§ 676. Appeals from regulations. 1. Finality. Any regulation issued by the commissioner pursuant to this article shall, unless appealed from as provided in this section, be final. The findings of the commissioner as to the facts shall be conclusive.

2. Review by board of standards and appeals. Any person in interest, including a labor organization or employer association, who is aggrieved by such regulation may obtain review before the board of standards and appeals by filing with said board, within forty-five days after the date of the publication of the notice of such regulation, a written petition requesting that the regulation be modified or set aside. A copy of such petition shall be served promptly upon the commissioner. On such appeal, the commissioner shall certify and file with the board of standards and appeals a transcript of the entire record, including the testimony and evidence upon which such regulation was made. The board of standards and appeals, upon the record certified and filed by the commissioner, shall, after oral argument, determine whether the regulation appealed from is contrary to law. Within forty-five days after the expiration of the time for the filing of a petition, the board of standards and appeals shall issue an order confirming, amending or setting aside the regulation appealed from. The appellate jurisdiction of the board of standards and appeals shall be exclusive and its order final except that the same shall be subject to an appeal taken directly to the appellate division of the supreme court, third judicial department, within sixty days after its order is issued. The commissioner shall be considered an aggrieved party entitled to take an appeal from an order of the board of standards and appeals.

3. Security. The taking of an appeal by an employer to the board of standards and appeals shall not operate as a stay of a minimum wage regulation issued under this article unless and until, and only so long as, the employer shall have provided security determined by the board of standards and appeals in accordance with this section. The security shall be sufficient to guarantee to the employees affected the payment of the difference between the wage they receive and the minimum wage they would be entitled to receive under the terms of the minimum wage regulation (such difference being hereinafter referred to as

"underpayments") in the event that such regulation is affirmed by the board of standards and appeals. The security shall be either:

a. A bond filed with the board of standards and appeals issued by a fidelity or surety company authorized to do business in this state. The bond shall be sufficient to cover the amount of underpayments due at the time the bond is filed with the board of standards and appeals and the amount of underpayments that can reasonably be expected to accrue within the following sixty days; or

b. An escrow account established by the employer in behalf of employees and, deposited in a bank or trust company in this state, of which the employer has notified the board of standards and appeals in writing that he has established such account. The account shall be sufficient to cover the amount of underpayments due at the time of notification to the board of standards and appeals and shall be kept current by the employer depositing therein the amount of underpayments accruing each and every pay period. Such deposits shall be made no later than the day on which the wages for each pay period are payable. As an alternative thereto, an employer may deposit the amount of underpayments due at the time the deposit is made and the amount of underpayments that can reasonably be expected to accrue within the following sixty days, as determined by the board of standards and appeals. The employer shall keep accurate records showing the total amount of each deposit, the period covered, and the name and address of each employee and the amount deposited to his account. The employees escrow account shall be deemed to be a trust fund for the benefit of the employees affected, and no bank or trust company shall release funds in such account without the written approval of the board of standards and appeals.

4. Maintenance of security. The commissioner, at the request and on behalf of the board of standards and appeals, shall have the right to inspect the books and records of every employer who appeals or who provides a security in accordance with subdivision eight of this section. In the event that the board of standards and appeals finds that the security provided by an employer is insufficient to cover the amount of underpayments, it shall notify the employer to increase the amount of

the security. If the employer fails to increase the security of the amount requested within seven days after such notice, the stay shall be terminated. If the board of standards and appeals finds that the amount of the security is excessive, it shall decrease the amount of security required.

5. Review of determination as to security. Notwithstanding any provision in this chapter, any determination of the board of standards and appeals with reference to subdivisions three and four of this section shall be reviewable only by a special proceeding under article seventy-eight of the civil practice law and rules instituted in the supreme court in the third judicial district within ten days after such determination.

6. Security on court review. In the event that an appeal is taken from the order of the board of standards and appeals to the supreme court in the third judicial district pursuant to subdivision two of this section, the court may continue the security in effect or require such security as it deems proper.

7. Waiver of security. Notwithstanding any provision in this section, the board of standards and appeals may, in its discretion, waive the requirement of a security for an employer who the board of standards and appeals finds is of such financial responsibility that payments to employees of any underpayments due or to accrue are assured without the security provided by this section.

8. Stay for other employers. Any employer affected by a minimum wage regulation from which an appeal has been taken by another employer to the board of standards and appeals or to the supreme court in the third judicial district, may obtain a stay of proceedings against him by providing a security in accordance with subdivisions three and four of this section within thirty days after the filing of the appeal by the other employer.