

For Department of State use only.

Notice of Adoption

Temporary and Disability Assistance, Office of
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.
 This adoption will not amend the NYCRR.

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

1. Action taken:

Adoption of § 352.38 of Title 18 NYCRR

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

2. Effective date of rule:

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

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

Date of filing.

Other date (*specify*):

Other date (*specify*):

_____ days after filing.

3. Statutory authority under which the rule was adopted:

Social Services Law §§ 17(a)-(b), and (j); 20(2)-(3); 34; 460-c; and 460-d

4. Subject of the rule:

Emergency shelters

5. Purpose of the rule:

To address security measures and incident reporting in shelters for the homeless

6. Terms and identification of rule :

A. I.D. No. of original notice of proposed or emergency/proposed rule making: TDA-25-16-00002 - EP

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

[X] No changes were made to the proposed rule.

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

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

[Redacted area]

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

Text attached.

Summary attached.

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

[Redacted area]

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

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

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

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

Agency contact Richard P. Rhodes, Jr.

Agency name New York State Office of Temporary and Disability Assistance

Office address 40 North Pearl Street, 16-C

Albany, NY 12243-0001

Telephone (518) 486-7503 E-mail: richard.rhodesjr@otda.ny.gov

8. Additional matter required by statute:

[] Yes (include below material required by statute).

[Redacted area]

[X] No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)

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

A. The attached Revised RIS contains:

[] The full text of the Revised RIS.

[] A summary of the Revised RIS.

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

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

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

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

A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

10. Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments

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

A. The attached Revised RFA contains:

The full text of the Revised RFA.

A summary of the Revised RFA.

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

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

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

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

A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. Revised Rural Area Flexibility Analysis (RAFA)

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

A. The attached Revised RAFA contains:

The full text of the Revised RAFA.

A summary of the Revised RAFA.

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

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

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

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

A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. Revised Job Impact Statement (JIS)

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

A. The attached Revised JIS contains:

The full text of the Revised JIS.

A summary of the Revised JIS.

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

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

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

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

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

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

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

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

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

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

Attached is an assessment of public comment.

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

An assessment is not attached because no comments were received.

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

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

No information is being incorporated by reference in this rule.

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

[Redacted area]

15. **Initial Review of Rule** (SAPA §207)

(SELECT AND COMPLETE ONE)

A. As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

B. As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year [redacted] which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

C. As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year [redacted] which is no later than the 5th year after the year in which this rule is being adopted.

D. Not Applicable. This rule is a "rate making" or a "consensus rule," or the agency is not required to review existing rules.

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

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

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

Name Richard P. Rhodes, Jr.

Signature _____

Address N.Y.S.O.T.D.A., 40 North Pearl Street, 16C, Albany, NY 12243-0001Telephone (518) 486-7503E-mail richard.rhodesjr@otda.ny.govDate 08/16/2016**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

New Section 352.38 of Title 18 of the NYCRR is added to read as follows:

§ 352.38. Security Measures in Shelters for the Homeless.

(a) Commencing ninety (90) days after the filing of this section with the New York Department of State, and annually thereafter, the operator of each emergency shelter shall submit to the Office of Temporary and Disability Assistance (the “Office”) and the social services district in which the emergency shelter is located a plan for the emergency shelter to provide security and help ensure the physical safety of residents and staff. The social services district shall assess the adequacy of the plan and shall share the results of that assessment with the Office. For purposes of this section, “emergency shelter” shall mean any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter to recipients of temporary housing assistance. Based upon the individual characteristics of each emergency shelter, including, but not limited to, the location of the emergency shelter and the extent to which the location is known in the community, the size of the emergency shelter, construction characteristics of the emergency shelter, the homeless population served by the emergency shelter, and use of the building or site location for purposes other than the provision of shelter and services to the homeless, the security plan shall address, among other things:

- (1) measures taken to control access to the emergency shelter, including but not limited to admittance procedures in place for persons entering the facility and the installation and use of safety locks on exit and entry doors, security devices such as metal detectors, cameras and security or alarm systems;
- (2) the surveillance of the grounds, facility and activities of the residents to prevent theft and resident harm;
- (3) the training and deployment of staff responsible for security, and in the case of emergency shelters with mental health or domestic violence programs, the availability of security staff trained in recognizing and responding to mental health or domestic violence issues;
- (4) fire safety measures, and the emergency shelter’s emergency and disaster plans, including but not limited to, procedures for conducting and supervising facility evacuations and periodic evacuation drills; actions taken in advance of an emergency to prepare emergency shelter employees to be ready for an emergency;
- (5) procedures for handling and documenting individual emergencies, including arranging for medical care or other emergency services, maintaining records of any special medical needs or conditions, the prescribed regimens to be followed, and the names and phone numbers of medical doctors to contact should an emergency arise concerning these conditions; and

(6) Safety measures provided for emergency shelter staff.

