.5(d), (f) modification and clarification of requirements for establishing succession rights.

26. 9 NYCRR § 2503.7 provides rental records retention requirements.

27. 9 NYCRR § 2503.8 adds requirements upon a change in building ownership or management.

28. 9 NYCRR § 2504.3(d) clarifies that the notices referenced in the section relate to an application for demolition.

29. 9 NYCRR § 2504.4(a), (d), (e) requirements for recovery of a rent stabilized unit for owner occupancy to comply with HSTPA; amendments regarding requirements of primary residency.

30. 9 NYCRR § 2504.4(f) amendments of the requirements for demolition including: a "good faith" requirement, that the applicant at the time of the application submit proof of financial ability to complete the proposed work, along with proof that the appropriate governmental agency has already approved demolition plans, requires that the entire building be removed, including the foundation, increases the stipends given to residents displaced by demolition by calculating it based on the average rent for non-regulated vacant apartments multiplied by six years, allows DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time, permits DHCR to initiate enforcement proceedings sua sponte for failure to comply and make those penalties applicable to subsequent purchasers, and provides that no order may be issued less than 90 days from the date the last affected tenant's lease has expired.

31. 9 NYCRR § 2505.2 adds a prohibition against the evasion of legal regulated rents as well as amends the requirements for rent receipts to comply with HSTPA.

32. 9 NYCRR § 2506.1 adds clarifying language about proceedings filed pre-HSTPA.

33. 9 NYCRR § 2506.2 amends allowable penalty amounts and adds new penalties.

34. 9 NYCRR § 2506.8 repeals and replaces the section regarding determination of legal regulated rents, overcharges and penalties to comply with HSTPA. The amendments include, for example: extension of a prior 4-year rule to a 6 or more year rule, use of the most "reliable" registration as a benchmark in certain overcharge processing, consideration of all available evidence reasonable necessary to make a determination of the legal rent, recognition of concurrent jurisdiction with respect to overcharge claims "subject to the tenant's choice of forum, provides that tenants may file a claim "at any time," provides that tenants can now receive up to six years of rent overcharges and six years of treble damages and reasonable costs and attorneys' fees; provides a new rolling base date and grandfathering of all claims that reflect the review of time periods prior to the enactment of HSTPA.

35. 9 NYCRR § 2507.2 adds language to allow DHCR to reclassify or convert a proceeding on its own initiative.

36. 9 NYCRR § 2507.3(a)(2) adds language to provide tenants, in a proceeding to increase the legal regulated rent, with sixty days from the date of DHCR's mailing of the notice of the proceeding to answer or reply.

37. 9 NYCRR § 2507.3(c) adds language that notice served upon the registered owner constitutes notice on whoever is currently owner of the building.

38. 9 NYCRR § 2507.4 correction for capitalization.

39. 9 NYCRR § 2507.5 addition of sections (l) and (m) providing that DHCR may stay proceedings as appropriate and permit a tenant to withdraw a complaint.

40. 9 NYCRR § 2508.1(a) removes a reference to a section being repealed; (e) added to allow DHCR to establish procedures for service and filing via electronic methods via operational bulletin.

41. 9 NYCRR § 2509.1 adds a requirement that apartment registrations include an actual physical address for the owner or agent.

42. 9 NYCRR § 2509.3(a) amended to repeal language regarding time period for examination of rental history.

43. 9 NYCRR § 2510.3 adds language providing that proceedings remanded to DHCR following an Article 78 proceeding may be reconsidered without being remanded to the rent administrator.

44. 9 NYCRR § 2510.9 provides that where a code provision or applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the statute or code as it existed at the time the rent administrator's order was issued, unless the relevant law or regulation states otherwise.

45. 9 NYCRR § 2510.11, provides correction of cross-references.

46. 9 NYCRR § 2511.1, § 2511.2, § 2511.3, § 2511.4, § 2511.5, § 2511.6, § 2511.7, § 2511.8, repeal of high rent/high income deregulation sections as of June 14, 2019, pursuant to HSTPA.

47. 9 NYCRR § 2511.9 is repealed as of June 14, 2019, pursuant to HSTPA and replaced with language providing that any apartment lawfully deregulated as of June 14, 2019, remains deregulated.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Executive Assistant, DHCR Office of Rent Administration, 92-31 Union Hall Street, 6th Floor, Jamaica, NY 11433, (718) 262-4816, email: michael.berrios@hcr.ny.gov

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

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

Summary of Regulatory Impact Statement (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information):

1. STATUTORY AUTHORITY

The Emergency Tenant Protection Act of 1974 ("ETPA") (McKinney Unconsol. Law 8621, et seq.), Laws of 1974 Ch. 576, section 10a provide authority to the Division of Housing and Community Renewal ("DHCR") to amend the Emergency Tenant Protection Regulations ("TPR"). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), enacted June 14, 2019, and Ch. 39 of the Laws of 2019 ("Clean-up law") further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of the HSTPA.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in Section 2 of the Emergency Tenant Protection Act ("ETPA"). The legislature has determined that, because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare.

DHCR is specifically authorized by ETPA § 8630 to promulgate regulations to protect tenants and the public interest and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up law.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there were significant amendments to the rent laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed. The needs and benefits of some of the specific modifications proposed are detailed in the full Regulatory Impact Statement available on DHCR's website at https://hcr.ny.gov/regulatory-information. Some of those are highlighted below:

a. Individual Apartment Improvements (IAIs) (9 NYCRR § 2502.4)

HSTPA itself mandated most of the regulatory amendments made with respect to this section.

b. Major Capital Improvements (MCIs) (9 NYCRR § 2502.4)

These provisions are another area that HSTPA changed and directed that DHCR promulgate regulations.

c. Rent Regulation for Supportive Housing Units (9 NYCRR § 2500.9)

HSTPA also amended three sections of the Emergency Tenant Protection Act McK.Unconsol. Laws § 8625(a)(6) and (10) to extend rent stabilization to previously exempt housing accommodations (§ 8625(a)(10)) or to buildings (§ 8625(a)(6)) used by not-for-profit corporations that were providing permanent housing accommodations with governmental services for vulnerable individuals with disabilities who were homeless or at risk of homelessness. These new inclusions are applicable to such housing accommodations provided "as of and after" the effective date of HSTPA.

d. High Rent/High Income Deregulation (9 NYCRR § 2511)

HSTPA repealed the high rent/high income provisions of the rent laws with an exception with respect to the rules governing Real Property Tax Law § 421-a(16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated. Modifications to the regulations on this topic are required by HSTPA.

e. Rent Overcharges (9 NYCRR § 2506.1)

The HSTPA made changes with respect to the processing and determination of rent overcharge cases which are reflected in these regulations.

The proposed amendments are consistent with the legislature's requirements and with the Court of Appeals decision in Matter of Regina Metropolitan Co. LLC v. New York State Division of Housing and Community Renewal, 2020 NY Slip. Op. 02127 (2020).

f. Apartment Reconfigurations (9 NYCRR § 2501.1)

While not expressly addressed by HSTPA, other provisions of HSTPA made these amendments necessary.

g. Succession Rights (9 NYCRR § 2503.5)

Family members remaining in a rent stabilized unit after the vacatur of the named lease holder have the right to remain in the apartment and continue to receive renewal leases. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacatur of the named leaseholder (9 NYCRR § 2503.5(d)(1)).

Presently, there is a split between the Appellate Division, 1st Department and 2nd Department as to how to measure the two-year period. DHCR's regulations reflect that true fraud and an extended period of misrepresentation will not be rewarded by adopting the approach of the 2nd Department. However, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated difficult and problematic interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

h. Rent Guidelines Board/Rent Guideline Increase on Vacancy (9 NYCRR § 2502.7)

HSTPA requires the Rent Guidelines Board to establish a single "unitary" guideline applicable to both vacancy and renewal leases. HSTPA also includes a repeal of the ETPA and RSL provisions allowing for the imposition of what was commonly called the "vacancy bonus" which is also reflected in these regulations. However, HSTPA did not intend to place a greater burden on existing tenants by excluding new tenants upon execution of their leases from the guideline increases.

i. Affordable Housing Regulatory Agreements (9 NYCRR § 2500.9)

The proposed regulation will implement HSTPA by allowing other federal project based rental assistance administered by a public housing agency eligible to administer section 8 subsidies, to obtain these increases upon renewal with a supervising agency's consent.

j. Deconversion (9 NYCRR § 2500.9)

DHCR, by these amendments, provides that upon "deconversion," the rent may be determined by a number of different processes, based on a variety of factors.

k. High Rent Vacancy Deregulation (9 NYCRR § 2500.9)

HSTPA eliminates high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with the exceptions previously noted.

l. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless the equities or avoiding undue hardship require otherwise. The regulation also allows DHCR, when a new rule requires a higher rent and is imposed, to make the increase prospective, rather than from the initiation of the RA proceeding. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to the equitable and hardship exceptions. The rule change conforms with the major implementation requirements of HSTPA based on Regina Metropolitan.

m. Actual Physical Address for Registration (9 NYCRR § 2509.1)

Part of the requirements of the ETPA is that each owner registers their building and each apartment annually. The proposed regulation requires owners to provide a brick-and-mortar address instead of utilizing a post office box address.

n. Substantial Rehabilitation (9 NYCRR § 2500.9)

There is an exclusion from regulation of buildings that were "substantially rehabilitated" as family units after January 1, 1974. The amendments include among other things, reinforcement of the regulatory requirement by stating more explicitly that a minimum of seventy-five percent of the buildings' systems need to be replaced.

o. Demolition (9 NYCRR § 2504.4)

The new regulations add a "good faith" requirement to demolition, require the applicant at the time of the application to submit proof of financial ability to complete the proposed work, along with proof that the local building department has already approved the plans for demolition, increases the stipends given to residents displaced by demolition, allows DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time, and permits DHCR to initiate enforcement proceedings sua sponte for failure to comply and make those penalties applicable to subsequent purchasers. The amended regulations clarify the existence of DHCR's powers with respect to enforcement.

4. COSTS

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at $20 per unit per year. The amended regulations do not impose any new mandatory program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their compliance with changes and the changes themselves in many instances do require additional filings by owners. Compliance costs are already a generally accepted expense of owning regulated housing. In general, the increased compliance costs are less a product of the promulgation of these regulations, but the enactment of HSTPA.

There are increased penalties in some instances if the regulations are violated. However, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur

any additional direct costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional record retention. Owners need, with the new overcharge provisions, to retain proof of the legality of rent for a longer period, but a prudent owner would have already retained that information for other purposes, such as to resolve possible jurisdictional disputes. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent stabilized property participates in another State, City or Federal housing program. In those instances, there may be a need to comply with the TPR requirements as well as the mandates of that City, State or Federal program.

8. ALTERNATIVES

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing, much examination of alternatives. Nevertheless, DHCR considered a variety of alternatives to certain rules which were not exactly proscribed by HSTPA. Most often however, the choices were questions of appropriate statutory interpretation rather than policy choices. A more detailed discussion of the alternatives for the proposed amendments is contained in the full Regulatory Impact Statement available on DHCR's website at: https://hcr.ny.gov/regulatory-information

9. FEDERAL STANDARDS

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally are the subject of current litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Emergency Tenant Protection Regulations ("TPR") apply only to rent regulated housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act (ETPA). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), amended Section 14 of the ETPA to expand applicability of the ETPA to all counties within the State of New York. However, as of the date of this analysis, rent regulation under the ETPA has not been adopted by any municipality outside of Westchester, Rockland and Nassau counties.

The class of small businesses affected by these proposed amendments would be limited to certain small property owners, who own limited numbers of rent regulated units. DHCR has sought to provide alternative and tailored methods of compliance with the requirements to provide options to small businesses to limit any additional regulatory burden. These amendments are expected to have no impact on local governments.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would require small businesses that own regulated residential housing units to perform some additional recordkeeping and reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES

The proposed amendments may require small businesses to obtain new or additional professional services in the form of architecture or engineering services if it seeks a waiver of the reasonable cost schedule, which was previously promulgated and is now being incorporated into the larger major capital improvement (MCI) regulation. However, such services are often already used with respect to a contested MCI application. Further, the regulation will require review of costs for MCIs when contracting for the services to comply with the reasonable cost schedule.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose significant costs upon small businesses or upon the local government anticipated by the passage of the HSTPA. Small business owners of regulated housing accommodations will need to be more vigilant to assure their compliance with these changes. Compliance costs are already a generally accepted expense of owning regulated housing. There are also increased penalties in some instances if the regulations are violated as well reflecting certain penalties added to the ETPA in 2015. However, the costs of conforming present business practices to the change in standards are not substantial. In addition, these consequences are consistent with existing law or otherwise necessary to secure compliance.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

6. MINIMIZING ADVERSE IMPACT

The proposed regulations have no adverse impact on local government. They may have some costs to businesses which must be weighed against the fact that the rule is required by statute and necessary to enforce statutes designed to protect the public health safety and welfare. The regulations do not create different regulatory standards for small businesses. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses, but the regulations do allow small businesses to use exceptions available to owners under certain circumstances. Outside of the administrative proceedings themselves, where complaints and applications are reviewed on an individual basis, it is difficult to ascertain the size of the businesses subject to these regulations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The rent laws and regulations empower DHCR to enforce the law. Meetings have been held with both business owners and affected tenant interest groups, including but not limited to: CHIP (Community Housing Improvement Program), Legal Services NYC, Brooklyn Legal Services, the Legal Aid Society, REBNY (Real Estate Board of New York), SHNNY (Supportive Housing Network of New York), RSA (Rent Stabilization Association of NYC, Inc.), UHAB (Urban Homesteading Assistance Board), HCC (Housing Conservation Coordinators), Tenants & Neighbors, as well as with members of the state senate and assembly. In addition, the Office of Rent Administration's Office of Public Information has attended at least twenty-five community meetings per year since 2019. While many of these meetings have been geared primarily for tenant-based audiences, owners and owner groups are entitled to attend and there have been meetings more directed to owners and their representatives. DHCR has also issued fact sheets and operational bulletins prior to this regulatory process to inform the public as to how HSTPA impacted many of the processes and procedures of the Office of Rent Administration. The New York legislature itself held public hearings prior to the passage of the HSTPA. At the outset of this regulatory process, the Office of Rent Administration sent out an email advising all those on the email distribution list of the regulatory process and the opportunity to participate in this process. DHCR's email distribution list consists of owners, tenants and their representatives. In addition, all interested parties will have an opportunity to comment as part of this SAPA process and all issues raised by concerned parties will be carefully reviewed and considered by DHCR prior to final promulgation. This process includes public hearings.

8. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES ASSOCIATED WITH A VIOLATION

DHCR has not by these regulations increased the penalties on violations or added any additional penalties except beyond those mandated by statute. HSTPA in the context of modifying the procedures governing overcharges specifically modified a prior DHCR policy regarding repayment of overcharges prior to the time that an owner was required to respond to an overcharge complaint.

Rural Area Flexibility Analysis

The proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is not anticipated that there will be an adverse impact on jobs and employment opportunities by the promulgation of these regulations. To the extent that there is any impact, these regulations are, in large part, mandated by statute.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

State Rent and Eviction Regulations Governing Statewide Rent Control

I.D. No. HCR-35-22-00006-P

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

Proposed Action: Amendment of Parts 2100-2110 of Title 9 NYCRR.

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

Subject: State Rent and Eviction Regulations governing statewide rent control.

Purpose: To implement changes required or informed by the Housing Stability and Tenant Protection Act of 2019.

Public hearing(s) will be held at: 10:00 a.m., Nov. 15, 2022 at One Bowling Green, New York, NY; 10:00 a.m., Nov. 15, 2022 at 1 Larkin Center, 2nd Fl., Yonkers, NY; and 10:00 a.m., Nov. 15, 2022 at 1550 Franklin Avenue, 1st Fl., Mineola, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information): 1. 9 NYCRR § 2100.1(a) adds "Division of Housing and Community Renewal".

2. 9 NYCRR § 2100.2(c), (d), and (g) amending definitions of the terms "Rent," "Maximum Rent," and "Tenant".

3. 9 NYCRR § 2100.3(k) and (l) adds definitions of the terms "Common Ownership" and "DHCR".

4. 9 NYCRR § 2100.9(v) repeals high rent vacancy deregulation to comply with HSTPA.

5. 9 NYCRR § 2100.9(w) repeals high rent/high income deregulation to comply with HSTPA.

6. 9 NYCRR § 2100.15 amendments regarding requirements for rent receipts.

7. 9 NYCRR § 2100.18 adds language regarding the primary residency of a victim of domestic violence.

8. 9 NYCRR § 2102.1 amendments regarding the establishment of maximum rents pursuant to HSTPA.

9. 9 NYCRR § 2102.3 amendments largely mandated by HSTPA for Individual Apartment Improvements ("IAI") and Major Capital Improvements ("MCI"). For IAIs the amendments include: written tenant consent from tenant for IAIs; required filings with DHCR supported by before and after photographs; an itemized list of work performed and the reason for such work; limits the amount the rent can be increased to 1/168th or 1/180th of the cost of the improvement depending on the number of units in the building; no more than three separate IAI increases collected over a 15-year period and the total cost of eligible improvements cannot exceed $15,000; with limited exception, all work must be done by a licensed contractor with no common ownership between the contractor and the owner; prohibition on increases based upon the installation of similar equipment or furnishings within the useful life of such new equipment or furnishings; prohibitions on increases where there are any outstanding hazardous and immediately hazardous violations at the time of installation that pertain to the subject apartment and; new IAI increases collected for the first time after June 14, 2019, are temporary and will be removed from the rent in thirty years. For MCIs, the amendments include: definition which incorporates new "green" installation; removal of MCI increases after thirty years; amortization of costs over twelve years or twelve and a half years depending on the number of units in the building, modification of the annual cap on collectability to two percent per year; a reasonable cost schedule; prohibition of rent increases due to immediately hazardous violations and hazardous violations; MCIs are no longer allowed for work done in individual apartments that is not otherwise an improvement to the entire building; and prohibition of MCIs in buildings with 35 percent or fewer rent regulated units.

10. 9 NYCRR § 2102.4(h) updates DHCR's website address and references.

11. 9 NYCRR § 2103.4 adds a requirement that apartment registrations include an "actual, physical street address" for the owner or agent.

12. 9 NYCRR § 2104.3(a) and (c) adds the address for filing of the notice with DHCR.

13. 9 NYCRR § 2104.4 amendments of the requirements of the relocation requirements when directed by or is required pursuant to a condition for the granting of a certificate of eviction.

14. 9 NYCRR § 2104.5(a)(1), (a)(2), (b), (c)(2) requirements for recovery of a rent regulated unit for owner occupancy to comply with HSTPA.

15. 9 NYCRR § 2104.6(d) modification and clarification of requirements for establishing succession rights.

16. 9 NYCRR § 2106.1(d)(5) adds that the tenant shall have a cause of action in a court of competent jurisdiction for damages, declaratory, injunctive relief against the owner where the owner fails to use the certificate of eviction for the specified purpose.

17. 9 NYCRR § 2108.10 provides that where a code provision or applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the statute or code as it existed at the time the rent administrator's order was issued, unless the relevant law or regulation states otherwise.

18. 9 NYCRR § 2110.2, § 2110.3, § 2110.4, § 2110.5, § 2110.6, § 2110.7 repeal of high rent/high income deregulation sections as of June 14, 2019, pursuant to HSTPA.

19. 9 NYCRR § 2110.8 is repealed as of June 14, 2019, pursuant to HSTPA and replaced with language providing that any apartment lawfully deregulated as of June 14, 2019 remains deregulated.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Executive Assistant, DHCR Office of Rent Administration, 92-31 Union Hall Street, 6th Floor, Jamaica, NY 11433, (718) 262-4816, email: michael.berrios@hcr.ny.gov

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

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

Summary of Regulatory Impact Statement (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information):

1. STATUTORY AUTHORITY

The Emergency Housing Rent Control Law ("RCL"), Laws of 1946, Chap 274, subdivision 4(a), as amended by the Laws of 1950, Chap. 250, as amended, as transferred to the Division of Housing and Community Renewal (DHCR) by the Laws of 1964, Chap. 244, provides the authority to the DHCR to amend the State Rent and Eviction Regulations (SRER). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), enacted June 14, 2019, and Ch. 39 of the Laws of 2019 ("Clean-up law") further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of HSTPA.

2. LEGISLATIVE OBJECTIVES

The RCL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare. The RCL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See RCL § 8581(1). DHCR is specifically authorized to promulgate regulations by RCL § 8584(4)(a) and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up bill.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there was a significant amendment to the rent laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Individual Apartment Improvements (IAIs)

HSTPA itself mandated most of the regulatory amendments made with respect to this section.

b. Major Capital Improvements (MCIs)

These provisions are another area that HSTPA changed and directed that DHCR promulgate regulations.

c. High Rent/High Income Deregulation

HSTPA repealed the high rent/high income provisions of the rent laws

with an exception with respect to the rules governing Real Property Tax Law § 421-a (16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated. Modifications to the regulations on this topic are required by HSTPA.

d. Maximum Rent

HSTPA made changes with respect to the establishment of the maximum rent. The proposed regulations reflect those changes.

e. Fuel Costs

HSTPA made prohibited fuel cost pass-alongs. The proposed regulations are amended to reflect that and any such increase to such tenant shall be null and void.

f. Succession Rights

Family members remaining in a rent-controlled unit after the vacatur of the named lease holder have the right to remain in the apartment. HSTPA made no changes to the statutory provisions regarding succession. However, DHCR has always been empowered to promulgate regulations, first by its general rent stabilization rule making authority, see, Rent Stabilization Association v. Higgins, 83 N.Y.2d 156, 608 N.Y.S.2d 930 (1993) and subsequently by Public Housing Law § 14. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacatur of the named leaseholder. (9 NYCRR § 2204.6)

DHCR determined that clarification for rent-controlled tenants that the period of actual physical vacatur of the named lease holder controls. DHCR's regulations reflect that true fraud, and an extended period of misrepresentation will not be rewarded, however, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated difficult and problematic interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

g. High Rent Vacancy Deregulation

HSTPA eliminates high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with the exceptions previously noted.

h. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless the equities or preventing undue hardship require otherwise. The regulation also allows DHCR, when a new rule requires a higher rent and is imposed, to make the increase prospective, rather than from the initiation of the RA proceeding. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to the equitable and hardship exceptions. The rule change conforms with the major implementation requirements of HSTPA based on Regina Metropolitan.

i. Actual Physical Address for Registration

Part of the requirements of the SRER is that each owner registers their building upon change in ownership. The proposed regulation requires owners to provide an actual physical address instead of utilizing a post office box address.

4. COSTS

The regulated parties are residential tenants and the owners of the rent controlled housing accommodations in which such tenants reside. There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at $20 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their compliance with changes and the changes themselves in many instances do require additional filings by owners. Compliance costs are already a generally accepted expense of owning regulated housing. In general, as in the example provided above, the increased compliance costs are less a product of the promulgation of these regulations, but the enactment of HSTPA.

There are increased penalties in some instances if the regulations are violated.

However, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur any additional direct costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional record retention. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent-controlled property participates in another State, City or Federal housing program. In those instances, there may be a need to comply with the SRER requirements as well as the mandates of that City, State or Federal program.

8. ALTERNATIVES

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing, much examination of alternatives. Nevertheless, DHCR considered a variety of alternatives to certain rules which were not exactly proscribed by HSTPA. Most often however, the choices were questions of appropriate statutory interpretation rather than policy choices. A more detailed discussion of the alternatives for the proposed amendments is contained in the full Regulatory Impact Statement available on DHCR's website at: https://hcr.ny.gov/regulatory-information

9. FEDERAL STANDARDS

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally are the subject of current litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The State Rent and Eviction Regulations (SRER) apply only to housing units located in those communities outside New York City that are subject to the Emergency Housing Rent Control Law. The class of small businesses affected by these proposed amendments would be limited to certain small property owners, who own limited numbers of rent regulated units. Given that rent control units are subject to vacancy decontrol, the number of units are limited and has decreased over time and will continue to do so. DHCR has sought to provide alternative and tailored methods of compliance with the requirements to provide options to small businesses to limit any additional regulatory burden. These amendments are expected to have no impact on local governments.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would require small businesses that own regulated residential housing units to perform some additional recordkeeping and reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES

The proposed amendments may require small businesses to obtain new or additional professional services in the form of architecture or engineering services if it seeks a waiver of the reasonable cost schedule, which was previously promulgated and is now being incorporated into the larger major capital improvement (MCI) regulation. However, such services are often already used with respect to a contested MCI application. Further, the regulation will require review of costs for MCIs when contracting for the services to comply with the reasonable cost schedule.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose significant costs upon small businesses or upon the local government that were not anticipated by the passage of HSTPA. Small business owners of regulated housing accommodations will need to be more vigilant to assure their compliance with these changes. Compliance costs are already a generally accepted expense of owning regulated housing. There are also increased penalties in some instances if the regulations are violated. However, the costs of conforming present business practices to the change in standards are not substantial. In addition, these consequences are consistent with existing law or otherwise necessary to secure compliance.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

6. MINIMIZING ADVERSE IMPACT

The proposed regulations have no adverse impact on local government. They may have some costs to businesses which must be weighed against the fact that the rule is required by statute and necessary to enforce statutes designed to protect the public health, safety and welfare. The regulations do not create different regulatory standards for small businesses. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses, but the regulations do allow small businesses to use exceptions

available to owners under certain circumstances. Outside of the administrative proceedings themselves, where complaints and applications are reviewed on an individual basis, it is difficult to ascertain the size of the businesses subject to these regulations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The rent laws and regulations empower DHCR to enforce the law. Meetings have been held with both business owners and affected tenant interest groups, including but not limited to: CHIP (Community Housing Improvement Program), Legal Services NYC, Brooklyn Legal Services, the Legal Aid Society, REBNY (Real Estate Board of New York), SHNNY (Supportive Housing Network of New York), RSA (Rent Stabilization Association of NYC, Inc.), UHAB (Urban Homesteading Assistance Board), HCC (Housing Conservation Coordinators), Tenants & Neighbors, as well as with members of the state senate and assembly. In addition, the Office of Rent Administration's Office of Public Information has attended at least twenty-five community meetings per year since 2019. While many of these meetings have been geared primarily for tenant-based audiences, owners and owner groups are entitled to attend and there have been meetings more directed to owners and their representatives. DHCR has also issued fact sheets and operational bulletins prior to this regulatory process to inform the public as to how HSTPA impacted many of the processes and procedures of the Office of Rent Administration. The New York legislature itself held public hearings prior to the passage of the HSTPA. At the outset of this regulatory process, the Office of Rent Administration sent out an email advising all those on the email distribution list of the regulatory process and the opportunity to participate in this process. DHCR's email distribution list consists of owners, tenants and their representatives. In addition, all interested parties will have an opportunity to comment as part of this SAPA process and all issues raised by concerned parties will be carefully reviewed and considered by DHCR prior to final promulgation. This process will include public hearings.

8. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES ASSOCIATED WITH A VIOLATION:

DHCR has not by these regulations increased the penalties on violations or added any additional penalties except beyond those mandated by statute.

Rural Area Flexibility Analysis

The proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is not anticipated that there will be an adverse impact on jobs and employment opportunities by the promulgation of these regulations. To the extent that there is any impact, these regulations are, in large part, mandated by statute.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rent Stabilization Code Regulating Residential Rents and Evictions

I.D. No. HCR-35-22-00007-P

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

Proposed Action: Amendment of Parts 2520-2531 of Title 9 NYCRR.

Statutory authority: Administrative Code of the City of New York, sections 26-511(b), 26-518(a); Rent Stabilization Law, section 26-511(c)(1)

Subject: Rent Stabilization Code regulating residential rents and evictions.

Purpose: To implement changes required or informed by the Housing Stability and Tenant Protection Act of 2019.

Public hearing(s) will be held at: 10:00 a.m., Nov. 15, 2022 at One Bowling Green, New York, NY; 10:00 a.m., Nov. 15, 2022 at 1 Larkin Center, 2nd Fl., Yonkers, NY; and 10:00 a.m., Nov. 15, 2022 at 1550 Franklin Avenue, 1st Fl., Mineola, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information): 1. 9 NYCRR § 2520.1 removes extraneous language.

2. 9 NYCRR § 2520.6(c), (d), (f), and (p) amending definitions of the terms "Rent," "Tenant,", and "Base date" and adds the definition of "common ownership".

3. 9 NYCRR § 2520.7 adds "otherwise required by law".

4. 9 NYCRR § 2520.8 adds language that DHCR shall follow the law in absence of regulation or where a conflicting code provision has not been amended or revoked.

5. 9 NYCRR § 2520.9 adds "publication of the notice of adoption in the State Register" and

"or otherwise required by law".

6. 9 NYCRR § 2520.11(c) clarifies applicability of rent stabilization to housing accommodations for which rentals are fixed by DHCR and other agencies or public benefit corporations.

7. 9 NYCRR § 2520.11(e) codifies and clarifies the requirements for establishing substantial rehabilitation of a building. For example, requires a minimum of seventy-five percent of the buildings' systems be replaced, not including systems that are not in need of replacement; repeals a presumption regarding the deteriorated condition of the premises due to being at least 80% vacant, broadens exception based on findings of harassment to include findings of other agencies or courts, provides that regulated tenants who remain in their apartments during rehabilitation shall be regulated until they vacate, provides that the burden of establishing substantial rehabilitation is on the owner, codifies the circumstances and procedures surrounding "dollar orders" where a tenant seeks to preserve their right of return where an apartment is destroyed by fire or similar circumstance.

8. 9 NYCRR § 2520.11(f) and (j) provides for rent stabilization for supportive housing units to comply with the Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA").

9. 9 NYCRR § 2520.11(k) adds language regarding the determination of primary residency for domestic violence victims and tenants paying a nominal rent pursuant to Part 2520.11(e)(6).

10. 9 NYCRR § 2520.11(l) adds language regarding the applicability of rent stabilization upon "deconversion" of cooperatives.

11. 9 NYCRR § 2520.11(p) clarifies applicability of rent stabilization to housing accommodations in buildings subject to regulation solely as a condition of receiving tax benefits pursuant to 421-a of the Real Property Tax Law.

12. 9 NYCRR § 2520.11(r) and (u) repeal high rent vacancy deregulation to comply with HSTPA.

13. 9 NYCRR § 2520.11(s), repeals high rent/high income deregulation to comply with HSTPA.

14. 9 NYCRR § 2520.12 repeals extraneous language.

15. 9 NYCRR § 2521.1(b), (c), (d), (e), (g), (i), and (n) adds language regarding the determination of initial legal regulated rents to comply with HSTPA.

16. 9 NYCRR § 2521.1 new subdivision (m) adds requirements pertaining to the

combination of two or more vacant apartments or other apartment reconfigurations and the resulting legal regulated rent.

17. 9 NYCRR § 2521.1 new subdivision (n) added to provide for the determination of the

initial rent upon the vacatur of a not for profit and affiliated subtenant.

18. 9 NYCRR § 2521.2(a), (c) and new subdivisions (d) and (e) provide the requirements for "preferential rents" to comply with HSTPA.

19. 9 NYCRR § 2522.2 clarifies the effective date of adjustment of legal regulated rent;

20. 9 NYCRR § 2522.3(a), (c), (e) and (f) amends time limits for Fair Market Rent Appeals, to six years to comply with HSTPA.

21. 9 NYCRR § 2522.4 amendments largely mandated by HSTPA for Individual Apartment Improvements ("IAI") and Major Capital Improvements ("MCI"). For IAIs the amendments include: requiring written tenant consent from tenant for IAIs; requiring filings with DHCR supported by before and after photographs; an itemized list of work performed and the reason for such work; limiting the amount the rent can be increased to 1/168th or 1/180th of the cost of the improvement depending on the number of building units; allows no more than three separate IAI increases collected over a 15-year period and the total cost of eligible improvements cannot exceed $15,000; with limited exception, all work must be done by a licensed contractor with no common ownership between the contractor and the owner; prohibition on increases based upon the installation of similar equipment or furnishings within the useful life of such new equipment or furnishings; prohibitions on increases where there are any outstanding hazardous and immediately hazardous violations at the time of installation that pertain to the subject apartment and; new IAI increases collected for the first time after June 14, 2019, are temporary and will be removed from the rent in thirty years. For MCIs, the amendments include: definition

which incorporates new "green" installation; removal of MCI increases after thirty years; amortization of costs over twelve or twelve and a half years depending on the number of building units, modification of the annual cap on collectability to two percent per year; a reasonable cost schedule; prohibition of rent increases due to immediately hazardous violations and hazardous violations; MCIs are no longer allowed for work done in individual apartments that is not otherwise an improvement to the entire building; and prohibition of MCIs in buildings with 35 percent or fewer rent regulated units.

22. 9 NYCRR § 2522.4(e) updates contact information and changes "shall" to "may" in several instances.

23. 9 NYCRR § 2522.5(d)(3) and (d)(4) provides a correct cross reference.

24. 9 NYCRR § 2522.5(f) and (g) clarification regarding the requirement that lease agreements have the same terms and conditions as an expired lease and regarding leases for housing accommodations in cooperative or condominium-owned buildings.

25. 9 NYCRR § 2522.6(b) amendment regarding determinations of the legal regulated rent.

26. 9 NYCRR § 2522.7 language added that DHCR's consideration of equities includes the creation of undue hardship or prejudice in determining the retroactive application of orders which create rent arrears.

27. 9 NYCRR § 2522.8 modifies the rent adjustments allowable on vacancy to comply with HSTPA.

28. 9 NYCRR § 2522.9(b)(3) revokes the inclusion of the surcharge for washing machine/dryer/dishwasher in the legal regulated rent.

29. 9 NYCRR § 2523.1 adds that for notice of the initial legal regulated rent, compliance with § 2528.2 shall be considered compliance with this section.

30. 9 NYCRR § 2523.4(a) adds clarifying language regarding rent reduction orders and the collection of MCI rent increases, (b) clarifies the effective date for complaints regarding provision of hotel services, (g) clarifies the use of affidavits in complaints relating to

maintenance of services.

31. 9 NYCRR § 2523.5(b), (f) modification and clarification of requirements for establishing succession rights.

32. 9 NYCRR § 2523.7(b), (c) rental records retention requirements.

33. 9 NYCRR § 2523.8 amended to include the requirement that the owner provide DHCR with an actual physical, street address for service.

34. 9 NYCRR § 2524.2(e) clarifies that the notices referenced in the section relate to an application for demolition.

35. 9 NYCRR § 2524.4(a), (b), (c) requirements for recovery of a rent stabilized unit for owner occupancy to comply with HSTPA; amendments regarding requirements of primary residency.

36. 9 NYCRR § 2524.5(a),(b) amendments of the requirements for demolition including: a "good faith" requirement, that the applicant at the time of the application submit proof of financial ability to complete the proposed work, along with proof that the Department of Buildings ("DOB") has already approved demolition plans, requires that the entire building be removed, including the foundation, increases the stipends given to residents displaced by demolition by calculating it based on the average rent for non-regulated vacant apartments multiplied by six years, allows DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time, permits DHCR to initiate enforcement proceedings sua sponte for failure to comply and make those penalties applicable to subsequent purchasers, and provides that no order may be issued less than 90 days from the date the last affected tenant's lease has expired.

37. 9 NYCRR § 2525.2(b) amends the requirements for rent receipts.

38. 9 NYCRR § 2525.3(a) amended to remove conditional rental language regarding purchase of shares to an apartment.

39. 9 NYCRR § 2525.5 amends the definition of owner harassment to include the illegal discontinuance of a current tenant's preferential rent.

40. 9 NYCRR § 2525.6(e), (g) amended to remove language regarding collection of vacancy increases in a sublease to comply with HSTPA.

41. 9 NYCRR § 2526.1 renames the section "Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits; where the proceeding is commenced prior to June 14, 2019" and adds section (i) to clarify that the section only applies to proceedings initiated prior to June 14, 2019.

42. 9 NYCRR § 2526.2(c), amendment of the civil penalties for violation of DHCR orders to comply with HSTPA.

43. 9 NYCRR § 2526.7 is added and named "Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits; where the proceeding is commenced on or after to June 14, 2019" and contains the HSTPA requirements including, for example: extension of a prior 4-year rule to a 6 or more year rule, use of the most "reliable" registration as a benchmark in certain overcharge processing, consideration of all available evidence reasonably necessary to make a determination of the legal rent, recognition of concurrent jurisdiction with respect to overcharge claims "subject to the tenant's choice of forum, provides that tenants may file a claim "at any time," provides that tenants can now receive up to six years of rent overcharges and six years of treble damages and reasonable costs and attorneys' fees; provides a new rolling base date and grandfathering of all claims that reflect the review of time periods prior to the enactment of HSTPA.

44. 9 NYCRR § 2527.2 adds language to allow DHCR to reclassify or convert a proceeding on its own initiative.

45. 9 NYCRR § 2527.3(a)(2) adds language to provide tenants, in a proceeding to increase the legal regulated rent, with sixty days from the date of DHCR's mailing of the notice of the proceeding to answer or reply.

46. 9 NYCRR § 2527.4 adds language to provide clarity regarding times to answer in other proceedings.

47. 9 NYCRR § 2527.5(j) and (k) contain typographical corrections. Addition of

subdivisions (l) and (m) providing that DHCR may stay proceedings as appropriate and permit a tenant to withdraw a complaint.

48. 9 NYCRR § 2527.7 adds "or by the RSL".

49. 9 NYCRR § 2527.9(a) removes a reference to a section being repealed; (e) added to allow DHCR to establish procedures for service and filing via electronic methods via operational bulletin.

50. 9 NYCRR § 2528.2(a) adds the requirement of that owner's provide an actual, physical street address in the initial registration.

51. 9 NYCRR § 2528.4(a) deletes base date language to comply with HSTPA.

52. 9 NYCRR § 2529.6 adds language providing that proceedings remanded to DHCR following an Article 78 proceeding may be reconsidered without being remanded to the rent administrator.

53. 9 NYCRR § 2529.10 provides that where a code provision or applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the statute or code as it existed at the time the rent administrator's order was issued, unless the relevant law or regulation states otherwise.

54. 9 NYCRR § 2529.12, provides correction of cross-references.

55. 9 NYCRR § 2531.1, § 2531.2, § 2531.3, § 2531.4, § 2531.5, § 2531.6, § 2531.7, § 2531.8, repeal of high rent/high income deregulation sections as of June 14, 2019, pursuant to HSTPA.

56. 9 NYCRR § 2531.9 is repealed as of June 14, 2019, pursuant to HSTPA and replaced with language providing that any apartment lawfully deregulated as of June 14, 2019, remains deregulated.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Berrios, Executive Assistant, DHCR Office of Rent Administration, 92-31 Union Hall Street, 6th Floor, Jamaica, NY 11433, (718) 262-4816, email: michael.berrios@hcr.ny.gov

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

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

Summary of Regulatory Impact Statement (Full text is posted at the following State website: https://hcr.ny.gov/regulatory-information):

1. STATUTORY AUTHORITY

§ 26-511(b) and § 26-518(a) of the Administrative Code of the City of New York, (also known as "the Rent Stabilization Law" or "RSL") provide authority to the Division of Housing and Community Renewal ("DHCR") to amend the implementing regulations (also known as "the Rent Stabilization Code" or "RSC"). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), enacted June 14, 2019, and Ch. 39 of the Laws of 2019 ("Clean-up law") further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of HSTPA.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in RSL § 26-501 and § 26-502 and Section 2 of the Emergency Tenant Protection Act ("ETPA"). The legislature has determined that, because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety, and general welfare.

DHCR is specifically authorized by RSL § 26-511(c)(1) to promulgate regulations to protect tenants and the public interest and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up law.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there were significant amendments to the rent laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed. The needs and benefits of some of the specific modifications proposed are detailed in the full Regulatory Impact Statement available on DHCR's website at https://hcr.ny.gov/regulatory-information. Some of those are highlighted below:

a. Individual Apartment Improvements (IAIs) (9 NYCRR § 2522.4)

HSTPA itself mandated most of the regulatory amendments made with respect to this section

b. Major Capital Improvements (MCIs) (9 NYCRR § 2522.4)

These provisions are another area that HSTPA changed and directed that DHCR promulgate regulations.

c. Rent Regulation for Supportive Housing Units (9 NYCRR § 2520.11 and § 2524.4)

HSTPA also amended three sections of the Emergency Tenant Protection Act

McK.Unconsol. Laws § 8625(a)(6) and (10) to extend rent stabilization to previously exempt housing accommodations (§ 8625(a)(10)) or to buildings (§ 8625(a)(6)) used by not-for-profit corporations that were providing permanent housing accommodations with governmental services for vulnerable individuals with disabilities who were homeless or at risk of homelessness. These new inclusions are applicable to such housing accommodations provided "as of and after" the effective date of HSTPA.

d. High Rent/High Income Deregulation (9 NYCRR § 2531)

HSTPA repealed the high rent/high income provisions of the rent laws with an exception with respect to the rules governing Real Property Tax Law § 421-a(16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated. Modifications to the regulations on this topic are required by HSTPA.

e. Rent Overcharges (9 NYCRR § 2526.1)

The HSTPA made changes with respect to the processing and determination of

rent overcharge cases which are reflected in these regulations. The proposed amendments are consistent with the legislature's requirements and with the Court of Appeals decision in Matter of Regina Metropolitan Co. LLC v. New York State Division of Housing and Community Renewal, 2020 NY Slip. Op. 02127 (2020).

f. Apartment Reconfigurations (9 NYCRR § 2521.1)

While not expressly addressed by the HSTPA, other provisions of the HSTPA made these amendments necessary.

g. Succession Rights (9 NYCRR § 2523.5)

Family members remaining in a rent stabilized unit after the vacatur of the named lease holder have the right to remain in the apartment and continue to receive renewal leases. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacatur of the named leaseholder (9 NYCRR § 2523.5(b)).

Presently, there is a split between the Appellate Division, 1st Department and 2nd Department as to how to measure the two-year period. DHCR's regulations reflect that true fraud and an extended period of misrepresentation will not be rewarded by adopting the approach of the 2nd Department. However, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated difficult and problematic interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

h. Rent Guidelines Board/Rent Guideline Increase on Vacancy (9 NYCRR § 2522.8)

HSTPA requires the Rent Guidelines Board to establish a single "unitary" guideline applicable to both vacancy and renewal leases. HSTPA also includes a repeal of

the ETPA and RSL provisions allowing for the imposition of what was commonly called

the "vacancy bonus" which is also reflected in these regulations. However, HSTPA did not intend to place a greater burden on existing tenants by excluding new tenants upon execution of their leases from the guideline increases.

i. Affordable Housing Regulatory Agreements (9 NYCRR § 2521.2 and § 2020.11)

The proposed regulation will implement HSTPA by allowing other federal project based rental assistance administered by a public housing agency eligible to administer section 8 subsidies, to obtain these increases upon renewal with a supervising agency's consent.

j. Deconversion (9 NYCRR § 2520.11)

DHCR, by these amendments, provides that upon "deconversion," the rent may be determined by a number of different processes, based on a variety of factors.

k. High Rent Vacancy Deregulation (9 NYCRR § 2520.11)

HSTPA eliminates high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with the exceptions previously noted.

l. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless the equities or avoiding undue hardship require otherwise. The regulation also allows DHCR, when a new rule requires a higher rent and is imposed, to make the increase prospective, rather than from the initiation of the RA proceeding. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to the equitable and hardship exceptions. The rule change conforms with the major implementation requirements of HSTPA based on Regina Metropolitan.

m. Actual Physical Address for Registration (9 NYCRR § 2528.2 and § 2533.8)

Part of the requirements of the rent stabilization law is that each owner registers their building and each apartment annually. The proposed regulation requires owners to provide a brick-and-mortar address instead of utilizing a post office box address.

n. Substantial Rehabilitation (9 NYCRR § 2520.11)

There is an exclusion from regulation of buildings that were "substantially rehabilitated" as family units after January 1, 1974. The amendments include among other things, reinforcement of the regulatory requirement by stating more explicitly that a minimum of seventy-five percent of the buildings' systems need to be replaced.

o. Demolition (9 NYCRR § 2524.5)

The new regulations add a "good faith" requirement to demolition and require the applicant at the time of the application to submit proof of financial ability to complete the proposed work, along with proof that the Department of Buildings ("DOB") has already approved the plans for demolition, brings the definition of demolition in line with the DOB definition, which requires that the entire building be removed, including the foundation, increases the stipends given to residents displaced by demolition, allows DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time, and permits DHCR to initiate enforcement proceedings sua sponte for failure to comply and make those penalties applicable to subsequent purchasers. The amended regulations clarify the existence of DHCR's powers with respect to enforcement.

4. COSTS

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at $20 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their compliance with changes and the changes themselves in many instances do require additional filings by owners. Compliance costs are already a generally accepted expense of owning regulated housing. In general, the increased compliance costs are less a product of the promulgation of these regulations, but the enactment of HSTPA.

There are increased penalties in some instances if the regulations are violated. However, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur any additional direct costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional record retention. Owners need, with the new overcharge provisions, to retain proof of the legality of rent for a longer period, but a prudent owner would have already retained that information for other purposes, such as assuring that an increase was not part of a fraudulent scheme to deregulate an apartment, making sure leases were offered on the same terms and conditions, assuring that a preferential rent was correct, and to resolve possible jurisdictional disputes. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent stabilized property participates in another State,

City or Federal housing program. In those instances, there may be a need to comply with the RSC requirements as well as the mandates of that City, State or Federal program.

8. ALTERNATIVES

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing much examination of alternatives. Nevertheless, DHCR considered a variety of alternatives to certain rules which were not exactly proscribed by HSTPA. Most often however, the choices were questions of appropriate statutory interpretation rather than policy choices. A more detailed discussion of the alternatives for the proposed amendments is contained in the full Regulatory Impact Statement available on DHCR's website at: https://hcr.ny.gov/regulatory-information

9. FEDERAL STANDARDS

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally are the subject of current litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Rent Stabilization Code ("RSC") applies only to rent stabilized housing units in New York City. The class of small businesses affected by these proposed amendments would be limited to certain small property owners, who own limited numbers of rent stabilized units. DHCR has sought to provide alternative and tailored methods of compliance with the requirements to provide options to small businesses to limit any additional regulatory burden. These amendments are expected to have no impact on local governments.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would require small businesses that own regulated residential housing units to perform some additional recordkeeping and reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES

The proposed amendments may require small businesses to obtain new or

additional professional services in the form of architecture or engineering services if it seeks a waiver of the reasonable cost schedule, which was previously promulgated and is now being incorporated into the larger major capital improvement (MCI) regulation. However, such services are often already used with respect to a contested MCI application. Further, the regulation will require review of costs for MCIs when contracting for the services to comply with the reasonable cost schedule.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose significant costs upon small businesses or upon the local government that were not anticipated by the passage of HSTPA. Small business owners of regulated housing accommodations will need to be more vigilant to assure their compliance with these changes. Compliance costs are already a generally accepted expense of owning regulated housing. There are also increased penalties in some instances if the regulations are violated. However, the costs of conforming present business practices to the change in standards are not substantial. In addition, these consequences are consistent with existing law or otherwise necessary to secure compliance.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

6. MINIMIZING ADVERSE IMPACT

The proposed regulations have no adverse impact on local government. They may have some costs to businesses which must be weighed against the fact that the rule is required by statute and necessary to enforce statutes designed to protect the public health, safety and welfare. The regulations do not create different regulatory standards for small businesses. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses, but the regulations do allow small businesses to use exceptions available to owners under certain circumstances. Outside of the administrative proceedings themselves, where complaints and applications are reviewed on an individual basis, it is difficult to ascertain the size of the businesses subject to these regulations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The rent laws and regulations empower DHCR to enforce the law. Meetings have been held with both business owners and affected tenant interest groups, including but not limited to: CHIP (Community Housing Improvement Program), Legal Services NYC, Brooklyn Legal Services, the Legal Aid Society, REBNY (Real Estate Board of New York), SHNNY (Supportive Housing Network of New York), RSA (Rent Stabilization Association of NYC, Inc.), UHAB (Urban Homesteading Assistance Board), HCC (Housing Conservation Coordinators), Tenants & Neighbors, as well as with members of the state senate and assembly. In addition, the Office of Rent Administration's Office of Public Information has attended at least twenty-five community meetings per year since 2019. While many of these meetings have been geared primarily for tenant-based audiences, owners and owner groups are entitled to attend and there have been meetings more directed to owners and their representatives. DHCR has also issued fact sheets and operational bulletins prior to this regulatory process to inform the public as to how HSTPA impacted many of the processes and procedures of the Office of Rent Administration. The New York legislature itself held public hearings prior to the passage of the HSTPA. At the outset of this regulatory process, the Office of Rent Administration sent out an email advising all those on the email distribution list of the regulatory process and the opportunity to participate in this process. DHCR's email distribution list consists of owners, tenants and their representatives. In addition, all interested parties will have an opportunity to comment as part of this SAPA process and all issues raised by concerned parties will be carefully reviewed and considered by DHCR prior to final promulgation. This process includes public hearings and a review by the New York City Department of Housing Preservation and Development as required by law prior to final adoption.

8. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES ASSOCIATED WITH A VIOLATION

DHCR has not by these regulations increased the penalties on violations or added any additional penalties except beyond those mandated by statute. HSTPA in the context of modifying the procedures governing overcharges specifically modified a prior DHCR policy regarding repayment of overcharges prior to the time that an owner was required to respond to an overcharge complaint.

Rural Area Flexibility Analysis

The proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is not anticipated that there will be an adverse impact on jobs and employment opportunities by the promulgation of these regulations. To the extent that there is any impact, these regulations are, in large part, mandated by statute.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Mandatory Face Coverings in OPWDD Settings

I.D. No. PDD-40-21-00002-E
Filing No. 648
Filing Date: 2022-08-15
Effective Date: 2022-08-15

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

Action taken: Addition of section 633.26 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The emergency adoption of a new section, 14 NYCRR 633.26, that requires face coverings for all staff, volunteers, contractors, vendors, visitors and individuals receiving services when in facilities or providing services that are certified or operated by OPWDD, is necessary to protect the health, safety, and welfare of individuals who receive these services. This regulation must be

HEARINGS SCHEDULED FOR PROPOSED RULE MAKINGS

Agency I.D. No.	Subject Matter	Location—Date—Time
Environmental Conservation, Department of		
ENV-28-22-00011-P	Forest Tax Law	Electronic Webinar—September 13, 2022, 1:00 p.m. Electronic Webinar—September 13, 2022, 6:00 p.m. Instructions on how to "join" the hearing webinar and provide an oral statement will be published on the department's proposed regulations webpage for 6 NYCRR Part 199 by July 13, 2022. The proposed regulations webpage for 6 NYCRR Part 199 may be accessed at: https://www.dec.ny.gov/regulations/propregulations.html Persons who wish to receive the instructions by mail or telephone may call the department at (518) 402-9003. Please provide your first and last name, address and telephone number and reference the Part 199 public comment period. The department will provide interpreter services for hearing impaired persons, and language interpreter services for individuals with difficulty understanding or reading English, at no charge upon written request submitted no later than August 23, 2022. The written request must be addressed to ALJ Richard Sherman, NYS DEC Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550 or e-mailed to: ALJ Sherman at ohms@dec.ny.gov
ENV-33-22-00004-P	Amendments to the regulations (6 NYCRR Part 621) that implement ECL article 70 (Uniform Procedures Act) and related changes	Remote hearing by Webex event—October 20, 2022, 2:00 p.m. Remote hearing by Webex event—October 20, 2022, 6:00 p.m. The DEC will be conducting remote hearings by Webex as identified in item 5 on the Notice of Proposed Rule Making Form. Additional information regarding the hearings is available at https://www.dec.ny.gov/regulations/propregulations.html#public, under the section for Proposed Amendments to 6 NYCRR 621, Uniform Procedures Act.
Housing and Community Renewal, Division of		
HCR-35-22-00004-P	City rent and eviction regulations governing rent control in New York City	One Bowling Green, New York, NY—November 15, 2022, 10:00 a.m. One Larkin Center, 2nd Fl., Yonkers, NY—November 15, 2022, 10:00 a.m. 1550 Franklin Ave., 1st Fl., Mineola, NY—November 15, 2022, 10:00 a.m.
HCR-35-22-00005-P	Emergency tenant protection regulations regulating residential rents and evictions	One Bowling Green, New York, NY—November 15, 2022, 10:00 a.m. One Larkin Center, 2nd Fl., Yonkers, NY—November 15, 2022, 10:00 a.m. 1550 Franklin Ave., 1st Fl., Mineola, NY—November 15, 2022, 10:00 a.m.
HCR-35-22-00006-P	State rent and eviction regulations governing statewide rent control	One Bowling Green, New York, NY—November 15, 2022, 10:00 a.m.

		One Larkin Center, 2nd Fl., Yonkers, NY—November 15, 2022, 10:00 a.m. 1550 Franklin Ave., 1st Fl., Mineola, NY—November 15, 2022, 10:00 a.m.
HCR-35-22-00007-P	Rent stabilization code regulating residential rents and evictions	One Bowling Green, New York, NY—November 15, 2022, 10:00 a.m. One Larkin Center, 2nd Fl., Yonkers, NY—November 15, 2022, 10:00 a.m. 1550 Franklin Ave., 1st Fl., Mineola, NY—November 15, 2022, 10:00 a.m.
Liquor Authority, State		
LQR-26-22-00001-P	Ensuring smaller retailers are not unlawfully discriminated against through the charging of exorbitant split case fees	80 S. Swan St., Albany, NY—September 14, 2022, 10:00 a.m.
Public Service Commission		
PSC-31-22-00005-P	Proposed major rate increase in NYSEG's electric delivery revenues of approximately $274 million (or 16.8% in total revenues)	Teleconference—November 2, 2022 and continuing daily as needed, 10:30 a.m. (Evidentiary Hearing)* *On occasion, the evidentiary hearing date may be rescheduled or postponed. In that event, public notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 22-E-0317.
PSC-31-22-00006-P	Proposed major rate increase in NYSEG's gas delivery revenues of approximately $43.4 million (or 9.8% in total revenues)	Teleconference — November 2, 2022 and continuing daily as needed, 10:30 a.m. (Evidentiary Hearing)* *On occasion, the evidentiary hearing date may be rescheduled or postponed. In that event, public notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 22-G-0318.
PSC-31-22-00007-P	Proposed major rate increase in RG&E's gas delivery revenues of approximately $37.7 million (or 9.7% in total revenues)	Teleconference — November 2, 2022 and continuing daily as needed, 10:30 a.m. (Evidentiary Hearing)* *On occasion, the evidentiary hearing date may be rescheduled or postponed. In that event, public notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 22-G-0320.
PSC-31-22-00009-P	Proposed major rate increase in RG&E's electric delivery revenues of approximately $93.8 million (or 11.3% in total revenues)	Teleconference — November 2, 2022 and continuing daily as needed, 10:30 a.m. (Evidentiary Hearing)* *On occasion, the evidentiary hearing date may be rescheduled or postponed. In that event, public notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 22-E-0319.
State, Department of		
DOS-29-22-00004-P	Updates to educational standards	Department of State, 123 William St., 2nd Fl., New York, NY—September 21, 2022, 11:00 a.m.

Rent Stabilization Code Amendments – HSTPA Revisions

1. 9 NYCRR § 2520.1 is amended to read as follows:

This Subchapter is promulgated and adopted pursuant to the powers granted to the Division of Housing and Community Renewal. [by chapter 888 of the Laws of New York for the year 1985.]

2. **9 NYCRR § 2520.6(c) and (d) are amended to read as follows:**

(c) 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 2522.10 of this Title nor for the purposes of any summary eviction proceeding such fees, charges or penalties; however, any such excess payments even if denominated as fees, charges or penalties may be considered a violation under Part 2525 or an overcharge under Part 2526 of this Code.

(d) Tenant. Any person or persons named on a lease as lessee or lessees, or who is or are a party or parties to a rental agreement and obligated to pay rent for the use or occupancy of a housing accommodation[.] or is entitled to occupy the housing accommodation as a tenant pursuant to any other provision of this Code.

3. Subdivision (f) of 9 NYCRR § 2520.6 is repealed and a new subdivision (f) is added as follows:

(f) Base date. For all purposes other than for the purpose of proceedings pursuant to sections 2522.3, 2526.1 and 2526.7 of this Title, base date shall mean the date which is the most recent of:

(1) For claims filed before June 14, 2019, the date four years prior to the filing date of such claim except where a special provision of this Code, the RSL or other law required maintenance of records or review for a longer period.

(2) For claims filed on or after June 14, 2019, the base date shall be June 14, 2015.

(3) The date on which the housing accommodation first became subject to the RSL; or

(4) 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.

4. **9 NYCRR § 2520.6 is amended to add a new subdivision (p) to read as follows:**

(p) Common Ownership. For the purposes of Section 2522.4 of this Part, Common Ownership shall be defined as any identity of interest or relationship based on family ties or financial interest between the owner/managing agent of a property and any other entity with which the owner/managing agent conducts business.

5. **9 NYCRR § 2520.7 is amended as follows:**

§ 2520.7 Effective Date.