(b) Each social services district shall annually submit to the Office for review and approval a general plan to help ensure that emergency shelters operating within the social services district are providing security and protecting the physical safety of residents and staff. The commissioner of the Office shall establish the date by which the annual plan must be submitted each year. Taking into consideration the characteristics of the types of emergency shelters operating within the social services district, such as the locations of the emergency shelters and the extent to which the locations of the emergency shelters are known in the community, the size of the emergency shelters, construction characteristics of the emergency shelters, the homeless populations served by the emergency shelters, and use of the buildings or site locations for purposes other than the provision of shelter and services to the homeless, the plan shall address generally, among other things, each of the items identified in subdivision (a) of this section.

(c) In the event of a serious incident impacting upon the safety and well-being of any resident of an emergency shelter or member of the emergency shelter's staff, including, but not limited to, deaths by unnatural causes or suicides, life-threatening injuries including drug overdoses, assaults, rapes, sexual assaults, or attempted rapes or sexual assaults, arrests for alleged child abuse, fires, disasters, or other events that cause evacuation of the building or injury to shelter residents, heating, water, electrical failure that is more than four hours in duration, discovery of any environmental hazard, such as lead paint or asbestos, that threatens resident health or well-being, domestic violence that results in injury of one or more residents, criminal activity on the part of emergency shelter staff, or any misconduct on the part of emergency shelter staff that results in harm to the residents or other staff members, the operator of the emergency shelter shall (1) immediately email both the social services district and the Office to report the serious incident, (2) telephone both the social services district and the Office within one business day to report the serious incident, and (3) submit a copy of the Office-prescribed Incident Report form to the Office within three business days.

(d) The operator must maintain a chronological record of serious incidents of the type described in subdivision (c) of this section using the Office-prescribed Incident Report form. In the case of injury, the operator must include a written statement of the resident's version of the events leading to an accident or incident involving such resident on all Incident Reports unless the resident objects.

(e) Where a security incident has been reported, or upon review of the operator's or social service district's annual plan, the Office may direct the social services district or the operator to take additional security measures including, but not limited to, directing that the emergency shelter deploy additional trained security staff or relocate residents to another facility or emergency shelter. The Office also may direct the social services district or the operator to (1) engage a qualified third party, who has been approved by the Office, to conduct an evaluation of the security measures employed by the facility, and (2) employ any or all of the recommendations made by the third party.

Assessment of Public Comments

The Office of Temporary and Disability Assistance (OTDA) received comments relative to emergency regulation 18 NYCRR § 352.38 (§ 352.38), which addresses security measures and incident reporting in shelters for the homeless. The comments pertaining to § 352.38 have been reviewed and are duly considered in this Assessment of Public Comments.

One comment characterized § 352.38 as an unfunded mandate and requested that OTDA fully reimburse the social services districts (SSDs) for any and all expenses related to the administration of § 352.38. As previously stated in the Regulatory Impact Statement, OTDA anticipates the fiscal impact of the emergency regulation will be minimal so long as SSDs are in compliance with existing security and fire safety standards.

One comment asserted that SSD employees do not generally have the expertise to assess the adequacy of security plans or to provide the oversight and guidance necessary to ensure that a security plan is operational. However, SSL § 62(1) explicitly provides that “each public welfare district shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for him or herself.” SSDs are therefore statutorily mandated to take appropriate measures to help ensure the safety and welfare of persons in need of public assistance and care.

Another comment requested that commercial hotels and motels used to provide emergency shelter be excluded from consideration under § 352.38(a), which requires each emergency shelter to submit a security plan to both the SSD in which it is located and to OTDA. The comment reasoned that in some SSDs commercial hotels and motels are utilized only occasionally for emergency shelter, and it would be impractical, if not impossible, to prospectively obtain, review and assess safety plans for commercial hotels or motels. OTDA notes that the emergency regulation, by its explicit terms, applies only to “facilit[ies] with overnight sleeping accommodations, the *primary purpose* of which is to provide temporary shelter to recipients of temporary housing assistance” (emphasis added). Consequently, under the current emergency regulation, a hotel or motel is required to submit a security plan for approval only when more than 50 percent of its space is used to provide emergency shelter; therefore, commercial hotels and motels used only occasionally to provide emergency shelter when no other suitable housing is available generally will not be required to submit security plans.

In view of the foregoing, OTDA does not believe that revisions to the current emergency regulation are necessary.



Office of Temporary and Disability Assistance

ANDREW M. CUOMO
Governor

SAMUEL D. ROBERTS
Commissioner

MICHAEL PERRIN
Executive Deputy Commissioner

CERTIFICATION

I hereby certify that the attached amendments to § 352.38 to Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York are duly adopted by me, Executive Deputy Commissioner Michael Perrin, acting pursuant to designation under Public Officers Law § 9, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance (OTDA) by Social Services Law §§ 17(a)-(b), and (j), 20(2)-(3), 34, 460-c, and 460-d. These amendments shall be effective upon publication of the Notice of Adoption in the New York State Register.

The Notice of Emergency Adoption and Proposed Rule Making for these amendments was previously published in the New York State Register on June 22, 2016, under I.D. No. TDA-25-16-00002-EP.

No other publication of prior notice is required by statute.

Michael Perrin
Executive Deputy Commissioner

Date