In accordance with the provisions of the State Administrative Procedure Act, this Code shall be effective May 1, 1987, and all amendments to this Code shall become effective in accordance with the State Administrative Procedure Act or as otherwise required by law. Where implementation of a provision would require new or significantly revised filing procedures or notice requirements, the DHCR may postpone implementation of such provision, as required, for up to [180] 210 days after the effective date of this Code, by an advisory opinion issued pursuant to section 2527.11 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.

6. **9 NYCRR § 2520.8 is amended as follows:**

§2520.8 Amendment [of]or revocation

Any provision of this Code may be amended or revoked at any time in accordance with the procedure set forth in chapter 888 of the Laws of New York for the year 1985, or as otherwise provided by the State Administrative Procedure Act. However, where a law requires a different rule than set forth in any provision of this Code, which may be implemented in the absence of regulation, DHCR shall follow such law notwithstanding that such conflicting code provision has not yet been amended or revoked.

7. 9 NYCRR § 2520.9 is amended as follows:

§2520.9 Filing of amendments

Such amendment or revocation shall be filed with the Secretary of State and shall take effect upon the date of publication of the notice of adoption in the State Register [filing] unless otherwise specified therein or as otherwise provided by the State Administrative Procedure Act, or otherwise required by law.

8. Subdivision (c) of 9 NYCRR § 2520.11 is amended as follows:

(c) housing accommodations for which rentals are fixed by the DHCR, [or] HPD, New York City Housing Development Corporation, New York State Housing Finance Agency or other governmental agencies or public benefit corporations of the City or State unless, after the establishment of initial rents, the housing accommodations are made subject to the RSL pursuant to such applicable law or agreement, or housing accommodations subject to the supervision of the DHCR or HPD or other governmental agencies or public benefit corporations or under other provisions of law or the New York State Urban Development Corporation, or buildings aided by government insurance under any provision of the National Housing Act to the extent the RSL or any regulation or order issued thereunder is inconsistent with such act. However, housing accommodations in buildings completed or substantially rehabilitated prior to January 1, 1974, and whose rentals were previously regulated under the PHFL or any other State or Federal law, other than the RSL or the

City Rent Law, shall become subject to the ETPA, the RSL and this Code, upon the termination of such regulation;

9. Subdivision (e) of 9 NYCRR § 2520.11 is amended as follows. Paragraph (e)(2) is repealed, and paragraphs (3), (4), (5), (6), (7) are renumbered as (2), (3), (4), (5), (6). New paragraphs (7) and (10) are added.

(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 Code by provision of the RSL or any other statute that meet the following criteria, which, at the DHCR's discretion, may be effectuated by operational bulletin:

(1) a specified percentage [, not to exceed] <u>of at least</u> 75 percent, of listed building-wide and individual housing accommodation 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)] <u>(2)</u> 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 percent 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 nonresidential 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)] (3) [except in the case of extenuating circumstances,] the DHCR 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] there has been a finding of harassment by the DHCR or other governmental entity [has made a finding of harassment,] as defined pursuant to any applicable rent regulatory law, code or regulation[;]. If there has been a finding of harassment by a governmental entity other than the DHCR, that finding shall be considered to be in force for three years from the date the finding was made, unless proof of its being lifted is provided or otherwise obtained;

[(5)](4) 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)] (5) [where] occupied rent regulated housing accommodations [have not been rehabilitated, such housing accommodations] shall remain rent regulated until vacated, notwithstanding a finding that the remainder of the building has been substantially rehabilitated, and therefore qualifies for exemption from regulation;

[(7)] (6) 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 DHCR 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 re-occupancy, if the returning tenant subsequently vacates, or if the tenant who is entitled to return pursuant to court or DHCR order chooses not to do so and expresses such intent not to return in writing. The DHCR may waive the requirement that the tenant expresses a desire not to return in writing at its discretion if the owner demonstrates that the tenant could not be found after the owner undertook a good faith effort to locate and contact them, and the tenant has failed to make the nominal rent payment for a period of at least six months;

(7) when an accommodation has been rendered uninhabitable and the tenant has received an order as described in paragraph (6) of this subdivision, the owner will restore the building to a layout that is substantially similar to the building layout prior to the building being rendered uninhabitable, unless the owner can demonstrate that doing so would be financially infeasible. If the owner does not restore the building to a layout that is substantially similar, tenants with orders described in paragraph (6) of this subdivision may, at their discretion, either accept a demolition stipend of an amount determined pursuant to Rent Stabilization Code Section 2524.5 (a)(2)(ii)(b)(3) or begin a rent stabilized tenancy in a re-configured accommodation. In the event a tenant elects to move into a reconfigured accommodation, the rent may be determined based on local comparable stabilized rents;

(10) the Applicant's lack of evidence for any reason, including passage of time, does not excuse the Applicant's obligation to substantiate the application as required by this section and any related operational bulletins.

10. Subdivision (f) of 9 NYCRR § 2520.11 is amended as follows:

(f) housing accommodations owned, 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, and occupied by a tenant whose initial occupancy is contingent upon an affiliation with such institution; however, [a housing accommodation occupied by a nonaffiliated tenant shall be subject to the RSL and this Code;] the following housing accommodations shall be subject to the RSL and this Code: (1) housing accommodations occupied by a tenant on the date such housing accommodation is acquired by any such institution, or which are occupied subsequently by a tenant who is not affiliated with such institution at the time of his initial occupancy or (2) permanent housing accommodations with government contracted services, as of and after June 14, 2019, occupied by vulnerable individuals or individuals with disabilities who are or were homeless or at risk of homelessness. For the purposes of this subdivision such vulnerable individuals or individuals with disabilities as described herein shall be considered to be tenants;

11. Subdivision (j) of 9 NYCRR § 2520.11 is amended as follows:

(j) housing accommodations in buildings operated exclusively for charitable purposes on a nonprofit basis; however such housing accommodation shall be subject to the RSL and this Code if they are permanent housing accommodations with government contracted services, as of and after the effective date of the chapter of the laws of June 14, 2019 that amended this subdivision, for vulnerable individuals or individuals with disabilities who are or were homeless or at risk of homelessness. For the purposes of this subdivision, such vulnerable individuals or individuals with disabilities as described herein shall be considered to be tenants;

12. Subdivision (k) of 9 NYCRR § 2520.11 is amended as follows:

(k) housing accommodations which are 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 purposes of

determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. In addition, a tenant who has left the housing accommodation and is paying a nominal rent pursuant to Part 2520.11(e)(6) of this Title shall be deemed to be occupying the unit as his or her primary residence.

13. **Subdivision (l) of 9 NYCRR § 2520.11 is amended as follows:**

(l) housing accommodations contained in buildings owned as cooperatives or condominiums on or before June 30, 1974; or thereafter, as provided in section 352-eeee of the General Business Law in accordance with section 2522.5(h) of this Title, provided, however, and subject to the limitations set forth in subdivisions (e), (o) and (p) 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 RSL, and this Code, and the legal regulated rents therefore be as follows:

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

(a) Where deconversion occurs [four]six 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]six years after the effective date of the conversion plan, the initial regulated rent shall be the most recent legal 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 RSL and this Code.

(c)

[(1) Where the rent, as agreed upon by the parties and paid by the tenant equals or exceeds the applicable amount qualifying for deregulation pursuant to subdivision (r) of this section, such accommodation and the rent therefor shall not revert to regulation under this Code.

(2)] Initial regulated rents established pursuant to clause (a) of this subparagraph shall not be subject to challenge as a fair market rent appeal [under section 2526.1(a)(2)(ii) 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, 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]90 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 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 Code 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 Code, 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 pertaining to the establishment of initial regulated rents[,] and lease offers[, and deregulation, including subclause (i)(d)(2) of this paragraph].

(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.

(c) All shareholders or former unit owners described in this subparagraph shall be offered a vacancy lease within 30 days after the deconversion, and shall have [30]90 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]failure to accept such offered vacancy lease.

(iii) Housing accommodations occupied pursuant to regulation under this Code or the City 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 Code or the City 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 DHCR pursuant to sections 2522.6 and 2522.7 of this Title. In such cases, subdivision (r) of this section shall not apply.

(b) Upon deconversion, housing accommodations which were last subject to regulation pursuant to the City Rent and Eviction Regulations and were decontrolled prior to or pursuant to the conversion shall become subject to regulation under this Code pursuant to this paragraph. In such cases, the initial legal

regulated rent shall be established by the DHCR pursuant to sections 2522.6 and 2522.7 of this Title.

(2) Housing accommodations that were subject to regulation under this Code or the City 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 Code [pursuant to paragraph (1) of this subdivision only for such period of time] as is required by[such] applicable law;

(3) Where cooperative or condominium ownership of such building no longer exists (deconversion) where the conversion of the building to cooperative or condominium ownership is revoked by the New York State Attorney General, such housing accommodations shall revert to regulation pursuant to the RSL, and this Code, and the legal regulated rents therefore shall be an amount set forth by the Attorney General by order or negotiated settlement. If deconversion occurs due to an action by the Attorney General and the Attorney General does not set rents, the rent for the housing accommodation shall be the lowest rent determined by the most recent legal regulated rent for the housing accommodation immediately prior to the conversion, increased by all lawful adjustments that would have been permitted had the housing accommodation been continuously subject to the RSL and this Code, or by the methods set forth in Section 2522.6(b)(3) of this Part.

(4) Where cooperative or condominium ownership of such building no longer exists (deconversion) prior to June 14, 2019, the legal regulated rent shall be set in accordance with the regulations that were in effect on June 14, 2019.

14. Subdivision (p) of 9 NYCRR § 2520.11 is amended as follows:

(p) 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, and which were originally made subject to regulation solely as a condition of receiving tax benefits pursuant to section 421-a of the Real Property Tax Law, as amended, and:

(1) the housing accommodations which were subject to the RSL pursuant to section 421-a and became vacant subsequent to the end of the applicable restriction period; or

(2) for housing accommodations which first became subject to the rent stabilization requirements of section 421-a after July 3, 1984, where each lease and each renewal thereof of the tenant in occupancy at the time the period of tax exemption pursuant to section 421-a expires, contains a notice in at least 12-point type informing such tenant that the housing accommodation shall become deregulated upon the expiration of the last lease or rental agreement entered into during the tax benefit period and states the approximate date on which such tax benefit period is scheduled to expire;

(3) Affordable rent housing accommodations which are subject to the restriction period pursuant to RPTL 421-a(16), shall remain subject to regulation at the end of the applicable restriction period if a tenant resides in such apartment when the restriction period ends. Such apartment shall remain subject to regulation for the tenant in occupancy and all successor tenants, and will be subject to deregulation only upon a permanent vacancy after the end of the relevant restriction period.

(4) Market rate housing accommodations constructed under RPTL 421(a)(16) shall be subject to deregulation if the housing accommodation is initially rented with a legally regulated rent above the deregulation rent threshold, or, if upon a permanent vacancy, the legally regulated rent was above the deregulation rent threshold in effect at that time.

15. **Subdivision (r) of 9 NYCRR § 2520.11 is amended as follows:**

(r) (1) Effective June 14, 2019, high rent vacancy deregulation is no longer applicable. Any apartment that was lawfully deregulated pursuant to Rent Stabilization Law section 26-504.2 shall remain deregulated, notwithstanding that such section was repealed by Chapters 36 and 39 of the Laws of 2019.

(2) A market rate unit in a multiple dwelling which receives benefits pursuant to subdivision 16 of RPTL 421-a shall be subject to high rent vacancy deregulation pursuant to Rent Stabilization Law Section 26-504.2, notwithstanding that such section was repealed pursuant to Chapters 36 and 39 of the Laws of 2019, with the deregulation rent threshold for such housing accommodation to be increased in January of each year by the same percent as the most recent one-year rent adjustment adopted by the New York City Rent Guidelines Board.

[housing accommodations which:

(1) became vacant on or after July 7, 1993 but before April 1, 1994 where, at any time between July 7, 1993 and October 1, 1993, inclusive, the legal regulated rent was $ 2000 or more per month;

(2) became vacant on or after April 1, 1994 but before April 1, 1997, with a legal regulated rent of $ 2000 or more per month;

(3) became vacant on or after April 1, 1997 but before June 19, 1997, where the legal regulated rent at the time the tenant vacated was $ 2000 or more per month; or

(4) became or become vacant on or after June 19, 1997 but before June 24, 2011, with a legal regulated rent of $ 2,000 or more per month;

(5) became or become vacant on or after June 24, 2011, with a legal regulated rent of $ 2,500 or more per month;

(6) exemption pursuant to this subdivision shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy is charged or pays less than the applicable amount qualifying for deregulation as provided in this subdivision;

(7) exemption pursuant to this subdivision previous regulations in effect shall not apply to housing accommodations which became or become subject to the RSL and this Code:

(i) solely by virtue of the receipt of tax benefits pursuant to section 421-a of the Real Property Tax Law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of such section 421-a, section 11-243 (formerly J51-2.5) or section 11-244 (formerly J51-5) of the Administrative Code of the City of New York, as amended; or

(ii) solely by virtue of article 7-C of the MDL;

(8) 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 RSL and this Code shall also apply;

(9) during the period of effectiveness of an order issued pursuant to section 2523.4 of this Title for failure to maintain required services, which lowers the legal regulated rent below the applicable amount qualifying for deregulation as provided in this subdivision, during the time period specified in this subdivision, a vacancy shall not qualify the housing accommodation for exemption under this subdivision;

(10)

(i) where an owner installs new equipment or makes improvements to the individual housing accommodation qualifying for a rent increase pursuant to section 2522.4(a)(1) 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 2522.8 of this Title, or by a combination of rent increases, as applicable, to the applicable amount qualifying for deregulation, as provided in this subdivision, whether or not the next tenant in occupancy actually is charged or pays, the applicable amount qualifying for deregulation, as provided in this subdivision, for rental of the housing accommodation, the housing accommodation will qualify for exemption under this subdivision;

(ii) subparagraph (i) of this paragraph to the contrary notwithstanding, where the housing accommodation became vacant after March 31, 1997, upon the next re-renting of the housing accommodation between April 1, 1997 and June 18, 1997, where the legal regulated rent at the time the tenant vacated was less than $ 2,000 per month, rent increases resulting from new equipment or improvements made during that vacancy will not result in exemption under this subdivision;

(11) where, pursuant to section 2521.2 of this Title, a legal regulated rent is established by record within four years before 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 RSL or this Code, may be charged, and where such previously established legal regulated rent, as so adjusted, equals or exceeds the applicable amount qualifying for deregulation, as provided in this subdivision, such vacancy shall qualify the housing accommodation for exemption under this subdivision;

(12) where an owner substantially alters the outer dimensions of a vacant housing accommodation, which qualifies for a first rent equal to or exceeding the applicable amount qualifying for deregulation, as provided in this subdivision, exemption pursuant to this subdivision shall apply.]

16. Subdivision (s) of 9 NYCRR § 2520.11 is amended as follows:

(s) (1) Effective June 14, 2019, high rent high income deregulation is no longer applicable. Any apartment that was lawfully deregulated pursuant to Rent Stabilization Law sections 26-504.1 and 26-504.3 shall remain deregulated, notwithstanding that such sections were repealed pursuant to Chapters 36 and 39 of the Laws of 2019. For the purposes of this subdivision, lawful deregulation shall be defined as the issuance of an order by the DHCR pursuant to Rent Stabilization Law sections 26-504.1 and 26-504.3, repealed by Chapters 36 and 39 of the Laws of 2019, and the expiration of the lease in effect upon issuance of such order expiring prior to June 14, 2019.

(2) Effective June 14, 2019, no further high rent high income deregulation proceedings pursuant to this Title may be commenced, and all pending applications shall be dismissed as not subject to deregulation. For the purposes of this paragraph, an application shall not be considered pending if the subject housing accommodation was lawfully deregulated pursuant to such application prior to June 14, 2019, and such lawful deregulation is subject to review as of June 14, 2019 in a Court of competent jurisdiction, before the commissioner pursuant to a petition for administrative review, or before the rent administrator subsequent to a remand for further consideration by the either the commissioner or a court.

[Upon the issuance of an order by the DHCR pursuant to the procedures set forth in Part 2531 of this Title, including orders resulting from default, housing accommodations which:

(1) have a legal regulated rent of $ 2,000 or more per month as of October 1, 1993, or as of any date on or after April 1, 1994, and which are occupied by persons who had a total annual income in excess of $

250,000 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 $ 175,000, where the first of such two preceding calendar years is 1996 through 2009 inclusive, with total annual income being defined in and subject to the limitations and process set forth in Part 2531 of this Title;

(2) have a legal regulated rent of $ 2,500 or more per month as of July 1, 2011 or after, and which are occupied by persons who had a total annual income in excess of $ 200,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 2010 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2531 of this Title;

(3) exemption pursuant to this luxury deregulation shall not apply to housing accommodations which became or become subject to the RSL and this Code:

(i) solely by virtue of the receipt of tax benefits pursuant to section 421-a of the Real Property Tax Law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of such section 421-a, section 11-243 (formerly J51-2.5) or section 11-244 (formerly J51-5) of the Administrative Code of the City of New York, as amended; or

(ii) solely by virtue of article 7-C of the MDL;

(4) in determining whether the legal regulated rent for a housing accommodation is the applicable amount qualifying for deregulation, the standards set forth in subdivision (r) of this section shall be applicable; to be eligible for exemption under this subdivision, the legal regulated rent must continuously be the applicable amount qualifying for deregulation pursuant to subdivision (r), from the owner's service of the income certification form provided for in section 2531.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.]

17. Subdivision (u) of 9 NYCRR § 2520.11 is amended as follows:

(u) Between January 8, 2014 and June 14, 2019, t[T]he owner of any housing accommodation that was[is] not subject to this code pursuant to the provisions of subdivision (r) of this section or of section 2200.2(f)(19) of the New York City Rent and Eviction Regulations, [shall] must have [give] given written notice certified by such owner to the first tenant of that housing accommodation after such housing accommodation becomes exempt from the provisions of this code or the city rent law. Such notice [shall] must have contained the last regulated rent, the reason that such housing accommodation is not subject to this Code or the city rent law, a calculation of how either the rental amount charged when there is no lease or the rental amount provided for in the lease has been derived so as to reach the applicable amount qualifying for deregulation [pursuant to subdivision (r) of this section], (whether the next tenant in occupancy or any subsequent tenant in occupancy actually is charged or pays less than the applicable amount qualifying for deregulation), a statement that the last legal regulated rent or the maximum rent may be verified by the tenant by contacting DHCR and the address and telephone number of DHCR. Such notice was required to be sent by certified mail within thirty days after the tenancy commences or after the signing of the lease by both parties, whichever occurs first or delivered to the tenant at the signing of the lease. In addition, the owner was required to send and certify to the tenant a copy of the registration statement for such housing accommodation filed with DHCR indicating that such housing accommodation become exempt from the provisions of this code or the city rent law, which form shall include the last regulated rent and be sent to the tenant within thirty days after the tenancy commences or the filing of such registration, whichever occurs later.

18. 9 NYCRR § 2520.12 is amended as follows:

The provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with the ETPA, the RSL or this Code, and in such event such provisions shall be void and unenforceable. [For housing accommodations made subject to the RSL and

this Code pursuant to section 2520.11(c) of this Part, w] Where such leases or rental agreements are so inconsistent as to render them ineffective in defining the rights and duties of tenants and owners, the DHCR may order the provision of new leases consistent with the ETPA, the RSL and this Code. No renewal lease or vacancy lease offered to a tenant shall contain any right of cancellation or eviction by the owner during the term thereof except as provided for by the ETPA, the RSL or this Code.

19. Subdivisions (b), (c), (d), (e) (g) and (i) of 9 NYCRR § 2521.1 are amended as follows:

(b)

(1) The initial legal regulated rent for a housing accommodation for which an overcharge complaint or a Fair Market Rent Appeal was filed by a tenant prior to April 1, 1984, and not finally determined prior thereto, shall be the April 1, 1984 rent as subsequently determined by the DHCR. Such determination will be based upon the law or code provision in effect on March 31, 1984.

(2) Upon determination of the initial legal regulated rent in paragraph (1) of this subdivision, legal regulated rents subsequent to April 1, 1984 shall be determined in accordance with the definition of base date and the definition of legal regulated rent as set forth in section 2520.6(e) and 2520.6(f) of this Title.

(c) The initial legal regulated rent for a housing accommodation first made subject to the RSL and this Code pursuant to article 7-C of the MDL shall be the rent established by the Loft Board under section 286(4) of the MDL applicable to a lease offered pursuant to MDL section 286(3). Such rent shall not be subject to the proceedings described in section 2522.3 of this Title. [Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal regulated rent, the owner may request upon vacancy that the next lease rental be the initial legal regulated rent plus the allowable increase established by the Rent Guidelines Board, and such other rent increases as are authorized pursuant to section 2522.4 of this Title.]

(d) Notwithstanding the provisions of any outstanding lease or other rental agreement, the initial legal regulated rent for a housing accommodation in a multiple dwelling for which a loan is made under the PHFL shall be the initial rent established pursuant to such law. Such rent, whether or not the housing accommodation was previously subject to the RSL, shall not be subject to the proceeding described in section 2522.3 of this Title. Such rent for housing accommodations occupied prior to the granting of the loan made pursuant to the PHFL shall take effect on the date specified in the order establishing the rent. Notwithstanding any other provision of the RSL or this Code, the owner of such housing accommodation shall offer any tenant in occupancy on such effective date or upon initial occupancy a one- or two-year lease at the tenant's option at such rent, which offer shall be made as soon as practicable after such rent is established, whether or not the rent has taken or is then permitted to take effect; and refusal of such tenant to sign such lease, at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following the tenant's receipt of the offer of such lease at such rent as lawfully established, a tenant in occupancy on such date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pays the rent established pursuant to law for such month and for any extended period, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such offer. [Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal regulated rent, the owner may request that the next lease rental after a vacancy be the initial legal regulated rent plus the allowable increase established by the Rent Guidelines Board.]

(e) Notwithstanding any other provision of this Code, the initial legal regulated rent for a housing accommodation first made subject to the RSL and this Code pursuant to article XIV of the PHFL or section 2429 of article 8 of the Public Authorities Law shall be the rent established pursuant to law which reflects the

improvements or rehabilitation and shall be subject to subsequent adjustment by the DHCR. Such rent shall not be subject to the proceedings described in section 2522.3 of this Title. Notwithstanding any other provision of the RSL or this Code: the owner of such housing accommodation shall offer a tenant in occupancy who first became subject to the RSL and this Code on the effective date of such rent a one- or two-year lease at the tenant's option at such rent, which offer shall be made as soon as practicable after such rent is effective; and refusal of such tenant to sign such lease at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following tenant's receipt of the offer of such lease at such rent, a tenant in occupancy on such effective date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pay the rent established pursuant to law while in occupancy, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal regulated rent, the owner may request that the next lease rental after vacancy be the initial legal regulated rent plus the allowable increase established by the Rent Guidelines Board and such other increases authorized by section 2522.4 of this Title.

(g) The initial legal regulated rent for a housing accommodation subject to this Title constructed pursuant to section 421-a of the Real Property Tax Law shall be the initial adjusted monthly rent charged and paid but not higher than the rent approved by HPD, when applicable, pursuant to such section for the housing accommodation or the lawful rent charged and paid on April 1, 1984, whichever is later.

(i) Notwithstanding the provisions of the RSL or any other provision of this Code, the initial legal regulated rent upon completion of the rehabilitation of a Class B multiple dwelling, Class A multiple dwelling used for single-room occupancy purposes, lodging house or a substantially vacant building intended to be used after rehabilitation for single-room occupancy purposes for which a loan is made for such rehabilitation on or after

September 1, 1985, under article VIII or VIII-A of the PHFL, shall be the initial rent established by HPD pursuant to such law. Such rent, whether or not the housing accommodation was previously subject to the RSL, shall not be subject to the proceeding described in section 2522.3 of this Title. Such rent shall take effect on the date specified in the order establishing the rent. Notwithstanding the provisions of the RSL or any other provision of this Code, the owner of such housing accommodation shall offer any tenant in occupancy on such effective date a one- or two-year lease, at the tenant's option, at such rent, which offer shall be made as soon as practicable after such rent is established. Refusal of such tenant to sign such lease at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following the tenant's receipt of the offer of such lease at such rent as lawfully established, a tenant in occupancy on such date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pay the rent established pursuant to law for such month and for any extended period, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such lease offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal regulated rent, the owner may request that the next lease rental <u>after a vacancy</u> be the initial legal regulated rent plus the allowable increase established by the Rent Guidelines Board, and such other rent increases as are authorized pursuant to section 2522.4 of this Title.

20. New subdivisions (m) and (n) are added to 9 NYCRR § 2521.1:

(m)

(1) Where an owner combines two or more vacant housing accommodations or combines a vacant housing accommodation with an occupied rent regulated accommodation, such initial rent for such new housing accommodation shall be the combined legal rent for both previous housing

accommodations, subject to any applicable guidelines increase and any other increases authorized by this Title including any individual apartment improvement increases applicable for both housing accommodations. If an owner combines a rent regulated accommodation with an apartment not subject to rent regulation, the resulting apartment shall be subject to the rent stabilization law. If an owner increases the area of an apartment not subject to the rent stabilization law by adding space that was previously part of a rent regulated apartment, each apartment shall be subject to the rent stabilization law.

(2) Where an owner substantially increases the outer dimension of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, increased by a percentage that is equal to the percentage increase in the dwelling space and such other increases authorized by this Title including any applicable guideline increase and individual apartment improvement increase that could be authorized for the unit prior to the alteration of the outer dimensions.

(3) Notwithstanding the above, the above increases may be denied based on the occurrence of such vacancy due to harassment, fraud, or other acts of evasion which may require that such rent be set in accordance with Part 2526 of this Title.

(4) Where the vacant housing accommodations are combined, modified, divided or the dimension of such housing accommodation otherwise altered and these changes are being made pursuant to a preservation regulatory agreement with a federal, state or local governmental agency or instrumentality, the legal regulated rents charged thereafter shall be based on an initial rent set by such agency or instrumentality.

(5) Where an owner substantially decreases the outer dimensions of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, decreased by the same

percentage the square footage of the original apartment was decreased by and such other increases authorized by this Title including any applicable guideline increase and individual apartment improvement increases that could be authorized for the apartment prior to the alteration of the outer dimensions.

(6) Apartment combinations and individual apartment improvements:

(i) When an owner combines two or more rent regulated apartments, the owner may use each of the previous apartments' remaining individual apartment improvement allowances for the purposes of a temporary individual apartment improvement rent increase. The owner shall subsequently designate a surviving apartment for the purposes of registration that has the same apartment number as one of the prior apartments. If that prior apartment has any reimbursable individual apartment improvement money remaining after the combination, that money may be reimbursed for future individual apartment improvements undertaken within the subsequent fifteen years following the combination.

(ii) In order for an owner to qualify for a temporary individual apartment improvement rent increase when apartments are combined, the requirements for an individual apartment improvement, including all notification requirements under Section 2522.4(a) of this Title must be met.

(7) Owners shall maintain the records and rent histories of all combined apartments, both prior to and post combination, for the purposes of rent setting, overcharge and all other proceedings to which the records are applicable.

(n) For housing accommodations made subject to this Title as of June 14, 2019 as set forth in 2520.11(f), (j) and (k) the initial rents thereafter upon vacatur of the not for profit and affiliated subtenant shall be set

using the rent in effect for the stabilized tenant in occupancy immediately prior to occupancy by the not for profit and the affiliated subtenant plus any applicable increases.

21. Subdivisions (a) and (c) of 9 NYCRR § 2521.21 are amended as follows:

(a) Where the amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation, such rent shall be known as the "preferential rent." The amount of rent for such housing accommodation which may be charged upon [renewal or] vacancy thereof may, at the option of the owner, be based upon either such preferential rent or an amount not more than the previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases and other increases authorized by law.

(c) Where the amount of the legal regulated rent is set forth either in a vacancy lease or renewal lease where a preferential rent is charged, the owner shall be required to maintain, and submit where required to by DHCR, the rental history of the housing accommodation immediately preceding such preferential rent to the present which may be prior to the [four-year period] <u>base date</u> preceding the filing of a complaint.

22. New subdivisions (d) and (e) are added to 9 NYCRR § 2521.21.

(d) Any tenant who is subject to a lease in effect on or after June 14, 2019, or is or was entitled to receive a renewal or vacancy lease on or after such date, upon renewal of such lease, the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law.

(e) Provided, however, that for buildings that are subject to this Code by virtue of a regulatory agreement with a local government agency and which buildings receive federal project based rental assistance administered by the United States Department of Housing and Urban Development or a state or local

section eight administering agency, where the rent set by the federal, state or local governmental agency is less than the legal regulated rent for the housing accommodation, the amount of rent for such housing accommodation which may be charged upon renewal or upon vacancy thereof, may be based upon such previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases or other increases authorized by law; and further provided that such vacancy shall not be caused by the failure of the owner or an agent of the owner to maintain the housing accommodation in compliance with the warranty of habitability set forth in subdivision one of section two hundred thirty-five-b of the real property law.

23. **9 NYCRR § 2522.2 is amended as follows:**

Except as otherwise provided in this Code or set forth in the order, [T]the legal regulated rent shall be adjusted effective the first rent payment date occurring 30 days after the filing of the application, [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 adjustments, or upon vacancy[or succession] as provided in section 2522.8 of this Part. No rent adjustment may take place during a lease term unless a clause in the lease authorizes such increase, or as otherwise provided by law and this Code.

24. Subdivisions (a), (c), (e) and (f) of 9 NYCRR § 2522.3 are amended as follows:

(a) Except as provided in section 2521.1(a)(2) of this Title, an appeal of the initial rent on the ground that it exceeds the fair market rent for the housing accommodation may be filed with the DHCR by the tenant of a housing accommodation which was subject to the City Rent Law on December 31, 1973. This right is limited to the first tenant taking occupancy on or after April 1, 1984, except where such tenant had vacated the housing accommodation prior to the service by the owner of the Notice of Initial Legal Regulated Rent as required by section 2523.1 of this Title. In such event, any subsequent tenant in occupancy shall also have a right to file a

Fair Market Rent Appeal until the owner mails the required notice and 90 days shall have elapsed without the filing of an appeal by a tenant continuing in occupancy during said 90-day period. Once a Fair Market Rent Appeal is filed, no subsequent tenant may file such appeal. Notwithstanding the above, where the first tenant taking occupancy after December 31, 1973, of a housing accommodation previously subject to the City Rent Law, was served with the notice required by section 26 of the former code of the Rent Stabilization Association of New York City, Inc., the time within which such tenant may file a Fair Market Rent Appeal is limited to 90 days after such notice was mailed to the tenant by the owner by certified mail. However, no Fair Market Rent Appeal may be filed after [four] six years from the date the housing accommodation was no longer subject to the City Rent Law.

(c) Such appeal shall be dismissed where:

(1) the appeal is filed more than 90 days after the certified mailing to the tenant of the Initial Apartment Registration, together with the Notice pursuant to section 2523.1 of this Title; or

(2) the appeal is filed more than [four] six years after the vacancy which caused the housing accommodation to no longer be subject to the City Rent Law.

(e) In determining Fair Market Rent Appeals filed pursuant to [paragraph] subdivision (a) [(1)] of this section, consideration shall be given to the applicable guidelines promulgated for such purposes by the Rent Guidelines Board and to rents generally prevailing for housing accommodations in buildings located in the same area as the housing accommodation involved. [In addition, 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.] The rents for these comparable housing accommodations may be considered where such rents are:

(1) unchallenged rents in effect for housing accommodations subject to this Code on the date the tenant filing the appeal took occupancy; or

(2) at the owner's option, market rents in effect for other comparable housing accommodations on the date the tenant filing the appeal took occupancy, as submitted by the owner.

(f)

(1) Except as provided in section 2521.1(a)(2) of this code, the landlord or tenant of a housing accommodation made subject to this Code by the ETPA may, within 60 days of the date the housing accommodation became subject to the ETPA or the commencement of the first tenancy thereafter, file an application on forms prescribed by the DHCR to adjust the initial legal regulated rent on the grounds that the presence of unique or peculiar circumstances materially affecting the legal regulated rent has resulted in a rent which is substantially different from the rents generally prevailing in the same area for substantially similar housing accommodations.

(2) The DHCR may grant an appropriate adjustment of the initial legal regulated rent upon finding that such grounds do exist, provided that the adjustment shall not result in a legal regulated rent substantially different from the legal regulated rents generally prevailing in the same area for substantially similar housing accommodations.

(3) Any such adjustment shall consider, in addition to the factors contained in section 2522.3(f)(2), the equities involved and the general limitations required by section 2522.7 of this title.

(4) Previous regulation of the rent for the housing accommodation under the PHFL or any other State or Federal law shall not, in and of itself, constitute a unique and peculiar circumstance within the meaning of this subdivision. Any change in economic circumstances arising as a consequence of the termination of such

prior regulation of rent may only be addressed in a proceeding for adjustment of the legal regulated rent under [paragraphs] subdivisions (c)[(b)] and (d) [(c)] of section 2522.4 of this code.

25. **Subdivision (a) of 9 NYCRR § 2522.4 is repealed and a new subdivision (a) and subdivision (b) are added as follows:**

(a) Individual Apartment Improvements.

(1) Increase in space, new equipment, new furniture or furnishings; and other adjustments.

(2) An owner is entitled to a temporary rent increase where there has been a reasonable and verifiable modification, other than an increase for which an adjustment may be claimed pursuant to subdivision (b) of this section, of dwelling space, installation of new equipment or improvements, or new furniture or furnishings, provided in or to the tenant's housing accommodation, where the tenant has agreed to such modification or increase and the owner has obtained written informed tenant consent to such rent increase. In the case of vacant housing accommodations, tenant consent shall not be required.

(i) For all work that commenced on or after June 14, 2019, notification of all modifications must be submitted to DHCR for verification. As a part of such verification, an owner shall:

(a) Provide a copy of the written informed tenant consent on an approved DHCR form when tenant consent is required.

(b) Provide the DHCR with an itemized list of work performed, including a description and/or explanation of the reason or purpose for such work.

(c) Provide the DHCR with photographs of the subject apartment where the work will be completed taken prior to such modification or increase as well as photographs taken after, and showing, the work has been

completed. Such photographs must be kept as part of the owner's permanent records such that the owner must at any future time produce such photographs upon request by an agency with appropriate jurisdiction.

(d) Use a licensed contractor to complete such work, where using a licensed contractor is required by an appropriate New York State or local governmental agency or rule. The costs for an individual apartment improvement paid to a person or organization contracted to do the improvement or installation work sharing a common ownership with the owner or managing agent of the subject building or apartment will be disallowed.

(e) Resolve, within the dwelling space, all outstanding hazardous and immediately hazardous violations. In no event shall an owner be permitted to begin collection of any rent increase pursuant to this subdivision while there are any hazardous or immediately hazardous violations of the Uniform Fire Prevention and Building Code (Uniform Code), New York City Fire Code, or New York City Building and Housing Maintenance Codes pending against the affected housing accommodation.

(ii) For work commenced on or after June 14, 2019, the recoverable costs incurred by the owner pursuant to this paragraph shall be limited to a total aggregate cost of fifteen thousand dollars ($15,000) that may be expended on no more than three (3) separate individual apartment improvements in any fifteen (15) year period.

(iii) 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.

(iv) Any increases to the legal regulated rent pursuant to this paragraph shall be temporary and shall be removed from the legal regulated rent thirty (30) years from the date the increase became effective

inclusive of any increases granted by the applicable Rent Guidelines Board that had been calculated based upon such rent increase.

(v) For individual apartment improvements pursuant to this subdivision, the DHCR shall maintain an itemized list of work performed and a description or explanation of the reason or purpose of such work, inclusive of photographic evidence documenting the condition prior to and after the completion of the performed work. Such documentation and any other supporting documentation shall be submitted to the DHCR by the owner within 90 days of the completion of the work, retained in a centralized electronic retention system and made available in cases pertaining to the adjustment of legal regulated rents.

(vi) Where an owner seeks a temporary individual apartment improvement rent increase pursuant to this subdivision while the unit is occupied, the DHCR shall provide a form for use by the owner, to obtain written informed consent from the tenant that shall include the estimated total cost of the improvement and the estimated monthly rent increase. Such form shall be completed and submitted to the DHCR by the owner within 90 days of the completion of the work and preserved in a centralized electronic retention system. Nothing herein shall relieve an owner, lessor, or agent thereof of his or her duty to retain proper documentation of all improvements performed or any rent increases resulting from said improvements.

(vii) For rent increases pursuant to this subdivision that took effect prior to June 14, 2019, the increase in the monthly legal regulated rent for the affected housing accommodations when authorized pursuant to this paragraph shall for buildings and complexes containing 35 or fewer housing accommodations be 1/40th of the total cost, including installation but excluding finance charges; and for buildings and complexes containing more than 35 housing accommodations be 1/60th of the total cost, including installation but excluding finance charges.

(viii) For temporary rent increases pursuant to this subdivision effective as of or after June 14, 2019, the temporary increase in the monthly legal regulated rent for the affected housing accommodations when authorized pursuant to this paragraph shall for buildings and complexes containing 35 or fewer housing accommodations be 1/168th of the total cost, including the cost of installation but excluding finance charges; and for buildings and complexes containing more than 35 housing accommodations be 1/180th of the total cost, including the cost of installation but excluding finance charges.

(b) Temporary major capital improvement rent adjustments.

(1) An owner of a building or building complex that contains more than thirty-five (35) percent rent-regulated units may file an application to temporarily increase the legal regulated rents of the building or building complex on forms prescribed by the DHCR which includes an itemized list of work performed and a description or explanation of the reason or purpose of such work, on one or more of the following grounds:

(i) There has been a major capital improvement, including an installation, which must meet all of the following criteria:

(a) it is deemed depreciable under the Internal Revenue Code, other than for ordinary repairs;

(b) it is essential for the preservation, energy efficiency, functionality or infrastructure of the entire building, including heating, windows, plumbing and roofing, but shall not be for operational costs or unnecessary cosmetic improvements;

(c) it is an improvement to the building or to the building complex which inures directly or indirectly to the benefit of all tenants, and which includes the same work performed in all similar components of the building or building complex, unless the owner can satisfactorily demonstrate to the DHCR that certain of such similar components did not require improvement; and

(d) the item being replaced meets the requirements set forth on the following useful life schedule, except with DHCR approval of a waiver, as set forth in clause (e) of this subparagraph.

Useful Life Schedule for Major Capital Improvements Replacement Item or Equipment Years - Estimated Life

1) Boilers and Burners

(a) Cast Iron Boiler 35

(b) Package Boiler 25

(c) Steel Boiler 25

(d) Burners 20

2) Windows

(a) Aluminum 20

(b) Wood 25

(c) Steel 25

(d) Storm 20

(e) Vinyl 15

3) Roofs

(a) 2-Ply (asphalt) 10

(b) 3-4 Ply (asphalt) 15

(c) 5-Ply (asphalt) 20

(d) Shingle 20

(e) Single-Ply Rubber 20

(f) Single-Ply Modified Bitumen 10

(g) Quarry Tile 20

4) Pointing 15

5) Rewiring 25

6) Intercom System 15

7) Mailboxes 25

8) Plumbing/Repiping

(a) Galvanized Steel 25

(b) TP Copper 30

(c) Brass cold water 15

(d) Fixtures 25

9) Elevators

(a) Major Upgrade..... 25

(b) Controllers and Selector 25

10) Doors

(a) Apartment Entrance 25

(b) Lobby/Vestibule 15

11) Water Tanks

(a) Metal 25

(b) Wood 20

12) Waste Compactors 10

13) Air Conditioners

(a) Individual Units/Sleeves 10

(b) Central System 15

(c) Branch Circuitry Fixtures 15

14) Siding

(a) Aluminum Siding 25

(b) Vinyl Siding 15

15) Catwalk 25

16) Chimney

(a) Steel 25

(b) Brick 25

17) Courtyards/Walkways/Driveways

(a) Cement 15

(b) Asphalt 10

18) Fire Escapes 25

19) Fuel Oil Tanks

(a) In Vaults 25

(b) Underground 20

20) Water Heating Units

(a) Hot Water/Central Heating 20

(b) Hot Water Heater (Domestic) 10

21) Parapets brick 25

22) Resurfacing Exterior Walls 25

23) Solar Heating System 25

24) Structural Steel 25

25) Television Security 10

For major capital improvements not listed above, the owner must submit evidence with the application that the useful life of the item or equipment being replaced has expired.

(e)

(1) An owner who wishes to request a waiver of the useful life requirement set forth in clause (d) of this subparagraph must apply to the DHCR for such waiver prior to the commencement of the work for which he or she will be seeking a temporary major capital improvement rental increase. Notwithstanding this requirement, where the waiver requested is for an item being replaced because of an emergency, which causes the building or any part thereof to be dangerous to human life and safety or detrimental to health, an owner may apply to the DHCR for such waiver at the time he or she submits the temporary major capital improvement rent increase application.

(2) If the waiver is denied, the owner will not be eligible for a temporary major capital improvement increase. However, if the waiver is granted, the useful life requirement will not be a factor in the determination of eligibility for the temporary major capital improvement rent increase. Approval of the waiver does not assure

that the application will be granted, as all other requirements set forth in this paragraph must be met.

(3) An owner may apply for, and the DHCR may grant, a waiver of the useful life requirements set forth in the Useful Life Schedule, if the owner satisfactorily demonstrates the existence of one or more of the following circumstances:

(i) The item or equipment cannot be repaired and must be replaced during its useful life because of a fire, vandalism or other emergency, or "act of God" resulting in an emergency;

(ii) The item or equipment needs to be replaced because such item or equipment is beyond repair, or spare parts are no longer available, or required repairs would cost more than seventy-five (75) percent of the cost of the total replacement of the item or equipment. Certification by a duly licensed engineer or architect, where there is no common ownership or other financial interest with the owner, shall be considered substantial proof of such condition(s). The owner may also be required to submit proof that the item or equipment was properly maintained. Such proof may include receipts for repairs and parts or maintenance logs;

(iii)

(a) An appropriate New York State or local governmental agency has determined that the item or equipment needs to be replaced as part of a government housing program;

(b) If a governmental lender or insurer, for the purposes of qualifying for a New York State or local government long-term loan or insured loan, requires the remaining useful life of the building or building complex, as well as the component parts of such building or building complex, to be as great as or greater than the term of the loan agreement.

(iv) The replacement of an item or equipment which has proven inadequate, through no fault of the owner, is necessary, provided that there has been no major capital improvement rent increase for that item or equipment being replaced.

(4) In the event that the DHCR determines that an installation qualifies for a waiver of the useful life requirements, the DHCR may, subject to all other requirements of this section, and the limitations of the reasonable cost schedule provisions in paragraph (2) of this subdivision:

(i) Where no previous increase was granted within the useful life of the item or equipment being replaced, approve one-hundred (100) percent of the actual, reasonable, and verifiable cost of the item or equipment, including installation;

(ii) Where it is determined that an item is eligible to be replaced during its useful life, grant a temporary increase based on the actual, reasonable, and verifiable cost of the item or equipment, including installation, less both (a) the amount reimbursed from other sources, such as insurance proceeds or

any other form of commercial guarantee, and (b) the amount of any increase previously granted for the same item or equipment either as a major capital improvement, or pursuant to other governmental programs, if such item or equipment has not exhausted at least seventy-five (75) percent of its useful life at the time of the installation;

(iii) Where it is determined that an item is eligible to be replaced even though it has not exhausted seventy-five (75) percent of its useful life and that it was installed as part of a substantial rehabilitation or the new construction of a building for which the owner set initial building-wide rents, the DHCR may reduce the increase granted for a major capital improvement by a proportion of the remaining useful life of such item or equipment;

(iv) Where it is determined that an item is eligible to be replaced even though it has not exhausted one-hundred (100) percent of its useful life, but has exhausted more than seventy-five (75) percent of its useful life, the DHCR may reduce the increase granted for a major capital improvement by a proportion of the remaining useful life of such item or equipment.

(f) In no event shall a temporary major capital improvement increase be granted for work done in individual apartments that is otherwise not an improvement to an entire building.

(ii) 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;

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

(c) not be for primarily cosmetic improvements or for operational costs.

(iii) With approval by the DHCR, there has been an increase in services or 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.

(iv) With approval by the DHCR, there have been other improvements made or services provided to the building or building complex, other than those specified in subparagraphs (i)-(iii) of this paragraph, with the express consent of the tenants in occupancy of at least seventy-five (75) percent of the rent regulated housing accommodations.

(2) Major Capital Improvement Schedules

(i) The reasonable costs that may be recovered for qualified major capital improvements may not exceed the recoverable costs, as determined by DHCR. In making such determination, DHCR shall, unless for good cause shown or otherwise specified, refer to such reasonable costs as specified in the Reasonable Cost Schedule found in the Reasonable Cost Schedule that is in effect at the time that the contract for work for the major capital improvement was executed.

(ii) The Reasonable Cost Schedule shall provide the recoverable cost of major capital improvements that fall within the following main three categories:

1. Major Systems;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Plumbing; (b) Gas Re-pipe; (c) Wiring; (d) Windows; (e) Boiler/Burner; (f) Hot Water Heater; (g) Elevator Replacement; and (h) Elevator Modernization.

2. Façade, Parapet, Roof;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Façade; (b) Parapet; and (c) Roof.

3. Other Systems.

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Chimney; (b) Doors; (c) Security System; and (d) Intercom; and may include such other systems as DHCR may determine.

(iii) Each class of major capital improvement may list more detailed types of capital improvement work. Each class of major capital improvement described in the Schedule may be inclusive of additional costs that can be associated with the type of improvements listed within such class.

(iv) The costs of each type of major capital improvement work will be listed as per unit, per unit of measurement or per piece of equipment, as is appropriate given the nature of the improvement.

(v) The maximum recoverable costs for each type of major capital improvement specified in the initial Reasonable Cost Schedule shall be based on a survey of such construction costs undertaken for such installation.

(a) The maximum recoverable costs listed in the Reasonable Cost Schedule shall be initially published and made available for public review and comment in conjunction with the promulgation process required for adoption of this regulation.

(vi) Periodic Review of Reasonable Cost Schedule:

Every year after adoption of this regulation, DHCR shall assess and review the categories of major capital improvements, the classes of work within categories eligible for major capital improvements and the maximum recoverable costs listed for the types of major capital improvement costs identified in the Reasonable Cost Schedule.

(vii) Procedure:

(a) When applying for a temporary major capital improvement rent increase, owners are required to submit an itemized list of work performed with a description or explanation of the reason or purpose of such work.

(1) Costs may be granted for related expenses that are not specified in the actual schedule, if they are found to be:

(i) within or below the maximum costs for the class of work,

(ii) are necessary for the claimed improvement, and

(iii) eligible for reimbursement as a major capital improvement.

(2) Costs will not be granted for expenses which are ineligible for major capital improvement rent increases.

(3) Only the actual and verifiable amounts expended by owners for qualifying major capital improvement costs will be the basis for any temporary major capital

improvement rent increase. Qualifying owners will, therefore, be awarded a temporary major capital improvement rent increase on the lesser of either: (i) the actual amount expended, or (ii) the maximum reasonable cost from the schedule, and such other additional items that are eligible as a major capital improvement but are not listed as part of the Reasonable Cost Schedule.

(b) The schedule provides a maximum of costs that can be granted for eligible major capital improvements. All costs granted for a temporary major capital improvement rent increase must be actual, reasonable, verifiable, and meet all other regulatory requirements.

(viii) Waiver of Application of Reasonable Cost Schedule

(a) Owners may apply for a waiver of application of the Reasonable Cost Schedule. The waiver request will be denied, unless the owner satisfies the waiver requirements provided herein, and the Division finds the waiver of the application of the schedule to be reasonable and warranted under the circumstances set forth in such application.

(b) If an owner's application for a waiver of the reasonable cost schedule is denied, the owner's maximum recoupment shall be limited to that required by the applicable Reasonable Cost Schedule.

(c) Notwithstanding any waiver of the reasonable cost schedule, not all costs claimed for a temporary major capital improvement rent increase may be awarded, as the costs of items claimed may be disallowed, in whole or in part, pursuant to all other requirements set forth in this section that must be met and fully supported.

(d) Pursuant to the requirements specified below, such application must be fully supported and demonstrate that the claimed costs underlying the temporary major capital improvement rent increase are:

(1) not identified in the Reasonable Cost Schedule, or

(2) necessarily and appropriately priced higher than those costs listed in the Reasonable Cost Schedule due to the unique nature of the installation and the circumstances surrounding such installation, and such costs are accurate, reasonable, necessary, verifiable, and eligible for a rent increase under these circumstances, or

(3) that use of the Reasonable Cost Schedule will cause an undue hardship and the use of alternative procedures are appropriate to the interests of the owner, the tenants, and the public, and the costs of such improvement are accurate, reasonable, necessary, verifiable, and eligible for a rent increase under the circumstances.

(e) Owners must request a waiver of the use of the Reasonable Cost Schedule in writing and accompany the application with the information and documentation as specified in subparagraph (x).

(ix) Requirements for Waiver under Specific Circumstances

(a) At the time of the initial application for a temporary major capital improvement rent increase, an owner must apply for a waiver of application of the Reasonable Cost Schedule. Such application shall include all necessary requirements set forth in subparagraph (viii) of this paragraph and must also meet the following requirements:

(1) Non-Landmarked Buildings (Buildings not designated by the Landmark Commission):

(i) A licensed engineer or architect must certify that:

(a) the major capital improvement costs for which an owner seeks a temporary major capital improvement rent increase are accurate and reasonable under the circumstances; and

(b) there is no common ownership or other financial interest between the contractor installing the replacement or upgrade and the ownership entity of the owner; and

(c) a bid process was conducted and supervised by a licensed architect or engineer.

(2) Landmarked Buildings (Buildings designated by the Landmark Commission):

The costs beyond those permitted by the reasonable cost schedule that were the result of any law, regulation, rule, or requirement under which the premises have been designated a landmark building.

(3) Capital Improvement Work Performed While Also Under Another Governmental Agency's Supervision:

DHCR may also accept the cost of contract where:

(i) the building is subject to both (a) the Rent Stabilization Law, and (b) another housing program, and

(ii) the contract is approved by or awarded under the supervision of a state, city or local housing entity in conjunction with that affordable housing program, and

(iii) such supervision includes a process by which such supervising agency reviews the costs to assure they are reasonable.

(4) Emergency Capital Improvements:

DHCR may also accept the cost of contract where capital improvements were performed to remedy an emergency condition and for which the owner paid more than the reasonable costs due to such emergency. The costs must be actual, reasonable, necessary, verifiable, and eligible for a rent increase under the circumstances.

(5) Interim Rules:

(i) An owner may apply for a waiver of application of the Reasonable Cost Schedule if, prior to the effective date of this subparagraph (ix) of this paragraph, it has either:

(a) entered a contract for the performance of major capital improvement work within the two years immediately preceding January 27, 2021, the final adoption date of Emergency Regulation HCR-26-20-00012, or

(b) submitted to DHCR an application for a temporary major capital improvement rent increase.

(ii) The recoverable costs will be determined according to the applicable Reasonable Cost Schedule and these provisions, but the owner need not submit evidence of compliance with the bidding requirements set forth in clause (b) of subparagraph (x) of this paragraph; owner may instead submit for review alternative means of establishing the reasonableness of the major capital improvement costs sought to be recovered.

(iii) For pending major capital improvement applications, an owner was required to make this waiver application within 60 days of June 16, 2020, unless in the context of processing the major capital improvement application the owner was directed by DHCR to submit an application for waiver.

(x) Waiver Procedure:

As part of the written Waiver application for non-emergency capital improvements, owners must submit the following:

(a) A certification by a licensed architect or engineer stating that:

(1) The purchases and contracts, whose costs owner seeks to recover have been awarded on the basis of analysis and bidding to the fullest extent possible, but with no less than three bidders having been solicited to perform the work unless the owner can demonstrate that the work is so highly specialized that such bids cannot be extended;

(2) List of items for which owner solicited bids were necessary;

(3) The costs claimed by owner for the major capital improvement work are accurate and reasonable, provided that the architect or engineer's basis for such conclusion is fully and credibly supported;

(4) All changes to the original agreed upon scope of work were necessary to the underlying major capital improvement and reasonably priced;

(5) The owner selected the lowest responsible bidder or the bidder best suited to perform the major capital improvement work, provided that the architect or engineer's basis for such conclusion is credibly supported; and

(6) Such other and additional proof as DHCR may require to ascertain the need for the waiver and the certification of such reasonable, necessary, verifiable, and eligible costs.

(b) Certification by owner that it has complied with bid process requirements including submission of:

(1) Tabulation of all bids received; and

(2) Copies of all bids received; and

(3) A certification by each bidder disclosing whether the owner or any board member, general partner, officer or employee of owner, and/or principal or employee of any managing agent retained by owner, has a direct or indirect interest in the bidder or in the compensation to be received by the bidder pursuant to the proposed contract. Failure to accurately and fully complete this certification may result in the rejection of the bid for purposes of determining owner's application

for waiver of the use of the Reasonable Cost Schedule, as well as rejection and a dismissal of the major capital improvement application; and

(4) Detailed description of the items for which owner initially solicited bids.

(c) A certification by the owner's architect or engineer certifying the necessity, appropriateness, and reasonableness of the costs of all changes to the original agreed upon scope of work that were performed in connection with the major capital improvement, along with a description of the changes in the scope, price, or time of completion of the work related to each change order.

(xi) For Emergency Capital Improvement MCI Applications:

The owner must submit a statement from an independent engineer or architect describing the emergency, why the costs were greater than those in the schedule, that the costs were reasonable for the situation, and why the owner could not obtain three bids in a timely manner due to the exigent circumstances.

(xii) Notice:

As part of the major capital improvement application process, any request by an owner for a waiver of application of the Reasonable Cost Schedule shall be made available to the tenants of the subject building(s) with an opportunity to comment on and contest the waiver.

(xiii) Operational Bulletin

The initial Operational Bulletin 2020-1 including all amendments, shall be issued pursuant to this paragraph and Section 2527.11 of this Title. The Operational Bulletin 2020-1 and all amended

versions shall be available in hardcopy form at 92-31 Union Hall Street, Jamaica, Queens, New York, and will be available on DHCR's website at [www.hcr.state.ny.us] www.hcr.ny.gov.

(3) Improvements or installations for which the DHCR may grant applications for temporary rent increases based upon major capital improvements pursuant to paragraph (1) of this subdivision are described on the following Schedule. Other improvements or installations that are not included may also qualify, where all requirements of Section 2522.4(b) of this Title have been met.

SCHEDULE OF MAJOR CAPITAL IMPROVEMENTS

1. 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. BOILER AND/OR BURNER - new unit(s) including electrical work and additional components needed for the installation.

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

5. CATWALK – complete replacement.

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

7. COURTYARD, DRIVEWAYS AND WALKWAYS - resurfacing of entire original area within the property lines of the premises.

8. 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.

9. 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.

10. FIRE ESCAPES – complete new replacement including new landings.

11. GAS HEATING UNITS - new individual units with connecting pipes to every housing accommodation.

12. HOT WATER HEATER - new unit for central heating system.

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

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

15. PARAPET - complete replacement.

16. POINTING AND WATERPROOFING - as necessary on exposed sides of the building.

17. 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.

18. RESURFACING OF EXTERIOR WALLS - consisting of brick or masonry facing on entire area of all exposed sides of the building.

19. 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; but otherwise excluding work done to effectuate conversion from master to individual metering of electricity approved by DHCR pursuant to paragraph (3) of subdivision (e) of this section.

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

21. SOLAR HEATING SYSTEM - new central system, including additional components required for the system.

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

23. TELEVISION SYSTEM - new security monitoring system including additional components required for the system.

24. WASTE COMPACTOR - new installation(s) serving entire building.

25. WASTE COMPACTOR ROOM - new room where none existed before.

26. WATER SPRINKLER SYSTEM (FOR FIRE CONTROL PURPOSES) - new installation(s).

27. WATER TANK - new installation(s).

28. WINDOWS - new framed windows.

(4) Any temporary increase pursuant to paragraph (1) of this subdivision shall be 1/144 of the total cost for a building with thirty-five or fewer housing accommodations, or 1/150 of the total cost for a building with more than thirty-five housing accommodations, for any determination issued by DHCR after June 14, 2019, and such temporary increase shall be removed from the legal regulated rent thirty (30) years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. For increases pursuant to subparagraphs (1) (iii) and (iv) of this subdivision, in the discretion of the DHCR, an appropriate charge may be imposed in lieu of an amortization charge when an amortization charge is insignificant or inappropriate.

(5)

(i) A temporary major capital improvement increase is fixed to the unit and such increase shall be collectible prospectively on the first day of the first month beginning sixty (60) days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments.

(ii) The temporary major capital improvement increase is added to the legal regulated rent as a temporary increase and will be removed from the legal regulated rent thirty (30) years from the date the increase became effective inclusive of any increases granted by the local rent guidelines board. The DHCR shall issue a notice to the owner and all the tenants sixty (60) days prior to the end of the temporary major capital improvement increase and shall include the initial approved increase and the total amount to be removed from the legal regulated rent inclusive of any increases granted by the applicable rent guidelines board.

(iii) Such temporary increases shall not be collectible during the term of a lease then in effect, unless a specific provision in the tenant's lease authorizes an increase during its term pursuant to an order issued by the DHCR.

(iv) The collection of such temporary increases shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. In no event shall more than one two-percent increase in the legal regulated rent pursuant to paragraph (1) of this subdivision be collected in the same year, provided, however, that upon a vacancy, the owner may temporarily increase the rent to the full temporary major capital improvement increase amount.

(v) In addition, for any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019, an owner may not collect more than two percent in any year from any tenant in occupancy on the date the major capital improvement was approved, provided the tenant has entered into a renewal lease commencing on or after June 14, 2019, or is or was entitled to receive a renewal lease on or after such date. In such event, the adjusted limit on collectability shall take effect on the first anniversary of the date on which the increase became collectible to occur after such lease renewal.

(vi) An increase pursuant to paragraph (1) of this subdivision shall not be collectible from a tenant to whom there has been issued a currently valid senior citizen or disability rent increase exemption pursuant to section 26-509 of the Administrative Code of the City of New York, to the extent such increase causes the legal regulated rent of the housing accommodation to exceed one third of the aggregate disposable income of all members of the household residing in the housing accommodation.

(6) The determination of the 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 RSL, and including as a factor a return of the actual, reasonable, and verifiable cost to the owner, limited to the reasonable cost schedule in paragraph (2) of this subdivision and exclusive of interest or other carrying charges, and the increase in the rental value of the housing accommodations.

(7) DHCR may issue, upon an owner application, an advisory prior opinion pursuant to section 2527.11 of this Title, as to whether the proposed work qualifies for an increase in the legal regulated rent.

(8) No increase pursuant to paragraph (1) of this subdivision shall be granted by the DHCR, unless an application is filed no later than two years after the completion of the installation or improvement unless the applicant can demonstrate that the application could not be made within two years due to delay, beyond the applicant's control, in obtaining required governmental approvals for which the applicant has applied within such two-year period.

(9) An increase for an improvement made pursuant to paragraph (1) of this subdivision shall not be granted by the DHCR to the extent that, after a plan for the conversion of a building to cooperative or condominium ownership is declared effective, such improvement is paid for out of the cash reserve fund of the cooperative corporation or condominium association. However, where prior to the issuance of an order granting the increase, the funds taken from the reserve fund are returned to it by the sponsor or holder of unsold shares or units or through a special assessment of all shareholders or unit owners, the increase may be based upon the actual, reasonable and verifiable cost of the improvement. Nothing in this paragraph shall prevent an owner from applying for, and the DHCR from granting, an increase for such improvement to the extent that the cost thereof is otherwise paid for by an owner.

(10) Any temporary major capital improvement increase granted pursuant to paragraph (1) of this subdivision shall be reduced by an amount equal to (i) any governmental grant received by the landlord, where such grant compensates the landlord for any improvements required by a city, state or federal government, an agency or any granting governmental entity to be expended for improvements and (ii) any insurance payment received by the landlord where such insurance payment compensates the landlord for any part of the costs of the improvements. Low interest loans or repayable subsidies shall not be considered grants for the purposes of this paragraph.

(11) Rent adjustments pursuant to paragraph (1) of this subdivision and subdivisions (c) and (d) of this section shall be allocated as follows: The DHCR shall determine the dollar amount of the monthly rent adjustment. Such dollar amount shall be divided by the total number of rooms in the building. The amount so derived shall then be added to the rent chargeable to each housing accommodation in accordance with the number of rooms contained in such housing accommodation.

(12) When determining the adjustment of legal regulated rents pursuant to paragraph (1) of this subdivision, where the subject building contains commercial rental space in addition to residential rental space, and the DHCR determines that such commercial space benefits from the improvement, DHCR shall allocate the approved costs between the commercial rental space and the residential rental space based upon the relative square feet of each rental area.

(13) The DHCR shall not grant an owner's application for a rental adjustment pursuant to paragraph (1) of this subdivision, in whole or in part, if after review by DHCR, it is determined that the owner is not maintaining all required building wide services, or that there are outstanding hazardous, immediately hazardous, or other similar violations of any municipal, county, State or Federal law, including the Uniform Fire Prevention and Building Code (Uniform Code), New York City Fire Code, or New York City Building and Housing Maintenance Codes. Certain tenant caused violations may be excepted. A

tenant's repeated failure to provide access to remediate a violation may result in the violation being considered to be tenant caused.

(i) An owner application, pursuant to paragraph (1) of this subdivision, may be rejected if it is determined that there are one or more unresolved applicable violations. A rejected application may be refiled within sixty (60) days which shall stay the two-year filing requirement provided in paragraph (8) of this subdivision and preserve the original filing date. In the absence of good cause shown, a rejected application that is refiled outside of the sixty (60) day period will not retain the original filing date.

(ii) A timely refiled application pursuant to paragraph 13(i) of this subdivision, that has not addressed the outstanding violations placed against the building or has had new violations placed against the building in the interim period since rejection, will again be denied without leave to refile within sixty (60) days.

(iii) Prior to the issuance of a determination, the DHCR shall review and determine if one or more violations have been issued and not corrected to the subject building during the processing of an owner application pursuant to paragraph (1) of this subdivision. The owner will be allowed sixty (60) days to correct such violation(s). In the absence of good cause shown, failure to correct the violation(s) within the allotted time shall result in a denial of the application.

(iv) DHCR shall retain the ability and right where appropriate to review all penalties and violations at any other time during the pendency of such application.

(14) In the case of an improvement constituting a moderate rehabilitation as defined in section 5-02 of title 28 of the Rules of the City of New York, an owner may elect that the total cost for such improvement be deemed to be the amount certified by the Office of Tax Incentive Programs of HPD in the certificate

of eligibility and reasonable cost issued by such office with respect to such improvement. Such election shall be binding on the DHCR and shall waive any claim for a rent increase by reason of any difference between the total cash paid by the owner and such lesser certified amount.

(15) Where an application for a temporary major capital improvement rent increase has been filed, a tenant shall have sixty (60) days from the date of mailing of a notice of a proceeding in which to answer or reply. The DHCR shall provide any responding tenant with the reasons for the DHCR's approval or denial of such application.

(16) Where during the processing of a rent increase application filed pursuant to paragraph (1) of this subdivision, tenants interpose answers complaining of defective operation of the major capital improvement, the complaint may be resolved in the following manner:

(i) Where municipal sign-offs (other than building permits) are required for the approval of the installation, and the tenants' complaints relate to the subject matter of the sign-off, the complaints may be resolved on the basis of the sign-off, and the tenants referred to the approving governmental agency for whatever action such agency may deem appropriate.

(ii) Where municipal sign-offs are not required, or where the alleged defective operation of the major capital improvement does not relate to the subject matter of the sign-off, the complaint may be resolved by the affidavit of an independent licensed architect or engineer that the condition complained of was investigated and found not to have existed, or if found to have existed, was corrected. Such affidavit, which shall be served by the DHCR on the tenants, will raise a rebuttable presumption that the major capital improvement is properly operative. Tenants may only rebut this presumption based on persuasive evidence, for example, a counter affidavit by an independent licensed architect or engineer, or an affirmation by 51 percent of the complaining tenants.

(a) General requirements. There must be no common ownership, or other financial interest, between such architect or engineer and the owner or tenants. 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. The affidavit submitted must contain the signature and professional stamp of the architect or engineer. DHCR may conduct follow-up inspections randomly to ensure that the affidavits accurately indicate the condition of the premises. Any person or party who submits a false statement shall be subject to all penalties provided by law.

(iii) At the discretion of the DHCR, the DHCR may inspect the major capital improvement to determine whether the installation was conducted in a workmanlike manner or the work was sufficiently comprehensive so as to benefit all tenants.

(17) The DHCR shall annually inspect and audit no less than twenty-five percent of applications for a temporary major capital improvement increase that have been submitted and approved. Such process shall include individual inspections and document review to ensure that owners complied with all obligations and responsibilities under the law for temporary major capital improvement increases. Inspections shall include in-person confirmation that such improvements have been completed in such way as described in the application.

26. **Existing subdivisions (b), (c), (d), (e), (f) of 9 NYCRR § 2522.4 are to be renumbered as (c), (d), (e), (f), (g).**

27. The new subdivision (d) of 9 NYCRR § 2522.4 is amended as follows:

(d) [(c)] Alternative hardship. As an alternative to the hardship application provided under subdivision (c) [(b)] of this section, owners of buildings, not owned as cooperatives or condominiums, acquired by the same owner or a related entity owned by the same principals three years prior to the date of application, may apply to the DHCR, on forms prescribed by the DHCR, for increases in excess of the level of applicable guidelines increases established under the RSL, based on a finding by the DHCR that such guidelines increases are not sufficient to enable the owner to maintain an annual gross rent income collectible for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such annual gross rent income collectible, subject to the definitions and restrictions provided for herein.

(1) Definitions. The following terms shall mean:

(i) Annual gross rental income collectible shall consist of the actual income receivable per annum arising out of the operation and ownership of the property, including but not limited to rental from housing accommodations, stores, professional or business use, garages, parking spaces, and income from easements or air rights, washing machines, vending machines and signs, plus the rent calculated under subparagraph (2)(vi) of this subdivision. In ascertaining income receivable, the DHCR shall determine what efforts, if any, the owner has followed in collecting unpaid rent.

(ii) Operating expenses shall consist of the actual, reasonable costs of fuel, labor, utilities, taxes (other than income or corporate franchise taxes), fees (not including attorney's fees related to refinancing of the

mortgage), permits, necessary contracted services and noncapital repairs for which an owner is not eligible for an increase pursuant to this Part, insurance, parts and supplies, reasonable management fees, mortgage interest, and other reasonable and necessary administrative costs applicable to the operation and maintenance of the property.

(iii) Mortgage interest shall be deemed to mean interest on that portion of the principal of an institutional or a bona fide mortgage, including an allocable portion of the charges related to the refinancing of the balance of an existing mortgage or a purchase-money mortgage. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include, but shall not be limited to, the following: the condition of the property, the location of the property, the existing mortgage market at the time the mortgage is placed, the principal amount of the mortgage, the term of the mortgage, the amortization rate, security and other terms and conditions of the mortgage.

(iv) Institutional mortgage shall include a mortgage given to any insurance company, licensed by the State of New York or authorized to do business in the State of New York, or any commercial bank, trust company, savings bank or savings and loan association (which must be licensed under the laws of any jurisdiction within the United States and authorized to do business in the State of New York). The DHCR may determine in its discretion that any other mortgage issued by a duly licensed lending institution is an institutional mortgage.

(v) Owner's equity shall mean the sum of:

(a) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property;

(b) the cost of any capital improvement for which the owner has not collected an increase in rent less the principal of any mortgage or loan used to finance said improvement;

(c) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected an increase in rent; and

(d) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

(vi) Threshold income shall mean that annual gross rental income collectible for such building which exceeds the annual operating expense for such building by a sum equal to five percent of such annual gross rental income collectible.

(vii) Test year shall mean any one of the following:

(a) the most recent calendar year (January 1st to December 31st); or

(b) the most recent fiscal year (one year ending on the last day of a month other than December 31st, provided that books of account are maintained and closed accordingly; or

(c) any 12 consecutive months ending within 90 days prior to the date of filing of the hardship application. Such period must end on the last day of a month. Nothing herein shall prevent the DHCR from comparing and adjusting expenses and income during the test year with expenses and income occurring during the three years prior to the date of application in order to determine the reasonableness of such expenses and income.

(2) Restrictions. No owner may file an application, nor may an owner be granted an increase in excess of the level of applicable guidelines increases, unless:

(i) the collection of any increase in the legal regulated rent for any housing accommodation pursuant to this subdivision shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above

said sum to be spread forward in similar increments and added to the legal regulated rent as established or set in future years;

(ii) if the building was previously granted a hardship increase, such increase must have become effective more than 36 months prior to the filing date of the application;

(iii) the owner has resolved all legal objections to any real estate taxes and water and sewer charges for the test year. However, if there is a pending certiorari proceeding relating to the real estate tax expense for the test year, an owner may be permitted to file a hardship application. In such cases, the amount of real estate tax expense that will be recognized for purposes of the test year will be based upon the amount of proposed assessed value set forth by the owner in the certiorari petition; provided, however, that the owner submits proof of actual payment of all taxes due on the proposed assessed value, in accordance with applicable law. If after such tax objection is resolved, the owner's actual and reasonable tax expense allocable to the test year exceeds the amount the DHCR used in determining the hardship application, an additional increase may be granted prospectively by the DHCR in its discretion. The DHCR may also, in its discretion, accept reasonable alternatives as to unresolved water and sewer charges;

(iv) the DHCR shall not grant an owner an increase as provided, in whole or in part, if it is determined prior to the granting of approval to collect an increase pursuant to this subdivision that the owner is not maintaining all required services or there are current immediately hazardous violations of any municipal, county, State or Federal law which relate to the maintenance of such services. However, as determined by the DHCR, where the DHCR determines that insufficient income is the cause of such failure to maintain required services, hardship increases may be granted upon condition that such services will be restored within a reasonable time, and certain tenant-caused violations may be excepted;

(v) in buildings that also contain housing accommodations subject to the City Rent Law, appropriate adjustments for both income and expenses will be made by the DHCR in order to calculate the pro rata share for those housing accommodations subject to this application;

(vi) the DHCR shall set a rental value for any housing accommodation occupied by the owner or managing agent, or a person related to, or an employee of the owner or managing agent, or unoccupied at the owner's choice for more than one month at the last regulated rent plus the minimum number of guidelines increases or, if no such regulated rent existed or is known, the DHCR shall impute a rent equal to the average of rents for similar or comparable housing accommodations subject to this Code in the building during the test year;

(vii) each owner who files an application for a hardship rent increase shall be required to maintain all records as submitted with the subject application, and further be required to retain same for a period of three years after the effective date of the order;

(viii) each application under this subdivision shall be certified by the owner or his or her duly authorized agent as to its accuracy and compliance with this subdivision, under the penalty of perjury;

(ix) the annual gross rent income collectible for the test year does not exceed the annual operating expenses of such building by a sum equal to at least five percent of such annual gross rental income collectible;

(x) the owner or a related entity owned by the same principals acquired the building at least 36 months prior to the date of application. A cooperative corporation or the board of managers of a condominium association shall not be considered the owner of the building, nor are individual shareholders or unit owners <u>considered to be</u> building owners for the purpose of eligibility for the alternative hardship, and as such are not permitted to file alternative hardship applications;

(xi) the owner's equity in the building exceeds five percent of the sum of:

(a) the arm's-length purchase price of the property;

(b) the cost of any capital improvements for which the owner has not collected an increase in rent pursuant to paragraph (b)(1) [(a)(2)] of this section;

(c) any repayment of principal of any mortgage or loan used to finance the purchase of the property or any capital improvements for which the owner has not obtained an adjustment in rent pursuant to paragraph (b)(1) [(a)(2)] of this section; and

(d) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner; and

(xii) the maximum amount of hardship increase to which an owner shall be entitled shall be the difference between the threshold income and the annual gross rent income collectible for the test year.

(3) Right of tenant to cancel lease where rent increase based upon hardship is granted. If an order is issued increasing the legal regulated rent because of owner hardship, the tenant may within 30 days of his or her receipt of a copy of the DHCR order, cancel his or her lease on 60 days' written notice to the owner. Until such tenant vacates, he or she continues in occupancy at the approved increase in rent.

28. The new subdivision (e) of 9 NYCRR § 2522.4 is amended as follows:

(e) [(d)] An owner may file an application to decrease required services for a reduction of the legal regulated rent on forms prescribed by the DHCR 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 provided in the housing accommodation; or

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

(3) such decrease results from an approved conversion from master metering of electricity, with the cost of electricity included in the rent, to individual metering of electricity, with the tenant paying separately for electricity, and is in amounts set forth in a Schedule of Rent Reductions for different-sized rent stabilized housing accommodations included in Operational Bulletin [2003-1]2014-1 and any successor thereto governing electrical conversions issued pursuant to this paragraph and Section 2527.11 of this Title by DHCR, 92-31 Union Hall Street, Jamaica, Queens, New York, and available at DHCR's website at [www.dhcr.state.ny.us] www.hcr.ny.gov and determined as follows:

(i) Direct Metering: Where the conversion is to direct metering of electricity, with the tenant purchasing electricity directly from a utility, such Schedule of Rent Reductions is based on the median monthly costs of electricity to tenants derived from data from the United States Census Bureau's "[2002] New York City Housing and Vacancy Survey," as tabulated by the New York City Rent Guidelines Board, 1 Centre Street, Suite 2210 [51 Chambers Street, Suite 202], New York, New York, and available on its website at rentguidelinesboard.cityofnewyork.us [www.housingnyc.com]. The charge for electricity is not part of the work collection of such charge is not within the jurisdiction of the DHCR. A conversion to direct metering is required to include rewiring the building unless the owner can establish that rewiring is unnecessary.

(ii) Submetering: Where the conversion is to submetering of electricity, with the tenant purchasing electricity from the owner or a contractor retained by the owner, who purchases electricity from a utility at the bulk rate, such Schedule of Rent Reductions is based on the median monthly cost of electricity to tenants derived from data from the United States Census Bureau's "[2002] New York City Housing and Vacancy Survey," as tabulated by the New York City Rent Guidelines Board, 1 Centre Street, Suite 2210 [51 Chambers Street, Suite 202], New York, New York, and available on its website at

rentguidelinesboard.cityofnewyork.us [www.housingnyc.com], adjusted to reflect the bulk rate for electricity plus a reasonable service fee for the cost of meter reading and billing, based on the maximum estimated fee included in the "Residential Electric Submetering Manual" revised October 2001, published by the New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, New York, and available on its website at www. nyserda.org, and reflected in Operational Bulletin [2003-1]2014-1 and any successor thereto. The owner or contractor retained by the owner is not permitted to charge the tenant more than the bulk rate for electricity plus a reasonable service charge for the cost of meter reading and billing. The charge for electricity as well as any related service surcharge is not part of the legal regulated rent and is not subject to this Code. The resolution of any dispute arising from the billing or collection of such charge or surcharge is not within the jurisdiction of the DHCR. A conversion to submetering does not require rewiring the building provided the owner submits an affidavit sworn to by a licensed electrician that the existing wiring is safe and of sufficient capacity for the building.

(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]2014-1 and any successor thereto, and thereafter 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]2014-1 and any successor thereto, 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.

(iv) [Every three years] Periodically, upon the publication of a new New York City H[h]ousing and V[v]acancy S[s]urvey, and tabulation of the survey data by the New York City Rent Guidelines Board, DHCR [shall] may issue a new Operational Bulletin governing electrical conversions setting forth rent reductions based on the new survey data, and [shall move to amend the regulations to] may incorporate by reference the new Operational Bulletin, the new New York City H[h]ousing and V[v]acancy S[s]urvey, and Rent guidelines Board tabulation. At such time as NYSERDA issues a new Residential Electric Submetering Manual setting forth a new maximum estimated submetering service fee, DHCR shall move to amend the regulations to incorporate that document by reference.

(4) such decrease is not inconsistent with the RSL or this Code. No such reduction in rent or decrease in services shall take place prior to the approval by the DHCR of the owner's application, except that a service decrease pursuant to paragraph (2) of this subdivision may take place prior to such approval.

29. The new subdivision (g) of 9 NYCRR § 2522.4 is amended as follows:

(g) [(f)] Pursuant to section 452(7) of the PHFL, as an alternative to the rental adjustments for which an owner may file an application under subdivision (a) or (b) of this section, upon the completion of the rehabilitation of a multiple dwelling which is aided by a loan made pursuant to article VIII-A of the PHFL, HPD may adjust the rent for each housing accommodation within the multiple dwelling pursuant to such law. Any work required pursuant to or as a condition of an article VIII-A loan for which a rent adjustment is granted under section 452(7) of the PHFL is not eligible for an increase pursuant to paragraph (c) [(b)] (2) or (3) of this section.

30. Subdivisions (d)(3) and (d)(4) of 9 NYCRR § 2522.5 are amended as follows:

(3) where such lease provides that a rent increase shall be in the amount, if any, authorized by the DHCR in the event an application is filed to establish a hardship pursuant to section 2522.4([b]c) or ([c]d) of this Part; and

(4) in the case of a vacancy lease, where an application for a rent adjustment pursuant to 2522.4[(a)(2),](b), [or] (c) or (d) of this Part is pending before the DHCR, such lease also recites that such application is pending before the DHCR and the basis for the adjustment, and that the increase which is the subject of such application, if granted, may be effective during the term of the lease.

31. Subdivision (f) of 9 NYCRR § 2522.5 is repealed, and subdivisions(g) and (h) of 9 NYCRR § 2522.5 are to be renumbered as subdivisions (f) and (g) of 9 NYCRR § 2522.5.

32. The new subdivision (f) of 9 NYCRR § 2522.5 is amended as follows:

[(g)](f) Same terms and conditions.

(1) The lease provided to the tenant by the owner pursuant to subdivision (b) of this section shall be on the same terms and conditions as the expired lease, except where the owner can demonstrate that the change is necessary in order to comply with a specific requirement of law or regulation applicable to the building or to leases for housing accommodations subject to the RSL, or with the approval of the DHCR. Nothing herein may limit the inclusion of authorized clauses otherwise permitted by this Code or by order of the DHCR not contained in the expiring lease. Notwithstanding the foregoing, the tenant shall have the right to have his or her spouse or domestic partner added to the lease or any renewal thereof as an additional tenant where said spouse or domestic partner resides in the housing accommodation as his or her primary residence.

[(2) Where an owner has filed an Owner's Petition for Decontrol (OPD) with the DHCR, as provided for in section 2531.3 of this Title, and the period during which the owner must offer a renewal lease pursuant to section 2523.5 (a) 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 DHCR, 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 DHCR 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 DHCR of an order dismissing or denying the PAR.]

33. The new subdivision (g) of 9 NYCRR § 2522.5 is amended as follows:

[(h)](g) Leases for housing accommodations in cooperative[-] or condominium-owned buildings[, or in a building for which the Attorney General has accepted for filing a plan to convert the building to cooperative or condominium ownership] shall be governed as follows:[.]

(1) An owner of one or more housing accommodations subject to this Code may evict the tenant of such housing accommodation and/or refuse to renew a lease therefor, if such housing accommodation is in a building, group of buildings or development which is the subject of an Eviction Plan for conversion to cooperative or condominium ownership under General Business Law, section 352-eeee (hereinafter "section 352-eeee"), provided:

(i) the Attorney General has accepted for filing a plan to convert the building, group of buildings or development to cooperative or condominium ownership and an amendment declaring the plan effective as an Eviction Plan has been accepted for filing and a closing has been held thereunder; and

(ii) three years have elapsed from the date on which the Attorney General has accepted for filing an amendment declaring the plan effective as an Eviction Plan, and at such time or thereafter the tenant's lease has expired or has been cancelled pursuant to paragraph (2) of this subdivision.

(2) [Until the conditions set forth in paragraph (1) of this subdivision have been met, a]A tenant in occupancy of a housing accommodation subject to this Code shall have the right to a renewal lease or in the case of a permanent tenant, to continue his or her tenancy on the terms and conditions and at the rent and adjustments thereto as otherwise provided for in this Code. [Notwithstanding the foregoing, any vacancy or renewal lease, entered into after the plan is accepted for filing by the Attorney General and such plan has been presented to the tenants in occupancy, may contain a provision authorizing the owner to cancel the lease as of a date not less than three years after the date an Eviction Plan has been declared effective (providing that title has passed to the cooperative corporation or condominium unit owners) on 90 days' notice to the tenant. In order to cancel a lease pursuant to such provision, the owner must give the tenant written notice of such election by

certified mail no less than 90 days prior to the date upon which the cancellation is to become effective.]

(3) For the purposes of this section, filing date shall mean the date on which a letter was issued by the Attorney General accepting a plan for filing.

(4) After the filing date, and prior to the plan being declared effective, if a housing accommodation subject to this Code is vacated, such housing accommodation may only be rented at a rent and upon such terms and conditions as are authorized under this Code for a vacancy lease. Notwithstanding the foregoing, if a vacancy lease herein called an interim lease for such housing accommodation is executed in connection with an agreement to purchase such housing accommodation or the shares allocated thereto, pursuant to any Eviction Plan or Non-Eviction Plan, as defined by section 352-eeee, such interim lease:

(i) may provide that once the plan has been declared effective, if the tenant fails to purchase his or her housing accommodation or the shares allocated thereto on the terms set forth in the subscription or purchase agreement, or otherwise terminates or defaults on the subscription or purchase agreement, such tenant may be evicted; and

(ii) may provide for a rental below the legal regulated rent which [may] <u>shall not</u>, upon the abandonment or withdrawal of the plan, be increased to the legal regulated rent [, provided the interim lease or other agreement clearly notifies the tenant of what that higher rental will be]. If the plan is abandoned or withdrawn, such tenant remains a rent-stabilized tenant.

(5) If a housing accommodation which was subject to this Code is vacated or is rented to a new tenant after any plan which affects such housing accommodation has been declared effective, and a closing thereunder has occurred, such housing accommodation shall not be subject to this Code.

(6) If a building, group of buildings or development containing units to which this Code applies is converted to cooperative or condominium ownership[, whether or not such conversion is pursuant to an Eviction Plan or a Non-eviction Plan as defined by section 352-eeee], the services which shall be required to be maintained under this Code with respect to housing accommodations which remain subject to this Code shall not be diminished or modified without the approval of the DHCR as provided for in section 2522.4[(d)](e) or [(e)](f) of this Part.

[(7) The provisions of paragraph (h)(1) of this section, and the right to include a cancellation clause as provided by paragraph (h)(2), shall not apply to a housing accommodation of which the tenant is a senior citizen or disabled person on the filing date. Until such time as the appropriate agency determines that such tenant is not eligible for such status, such tenant shall continue to be subject to the provisions of this Code.]

34. Subdivision (b) of 9 NYCRR § 2522.6 is repealed and replaced with a new subdivision (b) as follows:

(b)

(1) Such order shall determine such facts or establish the legal regulated rent in accordance with the provisions of this Code. Where such order establishes the legal regulated rent, it shall contain a directive that all rent collected by the owner in excess of the legal regulated rent shall be refunded to the tenant, or any prior tenant, pursuant to the procedures and requirements set forth by Section 2526.1 or Section 2526.7 of this Title. Orders issued pursuant to this section shall be based upon the law and Code provisions in effect on March 31, 1984, if the complaint was filed prior to April 1, 1984.

(2) Where either:

(i) no base date, as defined in Section 2526.7 of this Title, can be determined, and the rent charged on June 14, 2015 cannot be determined, or

(ii) the rent is the product of a fraudulent scheme to deregulate the apartment, or

(iii) a rental practice proscribed under section 2525.3 (b), (c) and (d) of this Title has been committed, the rent shall be established at the lowest of the following amounts set forth in subparagraph (i), (ii), (iii), or (iv) of paragraph (3) of this subdivision, Section 2526.7 of this Title, or Section 2526.1 of this Title. Section 2526.1 of this Title shall only be applicable for complaints filed prior to June 14, 2019.

(3) These amounts are:

(i) the lowest rent registered pursuant to section 2528.3 of this Code for a comparable apartment in the building in effect on the date the complaining tenant first occupied the apartment; or

(ii) the complaining tenant's initial rent reduced by the percentage adjustment authorized by section 2522.8 of this Code; or

(iii) the last registered rent paid by the prior tenant; or

(iv) if the documentation set forth in subparagraphs (i) through (iii) of this paragraph is not available or is inappropriate, an amount based on data compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations.

(4) This subdivision shall also apply where the owner purchases the housing accommodations subsequent to judicial or other sales.

35. 9 NYCRR § 2522.7 is amended as follows:

In issuing any order adjusting or establishing any legal regulated rent, [or in determining when a higher or lower legal regulated rent shall be charged pursuant to an agreement between the DHCR and governmental agencies or public benefit corporations,] the DHCR shall take into consideration all factors bearing upon the equities involved, subject to the general limitation that such adjustment, establishment or determination can be put into effect with due regard for protecting tenants and the public interest against unreasonably high rent increases inconsistent with the purposes of the RSL, for preventing imposition upon the industry of any industry-wide schedule of rents or minimum rents, and for preserving the regulated housing stock. DHCR shall take into consideration all factors bearing upon the equities involved, including the creation of undue hardship or prejudice in determining the retroactive application of orders which create rent arrears.

36. 9 NYCRR § 2522.8 is repealed and replaced with a new 9 NYCRR § 2522.8 as follows:

(a) The legal regulated rent for any vacancy lease effective on or after June 14, 2019 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 one year, the one-year guideline increase, as promulgated by the Rent Guidelines Board, can be applied to the previous legal regulated rent; or

(2) if the vacancy lease is for a term of two years, the two-year renewal guideline increase, as promulgated by the Rent Guidelines Board can be applied to the previous legal regulated rent.

(3) The increase authorized in this paragraph may not be implemented more than one time in any calendar year, notwithstanding the number of vacancy leases or lease assignments entered into in such year.

(b) Any rent increases lawfully implemented in accordance with this Title prior to June 14, 2019 shall remain in effect.

37. **9 NYCRR § 2522.9(b)(3) is amended as follows:**

(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].

38. 9 NYCRR § 2523.1 is amended as follows:

Every owner of housing accommodations previously subject to the City Rent Law and thereafter rented to a tenant on or after April 1, 1984, shall within 90 days after the commencement of the first tenancy subject to the RSL, give notice in writing by certified mail to the tenant of each such housing accommodation on a form prescribed by the DHCR 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 of the certified mailing to the tenant of the notice pursuant to section 2522.3 of this Title. [Notwithstanding the foregoing, where such application is filed four years or more after the first date the housing accommodation was no longer subject to the City Rent Law, the application shall be dismissed pursuant to section 2522.3(c) of this Title.] Compliance with section 2528.2 of this Title shall also be considered compliance with this section.

39. 9 NYCRR § 2523.4(a) is amended as follows:

(a)

(1) A tenant may apply to the DHCR for a reduction of the legal regulated rent to the level in effect prior to the most recent guidelines adjustment, subject to the limitations of subdivisions (c) - (h) of this section, and the DHCR shall so reduce the rent for the period for which it is found that the owner has failed to maintain required services. The order reducing the rent shall further bar the owner from applying for or collecting any further increases in rent that were or are authorized by

this Title [including such increases pursuant to section 2522.8 of this Title] until such services are restored or no longer required pursuant to an order of the DHCR. If the DHCR further finds that the owner has knowingly filed a false certification, it may, in addition to abating the rent, assess the owner with the reasonable costs of the proceeding, including reasonable attorney's fees, and impose a penalty not in excess of $ 250 for each false certification.

(2) Where an application for a temporary rent adjustment pursuant to a Major Capital Improvement as set forth in section 2522.4(b)[(a)(2)] of this Title has been granted, and collection of such rent adjustment commenced prior to the effective date [issuance] of the rent reduction order, the owner will not be permitted to continue to collect the rent adjustment while the rent reduction order is in effect. [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 an Individual Apartment Improvement as set forth in section 2522.4(a)(1) of this Title, where collection of such rent adjustment commenced prior to the issuance of the rent reduction order. However, an owner will not be permitted to collect any increment pursuant to section 2522.4(a)(8) that was otherwise scheduled to go into effect after the effective date of the rent reduction order.]

40. 9 NYCRR § 2523.4(b) is amended as follows:

(b) Proceedings pending on the effective date of this Code (May 1, 1987) involving tenant complaints of owners' failure to provide hotel services shall be determined in accordance with the RSL and Hotel Industry Code in effect [immediately prior to such effective date of this Code.] on April 30, 1987.

41. 9 NYCRR § 2523.4(g)(1) is amended as follows:

(g)

(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 DHCR 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)].

42. 9 NYCRR § 2523.5(b) is amended as follows:

(b)

(1) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if an offer is made to the tenant pursuant to the provisions of subdivision (a) of this section and such

tenant has permanently vacated the housing accommodation, any member of such tenant's family, as defined in section 2520.6(o) of this Title, who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years, or where such person is a "senior citizen," or a "disabled person" as defined in paragraph (4) of this subdivision, for a period of no less than one year, immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, shall be entitled to be named as a tenant on the renewal lease.

(2) A tenant shall be considered to have permanently vacated the subject housing accommodation when the tenant has permanently ceased residing in the housing accommodation. The continued payment of rent by the tenant or the signing of renewal leases shall not preclude a claim by a family member as defined in section 2520.6(o) of this Title in seeking tenancy.

(3) The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:

(i) is engaged in active military duty;

(ii) is enrolled as a full-time student;

(iii) is not in residence at the housing accommodation pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;

(iv) is engaged in employment requiring temporary relocation from the housing accommodation;

(v) is hospitalized for medical treatment; or

(vi) has such other reasonable grounds that shall be determined by the DHCR upon application by such person.

[(3)](4) The 60-day period from the date of service of the Notice for Renewal of Lease for acceptance and renewal provided to the tenant in subdivision (a) of this section, shall also apply to the tenant's "family member."

[(4)](5) For the purposes of this subdivision (b), "disabled person" is defined as a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.

43. 9 NYCRR § 2523.5(f) is repealed.

44. 9 NYCRR § 2523.7(b) is repealed and replaced with a new subdivision (b) as follows:

(b) Except where a specific provision of this Code requires the maintenance of rent records for a longer period, or provides otherwise, including records of the useful life of improvements made to any housing accommodation or any building, any owner who has duly registered a housing accommodation pursuant to this Code shall not be required to maintain or produce any records relating to rentals of such accommodation more than six years prior to the most recent registration or annual statement for such accommodation. However, an owner’s election not to maintain records shall not limit the authority of the division of housing

and community renewal and the courts to conduct a full examination of all available records in order to determine legal regulated rents pursuant to this subdivision.

45. Paragraph (2) of 9 NYCRR § 2523.7(c) is amended as follows:

(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 shall not be construed to waive the purchaser's or receiver's obligation to register pursuant to Part 2528 of this Title.

46. 9 NYCRR § 2523.8 is amended as follows:

§2523.8 Notice of change of ownership or address

(a) Within 30 days after a change in ownership, the new owner shall notify the DHCR of such change on a form prescribed by the DHCR. Such form shall be signed by the new owner, listing the address of the building or complex, the name, address and telephone number of the new owner, and the date of the transfer of ownership. In addition to any other address, the owner shall provide an actual, physical street address from which it conducts business and where the owner or an agent is authorized to accept service of documents, subpoenas or requests.

(b) Within thirty (30) days after a change in the address of the managing agent, such managing agent, or, if there is no managing agent, the owner of a building or group of buildings or development shall give written notice to the DHCR and to all tenants of the new address.

(c) In the absence of such form, DHCR may serve all notices on the last registered owner or in any proceeding where the owner has appeared, at such address given in the proceeding.

47. 9 NYCRR § 2524.2(e) is amended as follows:

(e) All notices served pursuant to an application for demolition as set forth in section 2524.5 (a)(2) of this Part shall state:

(1) that the owner will not renew the tenant's lease because the owner has filed an application pursuant to section 2524.5(a)(2) 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;

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

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

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

48. 9 NYCRR § 2524.4(a) is amended as follows:

(a) Occupancy by owner or member of owner's immediate family.

(1) An owner who seeks to recover possession of a housing accommodation because of immediate and compelling necessity for such owner's personal use and occupancy as his or her primary residence in the City of New York and/or for the use and occupancy of a member of his or her immediate family as his or her primary residence in the City of New York, except that tenants in a noneviction conversion plan

pursuant to section 352-eeee of the General Business Law may not be evicted on this ground on or after the date the conversion plan is declared effective.

(2) The provisions of this subdivision shall not apply where a tenant or the spouse of a tenant lawfully occupying the [housing accommodation is a senior citizen or disabled person,] dwelling unit is sixty-two years of age or older, or has been a tenant in a dwelling unit in that building for fifteen years or more, or has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment, [as previously defined herein,] unless the owner offers to provide and, if requested, provides an equivalent or superior housing accommodation at the same or lower regulated rent in a closely proximate area.

(3) An owner may recover only one rent stabilized or rent controlled housing accommodation, whether for his or her personal use and occupancy or that of his immediate family. The provisions of this subdivision shall only permit one of the individual owners of any building, whether such ownership is by joint tenancy, tenancy in common, or tenancy by the entirety to recover possession of one [or more] dwelling unit[s] for personal use and occupancy.

(4) No action or proceeding to recover possession pursuant to this subdivision shall be commenced in a court of competent jurisdiction unless the owner shall have served the tenant with a termination notice in accordance with subdivisions (a), (b) and (c)(3) of section 2524.2 of this Part.

(5) The failure of the owner to utilize the housing accommodation for the purpose intended after the tenant vacates, or to continue in occupancy for a period of three years, may result in a forfeiture of the right to any increases in the legal regulated rent in the building in which such housing accommodation is contained

for a period of three years, unless the owner offers and the tenant accepts re-occupancy of such housing accommodation on the same terms and conditions as existed at the time the tenant vacated, or the owner establishes to the satisfaction of the DHCR that circumstances changed after the tenant vacated which prevented the owner from utilizing the housing accommodation for the purpose intended, and in such event, the housing accommodation may be rented at the appropriate guidelines without a vacancy allowance. This paragraph shall not eliminate or create any claim that the former tenant of the housing accommodation may or may not have against the owner.

49. Paragraphs (2) and (3) of 9 NYCRR § 2524.4(b) are amended as follows:

(2) In addition to such penalty provided in section 2526.2 of this Title, the failure of the owner without good cause to utilize or to continue to use the housing accommodation for the purpose intended after the tenant vacates, and for [four] three years thereafter, shall result in a forfeiture of the right to any increases in the legal regulated rent for the housing accommodation involved for a [four] three-year period following the recovery of the housing accommodation from the tenant.

(3) If an owner who recovers a housing accommodation pursuant to this subdivision, or any successor in interest, within [four] three-years after recovery of the housing accommodation from the tenant, utilizes such housing accommodation for purposes other than those permitted hereunder without good cause, then such owner or successor shall be liable to the removed tenant for three times the damages sustained on account of such removal, plus reasonable attorney's fees and costs as determined by a court of competent jurisdiction, provided that such tenant commences an action to recover such damages within three years from the date of recovery of the housing accommodation. The damages sustained by such tenant shall be the difference between the rent paid by such tenant for the recovered housing accommodation, and the rental value of a comparable rent-regulated housing accommodation, plus the reasonable costs of the removal of the tenant's property.

50. 9 NYCRR § 2524.4(c) is amended 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. A tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. In addition, a tenant who has left the housing accommodation and is paying a nominal rent pursuant to Part 2520.11(e)(6) of this Title shall be deemed to be occupying the unit as his or her primary residence. For the purposes of this paragraph, where a housing accommodation is rented to a not-for-profit for providing, as of and after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, permanent housing to individuals who are or were homeless or at risk of homelessness, affiliated individuals authorized to use such accommodations by such not-for profit shall be deemed to be tenants.

51. Paragraph (2) of 9 NYCRR § 2524.5(a) is amended as follows:

(2) Demolition.

(i)The owner seeks in good faith to demolish the building. [Until] As part of the application, the owner [has] shall submit[ted] proof of [it's] its financial ability to complete such undertaking to the DHCR, and that the plans for the undertaking have been approved by the appropriate city agency. [, an order approving such application shall not be issued.] Demolition shall mean the removal of the entire building including the foundation.

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

(a)The DHCR shall require an owner to pay all reasonable moving expenses and a stipend pursuant to subclause (3) of clause (b) of this subparagraph. It shall 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 DHCR's final order, such tenant shall be entitled to receive moving expenses and all stipend benefits pursuant to clause (b) of this subparagraph. 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 2527.11 of this Title.] subclause (3) of clause (b) of this subparagraph. However, at no time shall an owner be required to pay a stipend in excess of [the stipend set forth in such schedule] this amount. 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 except if the eviction is stayed by the commencement of judicial review of DHCR's order including any appeals.

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

(1) relocate the tenant to a suitable housing accommodation, as defined in subparagraph (iii) of this paragraph, 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 $ 5,000 stipend, provided the tenant vacates on or before the vacate date required by the final order;

(2) 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 72 months, provided the tenant vacates on or before the vacate date required by the final order; or

(3) in addition to the tenant's moving expenses, 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.] the average rent for vacant non-regulated apartments as set forth in the New York City Housing and Vacancy Survey as of the date of the determination. This difference is to be multiplied by 72 months. The stipend shall be increased each year by a guideline beginning the first year after the vacancy survey is issued and continuing until a new vacancy survey is issued.

(c) 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.

(d) In the event that the tenant dies prior to the issuance by the DHCR 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.

(e) Where the administrator's or commissioner's order [of the DHCR] 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, or if DHCR determines that the owner has not proceeded in good faith, the order may be modified or revoked.

(f) Noncompliance by an 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 DHCR's compliance unit for appropriate action] may result in DHCR initiating its own enforcement proceeding. The DHCR shall retain jurisdiction for this purpose until all [moving expenses, stipends, and relocation requirements have been met.] of the terms and conditions in the administrator's or commissioner's order granting the owner's application have been met and the project described in the owner's application has been completed. Subsequent owners shall be bound by the terms and conditions of DHCR's order. This clause shall not be deemed to eliminate any remedy or claim that a tenant of the dwelling unit may otherwise have against the owner nor eliminate any independent authority that DHCR may be able to exercise by law or regulation.

(g) An owner's failure to comply within a reasonable amount of time with any term or condition of the administrator's or commissioner's order granting the owner's application or an owner's failure to complete the project described in the owner's application may be found to be a violation of the RSL and the RSC and subject to any of the penalties and remedies described therein including but not limited to revocation of the administrator's or commissioner's order granting the owner's application and DHCR's continued jurisdiction under the RSL over the building or any subsequent construction. Any remedies and penalties prescribed by this Code shall apply to and be binding against subsequent owners.

(iii) 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 DHCR challenging the suitability of a 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 DHCR 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 DHCR as promptly as practicable thereafter. In the event that the DHCR 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 DHCR 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 DHCR 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 City 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 DHCR 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.

52. 9 NYCRR § 2524.5(b) is amended as follows:

(b) Election not to renew. Once an application is filed under this section, with notification to all affected tenants, the owner may refuse to renew all tenants' leases until a determination of the owner's application is made by the DHCR. For the purposes of paragraph (2) of subdivision (a) of this section, service of the application at any time shall be considered sufficient compliance with section 2524.2(c)(3) of this Part provided that no order may be issued less than 90 days from the date the last affected tenant's lease has expired. If such application is denied, or withdrawn, prospective renewal leases must be offered to all affected tenants within such time and at such guideline[s] rates as directed in the DHCR order of denial or withdrawal.

53. 9 NYCRR § 2525.2(b) is amended as follows:

(b)

(1) Upon the receipt of rent in the form of cash or any instrument other than the personal check of the tenant, it shall be the duty of the owner to provide the tenant with a written receipt containing the following:

(i) the date;

(ii) the amount;

(iii) the identity of the premises and period for which paid; and

(iv) the signature and title of the person receiving the rent.

(2) [Where a] A tenant[,] may request in writing [, requests] that an owner provide a receipt for rent paid by personal check[,]. If such request is made [it shall be the duty of], the owner shall [to] provide the

tenant with the receipt described in paragraph (1) of this subdivision [for each such request made in writing].

(3) The receipt provided pursuant to this subdivision shall state the name and New York City address of the managing agent or designee thereof, as required by section 27-2105 of the Administrative Code of the City of New York. A failure to comply with the provisions of this subdivision shall constitute an evasionary practice.

(4) Such request shall, unless otherwise specified by the tenant, remain in effect for the duration of such tenant's tenancy. The owner shall maintain a record of all cash receipts for rent for at least three years unless a longer period is required by other provisions of this Code.

(5) If a payment of rent is personally transmitted to an owner, the receipts for such payment shall be issued immediately to a tenant. If a payment of rent is transmitted indirectly to an owner, a tenant shall be provided with a receipt within fifteen days of such rent payment.

(6) If an owner or an agent of an owner authorized to receive rent fails to receive payment for rent within five days of the date specified in a lease agreement, such owner shall send the tenant, by certified mail, a written notice stating the failure to receive such rent payment. The failure of an owner or an agent of the owner authorized to receive rent to provide a tenant with a written notice of the non-payment of rent may be used as an affirmative defense by such tenant in an eviction proceeding based on the non-payment of rent.

54. 9 NYCRR § 2525.3(a) is amended as follows:

(a) No owner or other person shall require a tenant or prospective tenant to purchase or lease, or agree to purchase or lease, furniture or any other personal property, [including but not limited to shares to an apartment, prior to the acceptance for filing by the Attorney General of a plan of cooperative conversion,] as a condition of renting housing accommodations.

55. 9 NYCRR § 2525.5 is amended as follows:

It shall be unlawful for any owner or any person acting on his or her behalf, directly or indirectly, to engage in any course of conduct (including but not limited to interruption or discontinuance of required services, or illegal discontinuance of a current tenant's preferential rent, or unwarranted or baseless court proceedings, [of] or filing of false documents with or making false statements to DHCR) which interferes with, or disturbs, or is intended to interfere with or disturb, the privacy, comfort, peace, repose or quiet enjoyment of the tenant in his or her use or occupancy of the housing accommodation, or is intended to cause the tenant to vacate such housing accommodation or waive or not exercise any right afforded under this Code including the right of continued occupancy and regulation under the RSC and RSL.

56. 9 NYCRR § 2525.6(e) is amended as follows:

(e)

(1) Upon the consent of the owner to a sublet, the legal regulated rent payable to the owner effective upon the date of subletting may be temporarily increased [by] as provided for in section 2522.8 of this Title. [the vacancy allowance, if any, provided in the rent guidelines board order in effect at the time of the commencement date of the lease, provided the lease is a renewal lease.]

(2) 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:

(i) the increase provided for in section 2522.8 of this Title[; and

(ii) 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. However, in the case of a subletting, upon termination of the sublease, the legal regulated rent shall revert to the legal regulated rent without the sublet vacancy allowance].

57. 9 NYCRR § 2525.6(g) is repealed.

58. 9 NYCRR § 2525.7 is amended as follows:

§2525.7 Occupancy by persons other than[t] tenant of record or tenant's immediate family

(a) Housing accommodations subject to the RSL and this Code 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 amount that 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 charged to and paid by the tenant for the subject housing accommodation. For the purposes of this subdivision, an occupant's proportionate share shall be determined by dividing the legal regulated rent by the total number of tenants named on the lease and the total number of occupants residing in the subject housing accommodation. However, the total number of tenants named on the lease shall not include a tenant's spouse, and the total number of occupants shall not include a tenant's family member or an occupant's dependent child. Regardless of the number of occupants, tenants named on the lease shall remain responsible for payment to the owner of the entire legal regulated rent. The charging of a rental amount to

an occupant that exceeds that occupant's proportionate share shall be deemed to constitute a violation of this Code.

59. 9 NYCRR § 2526.1 is renamed to "Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits; where the proceeding is commenced prior to June 14, 2019" and a new subdivision (i) is added to read as follows:

(i) The procedures and rules set forth in this subdivision shall apply only to proceedings initiated prior to June 14, 2019, except as set forth in Section 2526.7 of this Part.

60. 9 NYCRR § 2526.7 is added to read as follows:

§2526.7 Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits; where the proceeding is commenced on or after June 14, 2019.

(a) Definitions.

(1) Base Date: For the purposes of this section, the Base Date shall be the date of the most recent reliable annual rent registration statement, filed and served upon a tenant six or more years prior to the filing of a complaint of overcharge or the initiation of a proceeding to determine the legal regulated rent of an apartment. Any registration statement filed contemporaneously with a certification of service shall be presumed to have been served upon the tenant in occupancy. In no event shall the base date be prior to June 14, 2015.

Absent an exception set forth in section 2526.1 of this Part, if no base date can be determined subsequent to June 14, 2015, the base date shall be June 14, 2015.

(2) Reliable rent registration statement: A rent registration shall be considered to be reliable if, prior to the filing of such registration statement, and subsequent to June 14, 2015, the rent history contains no unexplained increases in the rent.

(b) The DHCR shall consider all available reasonably necessary evidence when making a determination as to the reliability of a rent registration statement, including but not limited to:

(1) any rent registration or other records filed with the state division of housing and community renewal, or any other state, municipal or federal agency, regardless of the date to which the information on such registration refers;

(2) any order issued by any state, municipal or federal agency;

(3) any records maintained by the owner or tenants; and

(4) any public record kept in the regular course of business by any state, municipal or federal agency.

(c) The DHCR shall set the legal regulated rent by adding any lawful rent increases and adjustments to the rent on the base date.

(d) The DHCR shall examine the rent prior to the base date and subsequent to June 14, 2015 to make a determination as to:

(1) whether the legality of a rental amount charged or registered is reliable in light of all available evidence including, but not limited to, whether an unexplained increase in the registered or lease rents, or a fraudulent scheme to destabilize the housing accommodation, rendered such rent or registration unreliable.

(2) whether an accommodation is subject to the emergency tenant protection act or the rent stabilization law;

(3) whether an order issued by the division of housing and community renewal or by a court, including, but not limited to an order issued pursuant to section 2523.4(a) of this title, or any regulatory agreement or other contract with any governmental agency, and remaining in effect within six years of the filing of a complaint pursuant to this section, affects or limits the amount of rent that may be charged or collected;

(4) whether an overcharge was or was not willful;

(5) whether a rent adjustment that requires information regarding the length of occupancy by a present or prior tenant was lawful;

(6) the existence or terms and conditions of a preferential rent, or the propriety of a legal registered rent during a period when the tenants were charged a preferential rent;

(7) the legality of a rent charged or registered immediately prior to the registration of a preferential rent; or

(8) the amount of the legal regulated rent where the apartment was vacant or temporarily exempt on the date six years prior to a tenant's complaint.

(e) The DHCR shall examine the rent prior to June 14, 2015 pursuant to 9 NYCRR § 2526.1.

(f) A tenant may file a complaint of overcharge at any time.

(g) An owner may, prior to the issuance of an order determining the existence of an overcharge, file late registration statements. Provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration, shall not be found to have collected an overcharge at any time prior to the filing of the late registration.

(h)

(1) Any affected tenant shall be given notice of and an opportunity to join in any proceeding commenced by the DHCR pursuant to this section.

(2) Where a complainant pursuant to this section vacates the housing accommodation, and the DHCR continues the proceeding, the DHCR shall give any affected tenant notice of and an opportunity to join in such proceeding.

(i) Damages

(1) Any owner who is found by the DHCR, after a reasonable opportunity to be heard, to have collected any rent or other consideration in excess of the collectable 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. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, the DHCR 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.

(2) Any recovery of overcharge penalties, including treble damages, where appropriate, shall be limited to the six years preceding the complaint, provided, however, that there shall be no recovery of treble damages for overcharges that occurred prior to June 15, 2017, and no recovery of damages for overcharges that occurred prior to June 15, 2015. After a complaint of rent overcharge has been filed and served on an owner, the voluntary adjustment of the rent and/or the voluntary tender of a refund of rent overcharges shall not be considered by the division of housing and community renewal as evidence that the overcharge was not willful.

(3) a penalty of three times the overcharge may not be based upon an overcharge having occurred prior to April 1, 1984.

(4)

(i)Complaints filed prior to April 1, 1984 shall be determined in accordance with the RSL and Code provisions in effect on March 31, 1984, except that an overcharge collected on or after April 1, 1984 may be subject to treble damages pursuant to this section.

(ii)Complaints filed on or after April 1, 1984 and prior to June 14, 2019 shall be determined pursuant to 9 NYCRR § 2526.1.

(5) The DHCR shall determine the owner's liability between or among two or more tenants found to have been overcharged during their particular occupancy of a housing accommodation, and at its discretion, may require the owner to make diligent efforts to locate prior tenants who are not parties to the proceeding, and to make refunds to such tenants or pay the amount of such penalty as a fine.

(6) An owner who is found to have overcharged by the DHCR shall be assessed and ordered to pay as an additional penalty the reasonable costs and attorney's fees of the proceeding, and except where treble damages are awarded, interest from the date of the overcharge occurring on or after April 1, 1984, at the rate of interest payable on a judgment pursuant to section 5004 of the Civil Practice Law and Rules.

(7) A tenant may recover any overcharge penalty established by the DHCR by deducting it from the rent due to the present owner at a rate not in excess of 20 percent of the amount of the penalty for any one month's rent. If no such rent credit has been taken, the order of the DHCR awarding penalties may be entered, filed and enforced by a tenant in the same manner as a judgment of the Supreme Court, on a form prescribed by the DHCR, provided that the amount of the penalty exceeds $1,000 or the tenant is no longer in possession. Neither of these remedies are available until the expiration of the period in which the owner may institute a proceeding pursuant to Part 2530 of this Title.

(8) Responsibility for overcharges.

(i). For overcharges collected prior to April 1, 1984, an owner will be held responsible only for his or her portion of the overcharges, in the absence of collusion or any relationship between such owner and any prior owners.

(ii).

(a) For overcharge complaints filed or overcharges collected on or after April 1, 1984, 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 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.

(b) 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 paragraph shall be subject to the time limitations set forth in paragraph (a)(2) of this section.

(9) This subdivision shall not be construed to entitle a tenant to more than one refund for the same overcharge.

(j) Where no rent history for the housing accommodation is available, the rent shall be determined in the manner set forth in Section 2522.6 of this title.

61. 9 NYCRR § 2526.2(c) is amended as follows:

(c) If the owner is found by the DHCR:

(1) to have violated an order of the DHCR, the DHCR may impose, by administrative order after holding a hearing, a [penalty in the amount of $ 1,000 for the first such offense and $ 2,000 for each subsequent offense]civil penalty at minimum in the amount of one thousand but not to exceed two thousand dollars for the first such offense, and at a minimum in the amount of two thousand but not to exceed three thousand dollars for each subsequent offense; or

(2) to have harassed a tenant to obtain a vacancy of a housing accommodation, the DHCR may impose, by administrative order after holding a hearing, a civil penalty which shall be at a minimum in the amount of two thousand but not to exceed three thousand dollars for the first such offense, and at minimum in the amount of ten thousand but not to exceed eleven thousand dollars for each subsequent offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation[in the amount of $ 2,000 for the first such offense and up to $ 10,000 for each subsequent offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation]. Such order shall be deemed a final determination for the purposes of judicial review pursuant to Part 2530 of this Title. Such penalty may, upon the expiration of the period for seeking review pursuant to article 78 of the Civil Practice Law and Rules, be docketed and enforced in the manner of a judgment of the Supreme Court; or

(3) not have utilized a housing accommodation for the purpose intended under section 2524.4(b)(2) of this Title, the DHCR shall impose, by administrative order after hearing, a penalty in the amount of up to $ 1,000 for each such offense.

62. 9 NYCRR § 2527.2 is amended as follows:

The DHCR may institute, reclassify, or convert a proceeding on its own initiative whenever the DHCR deems it necessary or appropriate pursuant to the RSL or this Code.

63. 9 NYCRR § 2527.3(a)(2) is amended as follows:

(2) Where an application is filed, pursuant to section 2522.4[(a)(2)](b) of this Title, to increase the legal regulated rent, the DHCR shall notify all parties adversely affected thereby that such application has been filed, and shall afford such parties the opportunity to submit written responses thereto. Tenants shall have sixty (60) days from the date of the mailing of notice of the proceeding to answer or reply. 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 DHCR for tenant examination upon [prior] request. Tenants' written responses shall be considered by the DHCR prior to a final determination of the application.

64. 9 NYCRR § 2527.4 is amended as follows:

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

65. 9 NYCRR § 2527.5(j) and (k) are amended as follows:

(j) [O]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; [or]

(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[.];

66. New subdivisions (l) and (m) are added to 9 NYCRR § 2527.5 as follows:

(l) stay proceedings upon such terms as may be appropriate; or

(m) permit a tenant to withdraw a complaint.

67. 9 NYCRR § 2527.7 is amended as follows:

Except as otherwise provided herein or by the RSL, unless undue hardship or prejudice results therefrom, this Code shall apply to any proceeding pending before the DHCR, which proceeding commenced on or after April 1, 1984, or where a provision of this Code is amended, or an applicable statute is enacted or amended during the pendency of a proceeding, the determination shall be made in accordance with the changed provision.

68. 9 NYCRR § 2527.9(a) is amended as follows:

(a) Notices, orders, answers and other papers may be served personally, by mail, or electronically, as provided in an operational bulletin issued pursuant to section 2527.11 of this Title. Except as otherwise provided by section 2529.2 [or Part 2531] of this Title, when service, other than by the DHCR, is made personally or by mail, 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 stamped post-office receipt shall constitute sufficient proof of service. Once sufficient proof of service has been submitted to the DHCR, the burden of proving nonreceipt shall be on the party denying receipt.

69. A new subdivision (e) is added to 9 NYCRR § 2527.9 as follows:

(e) DHCR may establish such other procedures for service and filing via electronic or online methods via operational bulletin.

70. A new paragraph (7) is added to 9 NYCRR § 2528.2(a) as follows:

(7) an actual, physical street address from which it conducts business and where the owner or an agent is authorized to accept service of documents, subpoenas or requests.

71. 9 NYCRR § 2528.4(a) is amended as follows:

(a) The failure to 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 completed, bar an owner from applying for or collecting any rent in excess of: the base date rent, plus any lawful adjustments allowable prior to the failure to register. Such a bar includes but is not limited to rent adjustments pursuant to section 2522.8 of this Title. The late filing of a registration shall result in the elimination, prospectively, of such penalty, 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 a 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 2522.3 and 2526.1 of this Title.]

72. 9 NYCRR § 2529.6 is amended as follows:

Review pursuant to this Part shall be limited to facts or evidence before a 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 redetermination to the rent administrator to consider such facts or evidence. Proceedings remanded back to the DHCR following an Article 78 may be reconsidered, at the discretion of the commissioner, without being remanded to the rent administrator.

73. 9 NYCRR § 2529.10 is amended as follows:

Unless undue hardship or prejudice would result therefrom, this Code shall apply to any PAR proceeding pending before the DHCR commenced on or after April 1, 1984[;]. [or w]Where a provision of this Code is amended, or an applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the [changed provision.] statute or Code as it existed at the time the rent administrator's order was issued, unless the relevant law or regulation states otherwise.

74. 9 NYCRR § 2529.12 is amended as follows:

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 section 2526.1(a) of this Title, that portion of an order resulting in a retroactive rent abatement pursuant to section 2523.4 of this Title, that portion of an order resulting in a retroactive rent decrease pursuant to section 2522.3 of this Title, and that portion of an order resulting in a retroactive rent increase pursuant to section 2522.4[(a)(2), (3),] (b), [and] (c), and (d) of this Title shall also be stayed by the timely filing of a PAR against such orders until the expiration of the period for seeking review pursuant to article seventy-eight of the civil practice law and rules. However, an order granting a rent adjustment pursuant to section 2522.4[(a)(2)](b) 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.

75. 9 NYCRR § 2531.1 is repealed.

76. 9 NYCRR § 2531.2 is repealed.

77. 9 NYCRR § 2531.3 is repealed.

78. 9 NYCRR § 2531.4 is repealed.

79. 9 NYCRR § 2531.5 is repealed.

80. 9 NYCRR § 2531.6 is repealed.

81. 9 NYCRR § 2531.7 is repealed.

82. 9 NYCRR § 2531.8 is repealed.

83. 9 NYCRR § 2531.9 is repealed and replaced with the following:

§2531.9 Jurisdictional authority

(a) Effective June 14, 2019, high rent high income deregulation pursuant to Rent Stabilization Law sections 26-504.1 and 26-504.3, otherwise repealed by Chapters 36 and 39 of the Laws of 2019, is no longer applicable. Any apartment that was lawfully deregulated pursuant to Rent Stabilization Law sections 26-504.1 and 26-504.3 shall remain deregulated, notwithstanding that such sections were repealed pursuant to Chapters 36 and 39 of the Laws of 2019. For the purposes of this subdivision, lawful deregulation shall be defined as the issuance of an order by the DHCR pursuant to Rent Stabilization Law sections 26-504.1 and 26-504.3, which were repealed by Chapters 36 and 39 of the Laws of 2019 and the expiration of the lease in effect upon issuance of such order expiring prior to June 14, 2019.

(b) Effective June 14, 2019, no further high rent high income deregulation proceedings pursuant to this Title may be commenced, and all pending applications shall be dismissed as not subject to deregulation. For the purposes of this subdivision, an application shall not be considered pending if the subject housing accommodation was lawfully deregulated pursuant to such application prior to June 14, 2019, and such lawful deregulation is subject to review as of June 14, 2019 in a Court of competent jurisdiction, before the commissioner pursuant to a petition for administrative review, or before the rent administrator subsequent to a remand for further consideration by the either the commissioner or a court.

RSC Amendment Summary

The following is summary of the proposed amendments of the Rent Stabilization Code (the full text of all the amendments is available on DHCR's website at https://hcr.ny.gov/regulatory-information):

1. 9 NYCRR § 2520.1 removes extraneous language.
2. 9 NYCRR § 2520.6 (c), (d), (f), and (p) amending definitions of the terms "Rent," "Tenant,", and "Base date" and adds the definition of "common ownership".
3. 9 NYCRR § 2520.7 adds "otherwise required by law".
4. 9 NYCRR § 2520.8 adds language that DHCR shall follow the law in absence of regulation or where a conflicting code provision has not been amended or revoked.
5. 9 NYCRR § 2520.9 adds "publication of the notice of adoption in the State Register" and "or otherwise required by law".
6. 9 NYCRR § 2520.11 (c) clarifies applicability of rent stabilization to housing accommodations for which rentals are fixed by DHCR and other agencies or public benefit corporations.
7. 9 NYCRR § 2520.11 (e) codifies and clarifies the requirements for establishing substantial rehabilitation of a building. For example, requires a minimum of seventy-five percent of the buildings' systems be replaced, not including systems that are not in need of replacement; repeals a presumption regarding the deteriorated condition of the premises due to being at least 80% vacant, broadens exception based on findings of harassment to include findings of other agencies or courts, provides that regulated tenants who remain in their apartments during rehabilitation shall be regulated until they vacate, provides that the burden of establishing substantial rehabilitation is on the owner, codifies the circumstances and procedures surrounding "dollar orders" where a tenant seeks to

preserve their right of return where an apartment is destroyed by fire or similar circumstance.

8. 9 NYCRR § 2520.11 (f) and (j) provides for rent stabilization for supportive housing units to comply with the Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA").

9. 9 NYCRR § 2520.11 (k) adds language regarding the determination of primary residency for domestic violence victims and tenants paying a nominal rent pursuant to Part 2520.11(e)(6).

10. 9 NYCRR § 2520.11(l) adds language regarding the applicability of rent stabilization upon "deconversion" of cooperatives.

11. 9 NYCRR 2520.11 (p) clarifies applicability of rent stabilization to housing accommodations in buildings subject to regulation solely as a condition of receiving tax benefits pursuant to 421-a of the Real Property Tax Law.

12. 9 NYCRR § 2520.11 (r) and (u) repeal high rent vacancy deregulation to comply with HSTPA.

13. 9 NYCRR § 2520.11(s), repeals high rent/high income deregulation to comply with HSTPA.

14. 9 NYCRR § 2520.12 repeals extraneous language.

15. 9 NYCRR § 2521.1 (b), (c), (d), (e), (g), (i), and (n) adds language regarding the determination of initial legal regulated rents to comply with HSTPA.

16. 9 NYCRR § 2521.1 new subdivision (m) adds requirements pertaining to the combination of two or more vacant apartments or other apartment reconfigurations and the resulting legal regulated rent.

17. 9 NYCRR § 2521.1 new subdivision (n) added to provide for the determination of the initial rent upon the vacatur of a not for profit and affiliated subtenant.

18. 9 NYCRR § 2521.2 (a), (c) and new subdivisions (d) and (e) provide the requirements for "preferential rents" to comply with HSTPA.

19. 9 NYCRR § 2522.2 clarifies the effective date of adjustment of legal regulated rent;

20. 9 NYCRR § 2522.3 (a), (c), (e) and (f) amends time limits for Fair Market Rent Appeals, to six years to comply with HSTPA.

21. 9 NYCRR § 2522.4 amendments largely mandated by HSTPA for Individual Apartment Improvements ("IAI") and Major Capital Improvements ("MCI"). For IAIs the amendments include: requiring written tenant consent from tenant for IAIs; requiring filings with DHCR supported by before and after photographs; an itemized list of work performed and the reason for such work; limiting the amount the rent can be increased to $1/168^{th}$ or $1/180^{th}$ of the cost of the improvement depending on the number of building units; allows no more than three separate IAI increases collected over a 15-year period and the total cost of eligible improvements cannot exceed $15,000; with limited exception, all work must be done by a licensed contractor with no common ownership between the contractor and the owner; prohibition on increases based upon the installation of similar equipment or furnishings within the useful life of such new equipment or furnishings; prohibitions on increases where there are any outstanding hazardous and immediately hazardous violations at the time of installation that pertain to the subject apartment and; new IAI increases collected for the first time after June 14, 2019, are temporary and will be removed from the rent in thirty years. For MCIs, the amendments include: definition which incorporates new "green" installation; removal of

MCI increases after thirty years; amortization of costs over twelve or twelve and a half years depending on the number of building units, modification of the annual cap on collectability to two percent per year; a reasonable cost schedule; prohibition of rent increases due to immediately hazardous violations and hazardous violations; MCIs are no longer allowed for work done in individual apartments that is not otherwise an improvement to the entire building; and prohibition of MCIs in buildings with 35 percent or fewer rent regulated units.

22. 9 NYCRR § 2522.4 (e) updates contact information and changes "shall" to "may" in several instances.

23. 9 NYCRR §2522.5 (d)(3) and (d)(4) provides a correct cross reference.

24. 9 NYCRR § 2522.5 (f) and (g) clarification regarding the requirement that lease agreements have the same terms and conditions as an expired lease and regarding leases for housing accommodations in cooperative or condominium-owned buildings.

25. 9 NYCRR § 2522.6 (b) amendment regarding determinations of the legal regulated rent.

26. 9 NYCRR § 2522.7 language added that DHCR's consideration of equities includes the creation of undue hardship or prejudice in determining the retroactive application of orders which create rent arrears.

27. 9 NYCRR § 2522.8 modifies the rent adjustments allowable on vacancy to comply with HSTPA.

28. 9 NYCRR § 2522.9(b)(3) revokes the inclusion of the surcharge for washing machine/dryer/dishwasher in the legal regulated rent.

29. 9 NYCRR § 2523.1 adds that for notice of the initial legal regulated rent, compliance with §2528.2 shall be considered compliance with this section.

30. 9 NYCRR § 2523.4 (a) adds clarifying language regarding rent reduction orders and the collection of MCI rent increases, (b) clarifies the effective date for complaints regarding provision of hotel services, (g) clarifies the use of affidavits in complaints relating to maintenance of services.

31. 9 NYCRR § 2523.5 (b), (f) modification and clarification of requirements for establishing succession rights.

32. 9 NYCRR § 2523.7 (b), (c) rental records retention requirements.

33. 9 NYCRR § 2523.8 amended to include the requirement that the owner provide DHCR with an actual physical, street address for service.

34. 9 NYCRR § 2524.2(e) clarifies that the notices referenced in the section relate to an application for demolition.

35. 9 NYCRR § 2524.4 (a), (b), (c) requirements for recovery of a rent stabilized unit for owner occupancy to comply with HSTPA; amendments regarding requirements of primary residency.

36. 9 NYCRR § 2524.5 (a),(b) amendments of the requirements for demolition including: a "good faith" requirement, that the applicant at the time of the application submit proof of financial ability to complete the proposed work, along with proof that the Department of Buildings ("DOB") has already approved demolition plans, requires that the entire building be removed, including the foundation, increases the stipends given to residents displaced by demolition by calculating it based on the average rent for non-regulated vacant apartments multiplied by six years, allows DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time, permits DHCR to initiate enforcement proceedings *sua sponte* for failure

to comply and make those penalties applicable to subsequent purchasers, and provides that no order may be issued less than 90 days from the date the last affected tenant's lease has expired.

37. 9 NYCRR § 2525.2(b) amends the requirements for rent receipts.

38. 9 NYCRR § 2525.3(a) amended to remove conditional rental language regarding purchase of shares to an apartment.

39. 9 NYCRR § 2525.5 amends the definition of owner harassment to include the illegal discontinuance of a current tenant's preferential rent.

40. 9 NYCRR § 2525.6(e), (g) amended to remove language regarding collection of vacancy increases in a sublease to comply with HSTPA.

41. 9 NYCRR § 2526.1 renames the section "Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits; where the proceeding is commenced prior to June 14, 2019" and adds section (i) to clarify that the section only applies to proceedings initiated prior to June 14, 2019.

42. 9 NYCRR § 2526.2(c), amendment of the civil penalties for violation of DHCR orders to comply with HSTPA.

43. 9 NYCRR § 2526.7 is added and named "Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits; where the proceeding is commenced on or after to June 14, 2019" and contains the HSTPA requirements including, for example: extension of a prior 4-year rule to a 6 or more year rule, use of the most "reliable" registration as a benchmark in certain overcharge processing, consideration of all available evidence reasonably necessary to make a determination of the legal rent, recognition of concurrent jurisdiction with respect to overcharge claims

"subject to the tenant's choice of forum, provides that tenants may file a claim "at any time," provides that tenants can now receive up to six years of rent overcharges and six years of treble damages and reasonable costs and attorneys' fees; provides a new rolling base date and grandfathering of all claims that reflect the review of time periods prior to the enactment of HSTPA.

44. 9 NYCRR § 2527.2 adds language to allow DHCR to reclassify or convert a proceeding on its own initiative.

45. 9 NYCRR § 2527.3(a)(2) adds language to provide tenants, in a proceeding to increase the legal regulated rent, with sixty days from the date of DHCR's mailing of the notice of the proceeding to answer or reply.

46. 9 NYCRR § 2527.4 adds language to provide clarity regarding times to answer in other proceedings.

47. 9 NYCRR § 2527.5 (j) and (k) contain typographical corrections. Addition of subdivisions (l) and (m) providing that DHCR may stay proceedings as appropriate and permit a tenant to withdraw a complaint.

48. 9 NYCRR § 2527.7 adds "or by the RSL".

49. 9 NYCRR § 2527.9(a) removes a reference to a section being repealed; (e) added to allow DHCR to establish procedures for service and filing via electronic methods via operational bulletin.

50. 9 NYCRR § 2528.2(a) adds the requirement of that owner's provide an actual, physical street address in the initial registration.

51. 9 NYCRR § 2528.4(a) deletes base date language to comply with HSTPA.

52. 9 NYCRR § 2529.6 adds language providing that proceedings remanded to DHCR following an Article 78 proceeding may be reconsidered without being remanded to the rent administrator.

53. 9 NYCRR § 2529.10 provides that where a code provision or applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the statute or code as it existed at the time the rent administrator's order was issued, unless the relevant law or regulation states otherwise.

54. 9 NYCRR § 2529.12, provides correction of cross-references.

55. 9 NYCRR § 2531.1, § 2531.2, § 2531.3, § 2531.4, § 2531.5, § 2531.6, § 2531.7, §2531.8, repeal of high rent/high income deregulation sections as of June 14, 2019, pursuant to HSTPA.

56. 9 NYCRR § 2531.9 is repealed as of June 14, 2019, pursuant to HSTPA and replaced with language providing that any apartment lawfully deregulated as of June 14, 2019, remains deregulated.

REGULATORY IMPACT STATEMENT
RENT STABILIZATION CODE

1. STATUTORY AUTHORITY:

§26-511(b) and §26-518(a) of the Administrative Code of the City of New York, (also known as "the Rent Stabilization Law" or "RSL") provide authority to the Division of Housing and Community Renewal ("DHCR") to amend the implementing regulations (also known as "the Rent Stabilization Code" or "RSC"). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), and Ch. 39 of the Laws of 2019 ("Clean-up law") further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of HSTPA.

The RSL also provides specific statutory authority governing the subject matter of many of the proposed amendments. RSL §26-511(c)(2) mandates promulgation of a code that requires owners not to exceed the level of lawful rents. RSL §26-510(j) and §26-511 (c)(5-a), as added or amended by HSTPA, repeal the separate vacancy allowance that could be promulgated by the rent guidelines board. RSL§26-512(f), RSL §26-504.1, 504.2, 504.3 as amended by HSTPA repealed high rent vacancy and high rent/high income deregulation. RSL §26-511(c)(5) provides that the RSC may include such guidelines that assure that the levels for rent increase will not be subverted or made ineffective. RSL §26-511(c)(14), as amended by HSTPA, provides for the removal of a preferential rent upon vacancy only. RSL §26-516(a), (g) and (h), as amended or added by HSTPA, provides for the criteria and time frame for determining the rent and any rent overcharges including treble damages and sets the period for the maintenance of rental records by an owner. §RSL 26-511(c)(9)(b) as amended by HSTPA sets forth new criteria for recovery of rent stabilized housing

accommodations through owner occupancy. RSL §26-511(c)(6) and (13) and §26-511.1 as amended and added by HSTPA and the Clean-up law provide the parameters and criteria for individual apartment increases ("IAIs") and major capital improvement increases ("MCIs") and specifically references regulations as part of its implementation.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in RSL §26-501 and §26-502 and Section 2 of the Emergency Tenant Protection Act ("ETPA"). The legislature has determined that, because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare. The legislation also has an objective to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions.

DHCR is specifically authorized by RSL §26-511(c)(1) to promulgate regulations to protect tenants and the public interest and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up law.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there were significant amendments to the rent laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their

respective advocates. DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed. The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Individual Apartment Improvements (9 NYCRR §2522.4)

HSTPA itself mandated most of the regulatory amendments made with respect to this section. An owner is entitled to a rent increase for an IAI when there has been a reasonable and verifiable modification, including improvements to the housing accommodation, increase in the services provided by the owner, or new furniture or furnishings or substantial increase in dwelling space provided by the owner.

HSTPA made changes to the IAI process that are being implemented, including:

- Requiring written consent from the tenant on an approved DHCR form.
- Requiring filings with DHCR for IAIs made to vacant and occupied apartments to be supported by before and after photographs, an itemized list of work performed along with a description or explanation of the reason or purpose of such work, which will be made part of the DHCR rent registration records and retained in a centralized electronic retention system.
- In buildings with 35 units or less, the amount of rent that can be increased is limited to 1/168th the cost of the improvement.
- In buildings with more than 35 units, the increase in rent is limited to 1/180th the cost of the improvement.
- No more than three (3) separate IAI increases may be collected over a 15-year period and the total cost of eligible improvements cannot exceed $15,000.

- Exclusive of installation of items such as appliances that do not need licensed contractors, all work must be done by a licensed contractor with no common ownership between the contractor and the owner in order to pass along these increases.
- Prohibition on increases 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.
- Prohibition on increases where there are any outstanding hazardous and immediately hazardous violations of the Uniform Fire Prevention and Building Code (Uniform Code), New York City Fire Code, or New York City Building and Housing Maintenance Codes at the time of installation that pertain to the subject apartment.
- New IAI increases collected for the first time after June 14, 2019, are temporary and will be removed from the rent in 30 (thirty) years, at which time, the legal rent will be adjusted to include the removal of applicable guideline increases.

The proposed regulations implement the statutory requirements. The one known area of dispute is from the HSTPA Clean-up law. The legislature added a law exempting IAIs before HSTPA's effective date from HSTPA's limitation on the monetary limitation of $15,000 within a 15-year period. It has been asserted that this language also exempts those IAIs from the new amortization formula if completed but not implemented prior to HSTPA. DHCR is not adopting that interpretation as there is no support for that interpretation in either HSTPA or the Clean-up law.

b. Major Capital Improvements (MCIs) (9 NYCRR §2522.4)

The MCI provisions are another area that HSTPA changed and directed that DHCR promulgate regulations. The changes were to be made effective immediately to the extent feasible, but with a one-year period for implementation where necessary. These changes include:

- Modification to the MCI definition which incorporates new "green" installations.
- The removal of MCI increases after thirty (30) years.
- Amortization of costs over twelve (12) years for buildings with thirty-five (35) or fewer units and twelve and a half (12.5) years for buildings with more than thirty-five (35) units.
- Modification of the annual cap on collectability from six (6) percent per year to two (2) percent per year.
- For any renewal leases commencing on or after June 14, 2019, the collection of any rent increases due to any MCI approved on or after June 16, 2012, and before June 16, 2019, shall not exceed two (2) percent in any given year for any tenant in occupancy on the date the MCI was approved.
- The creation of a reasonable cost schedule.
- Prohibition of rent increases due to immediately hazardous violations as well as hazardous violations pertaining to the subject building.
- MCIs are also no longer allowed for work done in individual apartments that is not otherwise an improvement to the entire building which is largely directed at the prior practice of building-wide installations of new kitchens and bathrooms.
- The prohibition of MCIs in buildings with 35 percent or fewer rent regulated units.

- DHCR has already promulgated regulations regarding the reasonable costs but has now moved them from a stand-alone section to one more fully integrated with the other regulatory provisions to conform to HSTPA. In addition, the reasonable costs regulations have been modified to clarify the fact-based and case-by-case standard of review as actually applied by DHCR. These procedures give the regulated parties notice and another opportunity to comment on them as modified.

c. Rent Regulation for Supportive Housing Units (9 NYCRR §2520.11 and §2524.4)

HSTPA also amended three sections of the Emergency Tenant Protection Act McK. Unconsol. Laws §8625(a)(6) and §(a)(10) to extend rent stabilization to previously exempt housing accommodations (§8625(a)(10)) or to buildings (§8625(a)(6)) used by not-for-profit corporations that were providing permanent housing accommodations with governmental services for vulnerable individuals with disabilities who were homeless or at risk of homelessness. In addition, vulnerable individuals with disabilities who were homeless or at risk of homelessness are "deemed to be tenants" as part of the amendment exception to the pre-existing exemption of ETPA/ RSL coverage based on a tenant use of the accommodation as a non-primary residence. (McK. Unconsol. Laws §8625(a)(II)) These individuals' prior status is irrelevant as something other than tenant in light of the protection provided by HSTPA

These new inclusions are applicable to such housing accommodations provided "as of and after" the effective date of HSTPA. Further, the "terms" of their existing leases shall only be "affected" upon lease renewal; and upon vacancy the legal regulated rent is "the rent paid for such housing accommodation by the prior tenant, subject only to any adjustment adopted by the applicable guideline board." The regulations reflect these provisions.

d. High Rent/High Income Deregulation (9 NYCRR §2531)

HSTPA repealed the high rent/high income provisions of the rent laws with an exception with respect to the rules governing Real Property Tax Law §421-a (16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated.

The elimination of the high rent/high income provisions is required by HSTPA. While the high rent/high income deregulation provisions were considered as a necessary adjunct to the RSL and central to its purposes by some, the position is not borne out by objective evidence. DHCR's annual registration data and processing records reveal that, in total, High-Rent/High-Income Deregulation removed a total of 166 apartments from rent regulation in 2019 and 115 apartments in 2018.

e. Rent Overcharges (9 NYCRR §2526.1)

HSTPA made changes with respect to the processing and determination of rent overcharge cases which are reflected in these regulations. Further, it extended a prior four (4)-year rule to a new "six (6) or more year rule" and incorporates the prior regulatory exceptions with some clarifications into law. HSTPA also provides in certain overcharge processing, the use of the most recent "reliable" registration as a benchmark and allows consideration of all available evidence reasonably necessary to make a determination of the legal rent notwithstanding an election of an owner not to keep records older than the look back period.

DHCR regulations recognize the concurrent jurisdiction with respect to overcharge claims subject to the tenant's choice of forum and the rights of tenants to withdraw DHCR overcharge proceedings in favor of proceedings in court. Tenants can now receive up to six (6) years of rent overcharges, six (6) years of treble damages, and reasonable costs and attorneys' fees. Additionally, a tenant may now also file a claim "at any time".

The proposed amendments are consistent with the legislature's requirements and with the Court of Appeals decision in Matter of Regina Metropolitan Co. LLC v. New York State Division of Housing and Community Renewal, 2020 NY Slip. Op. 02127 (2020) in that they reflect a new rolling base date and grandfathering of claims and processing to reflect the review of time periods prior to the enactment of HSTPA and its application for recordkeeping, statute of limitations, rent review, and award of treble damages.

f. Apartment Reconfigurations (9 NYCRR §2521.1)

Previously, DHCR had allowed owners, as a matter of policy rather than regulation, upon certain combination/division/configuration of apartments to generate a new "first rent" for purposes of rent stabilization. The regulations were previously silent on this policy except for 9 NYCRR §2520.11(r)(12) which provided that if upon combination or reconfiguration, the rent charged exceeded the high rent vacancy deregulation rent threshold, the apartment would be deregulated. Clearly with the end of high rent vacancy deregulation, this regulation needed to be repealed.

While not expressly addressed by HSTPA, other provisions of HSTPA makes a continuation of the policy problematic. First, HSTPA created a new, more robust, enforcement mechanism and new limitations on individual apartment improvements, IAIs definitionally includes a "substantial increase in dwelling space." Second, the first rent policy was based on "the obliteration of the prior apartments' particular identity." As HSTPA places greater requirements on examining prior rent history to "consider all available rent history which is reasonably necessary to make [such] overcharge determinations," extinguishment of that history through policy is difficult to reconcile with this legislative command. Paradoxically, a continuation of an unreviewable first rent with the repeal of high rent vacancy deregulation

would lessen the amount an owner would spend on improvements and proof since owners would look to that high rent deregulation threshold as a cost that would be reached as a fall back. The general tenor of HSTPA with its emphasis on the preservation of units at historically reasonable rents militates against creating or continuing regulations that provide for unreviewable rents.

DHCR's new regulations in summary are as follows:

- If an owner combines regulated apartments, the legal regulated rent is the combined rent of each apartment.
- If an owner takes space from a regulated apartment to increase the size of an unregulated apartment, the new enlarged apartment becomes rent regulated.
- If an owner increases or decreases the size of a regulated apartment, the rent is adjusted by a percentage equal to the percent change in the size of the apartment.
- IAI increases can be used for apartment reconfigurations, subject to the HSPTA limitations on the use of IAIs for both apartments. No increase will be permitted where a vacancy prior to a reconfiguration was secured by harassment or other illegal means, or where the reconfiguration was not done in compliance with DOB regulations.

As noted in Devlin v. DHCR, 309 A.D.2d 1919 (2003), "the implementation of a first rent statute should not be used to frustrate the purpose of the RSL." With this change of emphasis within the RSL, the thrust of this policy needed to be changed as well. Continuing to allow setting of unreviewable first rents for combined apartments will result in endless after the fact

policing by DHCR. Further, it would allow a circumvention of the IAI, vacancy and overcharge sections of HSTPA.

An exception is made for rents and reconfigurations of units established by an affordable housing agency as part of their approved rehabilitation plan. Such rent would be consistent with such an affordable regimen and is therefore not subject to the same concerns driving this change with respect to other kinds of reconfigurations.

g. Succession Rights (9 NYCRR §2523.5)

Family members remaining in a rent stabilized unit after the vacature of the named lease holder have the right to remain in the apartment and continue to receive renewal leases. HSTPA made no changes to the statutory provisions regarding succession. However, DHCR has always been empowered to promulgate regulations, first by its general rent stabilization rule making authority, see, Rent Stabilization Association v. Higgins, 83 N.Y.2d 156 (1993) and subsequently by Public Housing Law §14. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacature of the named leaseholder (9 NYCRR § §2523.5(b)).

Presently, there is a split between two departments, the Appellate Division 1st Department and 2nd Department (the two departments in which Rent Stabilization is applicable) as to how to measure the two-year period. The First Department has held that if the named leaseholder executes a lease, even if that leaseholder has vacated the apartment, the two years are then measured from the end of that lease. Third Lenox Terrace Assoc. v. Edwards, 91 A.D.3d 532, 937 N.Y.S.2d 41 (1st Dept. 2012). The Second Department, at DHCR's urging, has taken a more pragmatic approach, reviewing the period of actual physical vacature of the named lease

holder even if it happened before the execution of the lease. Jourdain v. DHCR, 159 A.D.3d 41, 70 N.Y.S.3d 239 (2nd Dept. 2018). True fraud and an extended period of misrepresentation will not be rewarded by adopting the *Jourdain* approach which DHCR will use as an exception to the actual physical vacature date. However, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated problematic and difficult interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

While executing the lease renewal by the vacating named leaseholder may have been inappropriate, the Court of Appeals has ruled (reversing DHCR) in other contexts that an unrelated program violation (failing to advise DHCR of the family member's occupancy) should not supersede the actual facts that such person was remaining a family member and the purpose of these rules is to assure family cohesion and prevent their displacement. Murphy v. DHCR, 21 N.Y.3d 649, 977 N.Y.S.2d 161 (2013). This regulation is an opportunity to provide even more clarity as to DHCR's intentions with respect to implementation as the agency delegated to promulgate these succession regulations.

In addition, current regulations (9 NYCRR § 2522.5(g)) allow spouses of leaseholders to be added to leases without going through the full succession process. These proposed regulations will allow domestic partners of leaseholders the same protections.

h. Rent Guidelines Board/Rent Guideline Increase on Vacancy (9 NYCRR §2522.8)

HSTPA requires the Rent Guidelines Board to establish a single "unitary" guideline applicable to both vacancy and renewal leases. HSTPA also includes a repeal of the ETPA and RSL provisions allowing for the imposition of what was commonly called the "vacancy bonus" which is also reflected in these regulations. However, HSTPA did not intend to place a greater

burden on existing tenants by excluding new tenants upon execution of their leases from the guideline increases. The RSL, as amended by HSTPA, thus requires: (1) a guideline finding for new and renewal leases required to be offered pursuant to the RSL; (2) no separate "vacancy" guideline; (3) that a guideline not run afoul of HSTPA's express prohibition for separate guidelines based on the length of tenancy; and (4) establishment of an "annual" guideline. To prevent "double dipping" on these annual increases or adjustments (as they are to be applied annually) the regulations provide that an owner would only be entitled to one vacancy increase per guideline year cycle; i.e., if an owner takes a rent guidelines board ("RGB") increase on vacancy and the tenant moves out mid-lease, the owner would not be entitled to another RGB increase.

i. Affordable Housing Regulatory Agreements (9 NYCRR §2521.2 and §2020.11)

These provisions were amended to reflect that affordable housing agencies often use regulatory agreements as part of their supervision of affordable housing. Additionally, the regulatory agreements may provide exceptions to rules on preferential rents that enable affordable housing developers to increase the rents upon renewal if approved by their supervising agency and the subject of a rental subsidy.

The proposed regulation will implement HSTPA by allowing other federal project based rental assistance administered by a public housing agency eligible to administer section 8 subsidies, to obtain these increases upon renewal with a supervising agency's consent.

j. Deconversion (9 NYCRR §2520.11)

DHCR, by these amendments, provides that upon "deconversion," the prior stabilized rent be used as the rent upon which future increases are based, unless the building initially converted more than six years before the deconversion. In the event of termination by the

Attorney General, DHCR will honor any rent determinations made as part of the Attorney General's enforcement proceedings.

k. High Rent Vacancy Deregulation (9 NYCRR §2520.11)

HSTPA eliminated high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with an exception with respect to the rules governing Real Property Tax Law §421-a (16).

l. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless equities or avoiding undue hardship require otherwise. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to the equitable and hardship exceptions. The rule change conforms with the major implementation requirements of the HSTPA based on Matter of Regina Metro. Co., LLC v DHCR, 35 NY3d 332, 154 N.E.3d 972 (2020).

Pending overcharge cases, both at the RA and PAR level, will be using pre-HSTPA rules that are consistent with the Regina Metropolitan decision. High Rent/High Income cases and cases involving High Rent vacancy where an RA order was issued prior to the passage of HSTPA will largely use pre-HSTPA rules, and any apartment lawfully deregulated prior to the HSTPA, remains deregulated. In MCIs, the effective date contemplated a year-long implementation of the new rules, with certain express retroactive modifications to the implementation of existing orders (where even those changes were made prospectively) and prohibited the issuance of new orders based on the HSTPA standard. These modifications all point to excluding these standards to orders issued prior to the HSTPA, but which are pending

on PAR. Further, the regulation also conforms the legal rule with the evidentiary fact rule of not accepting new evidence generally on PAR.

m. Actual Physical Address for Registration (9 NYCRR §2528.2 and §2523.8)

Part of the requirements of the rent stabilization law is that each owner register their building and each apartment annually. The proposed regulation requires owners to provide an actual physical address instead of utilizing a post office box address. This rule meets a need of assuring a methodology to serve or contact ownership when necessary or to greater enhance understanding of the true characteristics of ownership and liability.

n. Substantial Rehabilitation (9 NYCRR §2520.11)

There is an exclusion from regulation of buildings that were "substantially rehabilitated" as family units after January 1, 1974. The change reinforces the substantial rehabilitation regulatory requirement by stating more explicitly that a minimum of seventy-five percent of the buildings' systems need to be replaced and that credit toward the seventy-five percent will not include systems that are not in need of replacement. Applicants, however, can still include recently replaced systems in their applications. Additional changes to the substantial rehabilitation provisions include:

- A presumption regarding the deteriorated condition of the premises due to being at least 80% vacant is repealed as the prescription seemingly rewards keeping units off the market, in favor of making a true factual evaluation of the circumstances surrounding the vacancies.
- The exception based on findings of harassment is amended to include such findings of other government agencies or courts and to remove an exception to the rule on

extenuating circumstances exception where an owner is convicted of committing arson to its own building.

- The regulation further codifies and clarifies actual practice that assures regulated tenants who retain their apartments during the rehabilitation remain regulated until they vacate the apartment by affording that protection, regardless of whether their apartment is part of that rehabilitation or not.
- The regulation also makes clear that the burden of establishing the exception based on substantial rehabilitation is on the owner and is not changed based on the time between when the work was completed and when the issue needs to be resolved. However, changes made to the standards are prospective in nature.
- The regulations further codify the circumstances and procedures surrounding "dollar orders" where a tenant seeks to preserve their right of return where an apartment is destroyed by fire or other similar circumstance.
- The regulation requires that displaced tenants with "dollar" orders must express their intent not to return in writing unless the owner can demonstrate that the tenant is unreachable, and the tenant has stopped paying the dollar rent for at least six months.
- The regulation also requires that where tenants have a dollar order, owners that rebuild their buildings do so in the same configuration so as to not extinguish the tenant's right of return unless they can demonstrate that doing so would impose a severe financial burden. Otherwise, the displaced tenant would be eligible for the stipend provided in the case of demolition.

o. Demolition (9 NYCRR §2524.5)

The new regulations:

- Add a "good faith" requirement to the demolition provision to mirror longstanding language in RSL §26-511(e)(9)(a).
- Require the applicant at the time of the application to submit proof of financial ability to complete the proposed work, along with proof that the Department of Buildings ("DOB") has already approved the plans for demolition.
- Bring the definition of demolition in line with the DOB definition, which requires that the entire building be removed, including the foundation.
- Increase the stipends given to residents displaced by demolition by calculating the stipend based on the average rent for non-regulated vacant apartments multiplied by six years.
- Allow DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time.
- Permit DHCR to initiate enforcement proceedings *sua sponte* for failure to comply and make those penalties applicable to subsequent purchasers.

The regulations also require an owner to demonstrate the financial ability to demolish and re-construct as part of its application rather than supply it before a determination is made. The RSC provides that an owner can apply and receive approval to demolish a building if they present an approved plan and proof of financial ability to complete the project. Requiring an owner to submit an approved building plan and the financial ability to complete the plan with the filing of the application will allow for more appropriate and timely processing and facilitate the screening of improperly filed applications.

The amended regulations clarify DHCR's powers with respect to enforcement. The RSL and RSC contain penalties and remedies which DHCR can apply to enforce its demolition orders. Under RSC §2525.5, an owner can be found guilty of harassment for filing false documentation with DHCR in order to obtain approval of a demolition project. Additionally, under RSL §26-516, DHCR is empowered to impose significant monetary penalties after a hearing, where an owner is found to have harassed a tenant to obtain a vacancy. DHCR has always had the inherent authority as set forth in RSC §2527.8 to revoke orders based on irregularities, illegalities or fraud. These administrative remedies are cumulative and, as expressly set forth in the proposed amended regulations, they are not intended to supplant other causes of actions and remedies that may inure before DHCR, the courts or any other administrative bodies based on the failure of an owner to comply with the requirements of an approved demolition plan. Successor owners shall be bound by the terms and conditions of DHCR's order. Any remedies and penalties prescribed by the RSC shall apply to subsequent owners as well as to the owner whose application is granted.

Finally, conforming to the DOB standards for demolition eliminates two separate standards and adheres more closely to the statutory language which references DOB approval.

4. COSTS

There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at $20 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their compliance with changes and the changes themselves in many

instances do require additional filings by owners. For example, IAIs now require contemporaneous filing with DHCR of certain proof, i.e., before and after photographs, that was only necessary previously in the context of an overcharge case or a direct demand by the tenant closely associated with the lease execution. The type of proof described here is the same kind of proof an owner looking to establish the propriety of the IAI increase would have maintained prior to HSTPA in the event of a subsequent overcharge claim. HSTPA may require additional costs to owners as explained in the Regulatory Flexibility Analysis with respect to MCIs. Compliance costs are already a generally accepted expense of owning regulated housing. In general, as in the example provided above, the increased compliance costs are less a product of the promulgation of these regulations, but rather the enactment of HSTPA.

In some instances, there are increased penalties if the regulations are violated, however, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur any additional direct costs through implementation of the proposed regulations but, as some of these regulatory standards have become more complex, may themselves be making additional submissions in the context of DHCR proceedings to resolve factual issues created by these new standards.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional

record retention. Owners need, with the new overcharge provisions, to retain proof of the legality of rent for a longer period, but a prudent owner would have already retained that information for other purposes, such as assuring that an increase was not a part of a fraudulent scheme to deregulate an apartment, making sure renewal leases were offered on the same terms and conditions, assuring that a preferential rent was correct, and to resolve possible jurisdictional disputes. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent stabilized property participates in another State, City or Federal housing program. In those instances, there may be a need to comply with the RSC requirements as well as the mandates of a City, State or Federal program.

8. ALTERNATIVES

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing much examination of alternatives. Nevertheless, DHCR considered a variety of alternatives to certain rules which were not exactly proscribed by HSTPA. Most often, however, the choices were questions of appropriate statutory interpretation.

a. Individual Apartment Improvements (IAIs)

The proposed amendments are necessary for DHCR to be in compliance with the legislative requirements outlined in Part K of HSTPA. Two major examples of such statutory interpretation are: 1) the implementation of the 15-year/$15,000 IAI rule to improvements installed prior to the effective date of HSTPA but where increases themselves were not effective until after HSTPA and 2) the need for licensed contractors for installation of IAIs. It was suggested that the rule in the Clean-up law exempting these installations from counting against the 15-year/$15,000 cap should also apply to the new amortization rules. However, the amortization was not included in the Clean-up law as an exception.

Moreover, the effective date requirements of HSTPA required that IAI changes be implemented, to the extent feasible, as effective immediately as possible. These provisions, DHCR believes, effectively precluded the suggestion of carving out an exception for amortization. As to the requirement of the installation of IAIs by licensed contractors, DHCR did not see such a requirement as an appropriate reading of the statute where local building code and rules did not require licensed contractors. Instead, DHCR saw the inclusion of this new requirement as one more issue DHCR must now check where such licensed contractor is required for such installation as part of an IAI review of an overcharge. For example, a requirement that the "installation" of a new refrigerator which is simply plugged in, should be by someone licensed, when no such license exists, did not square with DHCR's view of the meaning of the provision.

DHCR also believes the installation of appliances where the prior appliance was installed more than 15 years before (and before the enactment of HSTPA) was not meant to be a part of the $15,000 cap on three IAIs for the 15-year period. Such a reading of the statute simply left

too much to happenstance where there was a necessary replacement that could not otherwise be planned.

b. Major Capital Improvements (MCIs)

DHCR used its knowledge and experience in carrying out its operational responsibilities in creating a process around review of the prohibition of temporary MCI rent increase approvals where certain specific violations are extant. Various alternative options were suggested, none of which were effective as operational models: one was to deny an MCI application immediately whenever such a violation was placed. The second was to hold such MCI grant in abeyance indefinitely until the violation was cleared. The first option fails to recognize the exigencies of building operation and the well settled nature of a long outstanding violation clearance system. The second option fails to recognize the need for, and long settled doctrines of administrative finality. Instead, DHCR took its present process of review for violation at the time of application, approved as part of the "Portofino" litigation. (Portofino Realty Corp. v. DHCR, 2017 N.Y. Misc. LEXIS 5273, 2017 NY Slip Op 32773 (U) (Sup. Ct., Kings Co., 2017), aff'd 193 A.D.3d 773 (2d Dept.) (2021)). DHCR then added the HSTPA mandatory review and cure period prior to the final issuance of an MCI order. This combination provides for orderly processing of MCI applications, clearance of violations, but also the outright denials of MCI applications where such violations are not cleared.

Two ancillary provisions, although not directed to be changed by HSTPA, in DHCR's assessment, needed to be changed to give HSTPA effect. First, DHCR's prior regulation enabled an agreed upon increase in rent for new services where 75% of the residential tenants agreed to the service. With the new HSTPA rule, in denying any MCI increases in buildings with less than 35% regulated tenancies, the application of the 75% standard based on using all

tenants, could potentially undermine that 35% statutory limitation. Under DHCR's new rule, 75% of the residential tenants may still change the service, but it takes 75% of the rent regulated tenants to agree upon any increase associated with such a change.

Also, historically, DHCR had an evidentiary standard to judge the quality of an MCI. That standard facially precluded an independent inspection by DHCR of the MCI where an engineer certified correct installation and operation, unless 51% of the original complaining tenants disputed the certified opinion. Although such a rule may still be persuasive in many instances as to efficacy of the MCI, it no longer made any sense as an absolute prohibition against a DHCR inspection, in light of HSTPA's statutory command that 25% of all MCI installations be inspected. Such a self-imposed limitation by DHCR on certain inspections could serve to defeat that legislative directive and unreasonably limit selection of buildings for those inspections.

As with deregulation and overcharge, DHCR determined, as an issue of law, that new MCI rules needed to be applied to pending proceedings before the Rent Administrator, but not those pending at PAR as they were previously decided.

c. Rent Regulation for Supportive Housing

This is another area where DHCR wanted to ensure the regulations were consistent with the statute. DHCR, therefore, chose in its regulatory language to adhere closely to the terms of the statute itself. However, DHCR does note that even HSTPA's express terms have been open to variable interpretations. DHCR believes that HSTPA requires coverage of these previously exempt units rented either before and/or after HSTPA's enactment and HSTPA gives residents a continued right of occupancy as rent stabilized tenants in the event the not-for- profit surrenders or loses its tenancy. Further, given the remedial nature of this new statutory

inclusion, DHCR believes that the term "sub-tenant" should be interpreted expansively to include terms such as "licensees" and other nomenclature that existed under prior statutory interpretation.

d. High Rent/High Income Deregulation

There are no alternatives to this amendment. The elimination of this deregulation was part of HSTPA. DHCR repealed the entirety of the high rent/high income provisions just as the equivalent section was removed in its entirety from the statute by the legislature.

The division between pending RA proceedings (where the new law was applied) and PAR proceedings is dictated by what was already "lawfully deregulated" by DHCR order (and now just subject to PAR) and those that were still pending. Deregulation does however require the expiration of the lease then in effect. If the lease in effect had not expired prior to the enactment of HSTPA, the conditions for deregulation had not been lawfully completed prior to HSTPA's enactment.

e. Rent Overcharge

The choices with respect to the overcharge section are largely dictated by HSTPA itself and Regina Metropolitan.

f. Apartment Reconfigurations

Apartment reconfiguration was not a specific subject of HSTPA. However, the only existing DHCR regulation dealing with the topic of combined reconfiguration was within the high rent vacancy deregulation section, a matter expressly repealed by HSTPA. In addition, HSTPA's treatment of IAIs and its greater premium on the continued review and relevance of prior rent history all required review of the reconfiguration policy.

DHCR accordingly created a new paradigm consistent with those provisions of the HSTPA. The new rule allows for apartment reconfiguration, but within the confines of the provisions of the limitations placed on deregulation, IAIs and the expanded review of rent history.

g. Rent Guidelines Board/Rent Guideline Increase on Vacancy

The DHCR rule is not a policy choice, but a proper interpretation of HSTPA. In keeping with the interpretation that increases are allowed both on renewal and vacancy, DHCR created a rule to assure that there would be no duplicative rent increases where a tenant breaches a lease and leaves before its expiration.

h. Deconversion

Continuing the rule presently in place was not an acceptable alternative in light of its reference to a four-year period of review that was repealed by HSTPA.

i. High Rent Vacancy Deregulation

DHCR repealed the entire high rent vacancy deregulation section just as the equivalent section was removed in its entirety from the statute by the legislature. DHCR considered maintaining historical references to high rent/vacancy deregulation. The applicability to the various standards as they changed over various periods of time have been settled up to 2015 have now been settled by Altman v. 285 West fourth, LLC, 31 N.Y.3d 178 (2019). However, the impact of the changes made by the Rent Act of 2015 has been the subject of other litigation. In People's Home Improvement LL v. Kindig, the Court held that the rent in effect prior to vacancy controlled whether the rent exceeded the threshold to effect deregulation. More recently in 3265 Starr LLC v. Martinez, 202 N.Y. Misc. Lexis 6681, the Appellate Term 2nd Department reached the opposite conclusion. DHCR does not believe that the 3265 Starr

decision will necessarily be the final word from the courts nor is it yet ripe for resolution by regulation. DHCR shall instead for the time being makes its own assertion in cases that come before it which will be subject to judicial review.

j. Applying Changed Rules at PAR

DHCR considered a variety of alternatives to many of these new rules, as set forth in the Needs and Benefits sections. DHCR considered continuing the rule presently in place. The current regulations provide that "unless undue hardship or prejudice would result therefrom, where a provision is amended, or an applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the changed provision." However, DHCR decided that it would not be feasible to continue applying the current rules given the complexity of HSTPA, its actual legislative directions on implementation, and the Court of Appeals recent decision in Regina Metropolitan, all of which are discussed in the Needs and Benefit section.

k. Actual Physical Address for Registration

No significant alternatives to the proposed rules were considered by DHCR for the reasons stated in the Needs and Benefits section.

l. Demolition

The main alternative considered by DHCR was not to amend these provisions. However, the various technical changes are based on concerns raised by DHCR internally as to how best to process these matters as well as to close potential "loopholes" that could prevent DHCR in assuring the good faith use of the site of these regulated housing accommodations as expressed by the owner to DHCR. The utilization of DOB's definition for demolition more closely adheres to the actual language of the RSL. It was considered a better alternative as the present

"substantial demolition" standard is more in line with "substantial rehabilitation" where continued tenant occupancy is protected rather than leading to eviction. The change in the stipend calculation more accurately reflects the cost of replacement/relocation housing for which these stipends are supposed to represent an alternative. The impact of these changes to the broader owner and tenant communities are minimal in that there are presently only nineteen of these demolition applications pending before DHCR. This number needs to be contrasted with the one hundred and forty-one requests for a determination on substantial rehabilitation as of January 2022. To further highlight the difference in usage, these types of requests are not even required as part of a claim of exemption.

9. FEDERAL STANDARDS

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally are the subject of current litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.

SUMMARY REGULATORY IMPACT STATEMENT
RENT STABILIZATION CODE

1. STATUTORY AUTHORITY:

§26-511(b) and §26-518(a) of the Administrative Code of the City of New York, (also known as "the Rent Stabilization Law" or "RSL") provide authority to the Division of Housing and Community Renewal ("DHCR") to amend the implementing regulations (also known as "the Rent Stabilization Code" or "RSC"). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), enacted June 14, 2019, and Ch. 39 of the Laws of 2019 ("Clean-up law") further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of HSTPA.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in RSL §26-501 and §26-502 and Section 2 of the Emergency Tenant Protection Act ("ETPA"). The legislature has determined that, because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety, and general welfare.

DHCR is specifically authorized by RSL §26-511(c)(1) to promulgate regulations to protect tenants and the public interest and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up law.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there were significant amendments to the rent

laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed. The needs and benefits of some of the specific modifications proposed are detailed in the full Regulatory Impact Statement available on DHCR's website at https://hcr.ny.gov/regulatory-information. Some of those are highlighted below:

a. Individual Apartment Improvements (IAIs) (9 NYCRR §2522.4)

HSTPA itself mandated most of the regulatory amendments made with respect to this section

b. Major Capital Improvements (MCIs) (9 NYCRR §2522.4)

These provisions are another area that HSTPA changed and directed that DHCR promulgate regulations.

c. Rent Regulation for Supportive Housing Units (9 NYCRR §2520.11 and §2524.4)

HSTPA also amended three sections of the Emergency Tenant Protection Act McK.Unconsol. Laws §8625(a)(6) and §(a)(10) to extend rent stabilization to previously exempt housing accommodations (§8625(a)(10)) or to buildings (§8625(a)(6)) used by not-for-profit corporations that were providing permanent housing accommodations with governmental services for vulnerable individuals with disabilities who were homeless or at risk of homelessness. These new inclusions are applicable to such housing accommodations provided "as of and after" the effective date of HSTPA.

d. **High Rent/High Income Deregulation (9 NYCRR §2531)**

HSTPA repealed the high rent/high income provisions of the rent laws with an exception with respect to the rules governing Real Property Tax Law §421-a(16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated. Modifications to the regulations on this topic are required by HSTPA.

e. Rent Overcharges (9 NYCRR §2526.1)

The HSTPA made changes with respect to the processing and determination of rent overcharge cases which are reflected in these regulations. The proposed amendments are consistent with the legislature's requirements and with the Court of Appeals decision in Matter of Regina Metropolitan Co. LLC v. New York State Division of Housing and Community Renewal, 2020 NY Slip. Op. 02127 (2020).

f. Apartment Reconfigurations (9 NYCRR §2521.1)

While not expressly addressed by the HSTPA, other provisions of the HSTPA made these amendments necessary.

g. Succession Rights (9 NYCRR §2523.5)

Family members remaining in a rent stabilized unit after the vacatur of the named lease holder have the right to remain in the apartment and continue to receive renewal leases. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacatur of the named leaseholder (9 NYCRR § §2523.5(b)).

Presently, there is a split between the Appellate Division, 1st Department and 2nd Department as to how to measure the two-year period. DHCR's regulations reflect that true fraud and an extended period of misrepresentation will not be rewarded by adopting the approach of

the 2nd Department. However, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated difficult and problematic interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

h. Rent Guidelines Board/Rent Guideline Increase on Vacancy (9 NYCRR §2522.8)

HSTPA requires the Rent Guidelines Board to establish a single "unitary" guideline applicable to both vacancy and renewal leases. HSTPA also includes a repeal of the ETPA and RSL provisions allowing for the imposition of what was commonly called the "vacancy bonus" which is also reflected in these regulations. However, HSTPA did not intend to place a greater burden on existing tenants by excluding new tenants upon execution of their leases from the guideline increases.

i. Affordable Housing Regulatory Agreements (9 NYCRR §2521.2 and §2020.11)

The proposed regulation will implement HSTPA by allowing other federal project based rental assistance administered by a public housing agency eligible to administer section 8 subsidies, to obtain these increases upon renewal with a supervising agency's consent.

j. Deconversion (9 NYCRR §2520.11)

DHCR, by these amendments, provides that upon "deconversion," the rent may be determined by a number of different processes, based on a variety of factors.

k. High Rent Vacancy Deregulation (9 NYCRR §2520.11)

HSTPA eliminates high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with the exceptions previously noted.

l. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless the equities or avoiding undue hardship require otherwise. The regulation also allows DHCR, when a new rule requires a higher rent and is imposed, to make the increase prospective, rather than from the initiation of the RA proceeding. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to the equitable and hardship exceptions. The rule change conforms with the major implementation requirements of HSTPA based on Regina Metropolitan.

m. Actual Physical Address for Registration (9 NYCRR §2528.2 and §2533.8)

Part of the requirements of the rent stabilization law is that each owner registers their building and each apartment annually. The proposed regulation requires owners to provide a brick-and-mortar address instead of utilizing a post office box address.

n. Substantial Rehabilitation (9 NYCRR §2520.11)

There is an exclusion from regulation of buildings that were "substantially rehabilitated" as family units after January 1, 1974. The amendments include among other things, reinforcement of the regulatory requirement by stating more explicitly that a minimum of seventy-five percent of the buildings' systems need to be replaced.

o. Demolition (9 NYCRR §2524.5)

The new regulations add a "good faith" requirement to demolition and require the applicant at the time of the application to submit proof of financial ability to complete the proposed work, along with proof that the Department of Buildings ("DOB") has already approved the plans for demolition, brings the definition of demolition in line with the DOB definition, which requires that the entire building be removed, including the foundation,

increases the stipends given to residents displaced by demolition, allows DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time, and permits DHCR to initiate enforcement proceedings *sua sponte* for failure to comply and make those penalties applicable to subsequent purchasers. The amended regulations clarify the existence of DHCR's powers with respect to enforcement.

4. COSTS

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at $20 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their compliance with changes and the changes themselves in many instances do require additional filings by owners. Compliance costs are already a generally accepted expense of owning regulated housing. In general, the increased compliance costs are less a product of the promulgation of these regulations, but the enactment of HSTPA.

There are increased penalties in some instances if the regulations are violated.

However, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur any additional direct costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional record retention. Owners need, with the new overcharge provisions, to retain proof of the legality of rent for a longer period, but a prudent owner would have already retained that information for other purposes, such as assuring that an increase was not part of a fraudulent scheme to deregulate an apartment, making sure leases were offered on the same terms and conditions, assuring that a preferential rent was correct, and to resolve possible jurisdictional disputes. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent stabilized property participates in another State, City or Federal housing program. In those instances, there may be a need to comply with the RSC requirements as well as the mandates of that City, State or Federal program.

8. ALTERNATIVES

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing much examination of alternatives. Nevertheless, DHCR considered a variety of

alternatives to certain rules which were not exactly proscribed by HSTPA. Most often however, the choices were questions of appropriate statutory interpretation rather than policy choices. A more detailed discussion of the alternatives for the proposed amendments is contained in the full Regulatory Impact Statement available on DHCR's website at: https://hcr.ny.gov/regulatory-information.

9. FEDERAL STANDARDS

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally are the subject of current litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.

RENT STABILIZATION CODE

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 certain small property owners, who own limited numbers of rent stabilized units. DHCR has sought to provide alternative and tailored methods of compliance with the requirements to provide options to small businesses to limit any additional regulatory burden. These amendments are expected to have no impact on local governments.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would require small businesses that own regulated residential housing units to perform some additional recordkeeping and reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES

The proposed amendments may require small businesses to obtain new or additional professional services in the form of architecture or engineering services if it seeks a waiver of the reasonable cost schedule, which was previously promulgated and is now being incorporated into the larger major capital improvement (MCI) regulation. However, such services are often already used with respect to a contested MCI

application. Further, the regulation will require review of costs for MCIs when contracting for the services to comply with the reasonable cost schedule.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose significant costs upon small businesses or upon the local government that were not anticipated by the passage of HSTPA. Small business owners of regulated housing accommodations will need to be more vigilant to assure their compliance with these changes. Compliance costs are already a generally accepted expense of owning regulated housing. There are also increased penalties in some instances if the regulations are violated. However, the costs of conforming present business practices to the change in standards are not substantial. In addition, these consequences are consistent with existing law or otherwise necessary to secure compliance.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

6. MINIMIZING ADVERSE IMPACT

The proposed regulations have no adverse impact on local government. They may have some costs to businesses which must be weighed against the fact that the rule is required by statute and necessary to enforce statutes designed to protect the public health, safety and welfare. The regulations do not create different regulatory standards for small businesses. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses, but the regulations do allow small businesses to use exceptions available to owners under certain circumstances. Outside of the administrative proceedings themselves,

where complaints and applications are reviewed on an individual basis, it is difficult to ascertain the size of the businesses subject to these regulations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The rent laws and regulations empower DHCR to enforce the law. Meetings have been held with both business owners and affected tenant interest groups, including but not limited to: CHIP (Community Housing Improvement Program), Legal Services NYC, Brooklyn Legal Services, the Legal Aid Society, REBNY (Real Estate Board of New York), SHNNY (Supportive Housing Network of New York), RSA (Rent Stabilization Association of NYC, Inc.), UHAB (Urban Homesteading Assistance Board), HCC (Housing Conservation Coordinators), Tenants & Neighbors, as well as with members of the state senate and assembly. In addition, the Office of Rent Administration's Office of Public Information has attended at least twenty-five community meetings per year since 2019. While many of these meetings have been geared primarily for tenant-based audiences, owners and owner groups are entitled to attend and there have been meetings more directed to owners and their representatives. DHCR has also issued fact sheets and operational bulletins prior to this regulatory process to inform the public as to how HSTPA impacted many of the processes and procedures of the Office of Rent Administration. The New York legislature itself held public hearings prior to the passage of the HSTPA. At the outset of this regulatory process, the Office of Rent Administration sent out an email advising all those on the email distribution list of the regulatory process and the opportunity to participate in this process. DHCR's email distribution list consists of owners, tenants

and their representatives. In addition, all interested parties will have an opportunity to comment as part of this SAPA process and all issues raised by concerned parties will be carefully reviewed and considered by DHCR prior to final promulgation. This process includes public hearings and a review by the New York City Department of Housing Preservation and Development as required by law prior to final adoption.

8. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES ASSOCIATED WITH A VIOLATION

DHCR has not by these regulations increased the penalties on violations or added any additional penalties except beyond those mandated by statute. HSTPA in the context of modifying the procedures governing overcharges specifically modified a prior DHCR policy regarding repayment of overcharges prior to the time that an owner was required to respond to an overcharge complaint.