

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. change in text

1. Action taken:

Addition of new Part 304 and § 304.1 to 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)(b), 20(3)(d), 34(3)(c)-(e), and 34(6)

4. Subject of the rule:

Emergency measures for the homeless during inclement winter weather

5. Purpose of the rule:

To mitigate the effects and impact of inclement winter weather on individuals experiencing homelessness

6. Terms and identification of rule :

A. I.D. No. of original notice of proposed or emergency/proposed rule making: TDA-01-17-00002 - EP

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

No changes were made to the proposed rule.

● Text/Summary does not need to be republished in the State Register. 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), and D, as well as remaining Items 7-8 and 13-14.

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

● Text/Summary is required to be republished in the State Register. 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:

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

Publication date: 04/05/2017, I.D. No. TDA-01-17-00002 - ERP

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

D. Signed certification of adoption and full text of the rule are attached:

Signed certification of adoption (scanned pdf).

Full text of the rule (MS Word).

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).

No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ONE; 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 ONE; 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 ONE; 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 ONE; 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)

(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:

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 2020 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 _____ 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 _____ which is no later than the 5th year after the year in which this rule is being adopted.
- D. Not Applicable. This is a "rate making" or a "consensus rule," or a repeal of a rule.

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 /s/ Richard P. Rhodes, Jr.

Address N.Y.S. O.T.D.A., 40 North Pearl Street, 16-C, Albany, NY 12243-0001

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

Date 05/18/2017

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 (in MS Word unless otherwise specified), should be e-filed via the Department of State website.

New Part 304 is added to Title 18 of the NYCRR to read as follows:

PART 304

PROTECTION OF VULNERABLE HOMELESS PERSONS

(Statutory authority: Social Services Law §§ 17[a]-[b], and [j], 20[2][b], 20[3][d], 34[3][c]-[e],
and 34[6])

Sec.

304.1

Emergency Measures for the Homeless During Inclement Winter Weather.

§ 304.1 of Title 18 of the NYCRR is revised to read as follows:

§ 304.1 Emergency Measures for the Homeless During Inclement Winter Weather.

- (a) For purposes of this section, “inclement winter weather” shall mean air temperatures at or below 32 degrees Fahrenheit, including National Weather Service calculations for windchill.
- (b) In order to mitigate the effects of inclement winter weather and the resulting impacts of such weather on individuals experiencing homelessness, each social service district shall:
 - (1) work with police agencies, including the New York State Police, and state agencies to take all necessary steps to identify individuals reasonably believed to be homeless and unwilling or unable to find the shelter necessary for safety and health in inclement winter weather, and to direct and offer to move such individuals to the appropriate sheltered facilities;
 - (2) take all necessary steps to extend, or to have providers extend, shelter hours, to allow individuals experiencing homelessness to remain indoors;
 - (3) instruct homeless service outreach workers to work with other relevant personnel and to work with local police in relation to the involuntary transport of [at-risk] individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries to appropriate facilities for assessment consistent with the provisions of section 9.41 of the Mental Hygiene Law;
 - (4) work in coordination with the State Police and all police agencies to ensure that individuals facing homelessness receive assistance as needed to protect their health and safety; and
 - (5) ensure that all facilities used to shelter homeless individuals during periods of inclement winter weather are safe, clean, and well-maintained and supervised, as

required by state and local laws, regulations, administrative directives, and guidelines including local building and fire codes.

Assessment of Public Comments

The Office of Temporary and Disability Assistance (OTDA) received one comment relative to the regulation.

The comment suggested that the definition of “inclement winter weather” used in 18 NYCRR § 304.1 – air temperatures at or below 32 degrees Fahrenheit, including National Weather Service calculations for windchill – is too low and limits the regulation’s effectiveness in reducing the risk of cold-related injuries such as frostbite and hypothermia posed to individuals experiencing homelessness. OTDA asserts that it would not be feasible to successfully implement the regulation if the definition of “inclement winter weather” was expanded to include temperatures in excess of 32 degrees Fahrenheit, including windchill. Furthermore, OTDA notes that § 304.1 establishes a minimum temperature threshold at which measures must be taken by social services districts (SSDs) to protect the homeless from inclement winter weather; SSDs may elect to take additional measures, beyond those required by OTDA, to protect homeless individuals from inclement winter weather.

The comment also suggested that OTDA amend § 304.1 to require that emergency shelters remain open and accessible for the duration of periods of inclement winter weather, rather than between certain defined hours – for example, between the hours of 4:00 P.M. and 8:00 A.M. – during such periods. OTDA notes that § 304.1 already requires that SSDs “take all necessary steps to extend, or to have providers extend, shelter hours, to allow individuals experiencing homelessness to remain indoors” during periods of inclement winter weather. This provision applies to all inclement winter weather irrespective of the time of day or night. Consequently, OTDA asserts that such an amendment to the regulation is unnecessary.



ANDREW M. CUOMO
Governor

Office of Temporary and Disability Assistance

SAMUEL D. ROBERTS
Commissioner

BARBARA C. GUINN
Executive Deputy Commissioner

CERTIFICATION

I hereby certify that the attached amendments adding Part 304 and § 304.1 to Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York are duly adopted by me, Commissioner Samuel D. Roberts, 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)(b), 20(3)(d), 34(3)(c)-(e), and 34(6). 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 January 4, 2017, under I.D. No. TDA-01-17-00002-EP.

The Notice of Emergency Adoption and Revised Rule Making for these amendments was previously published in the New York State Register on April 5, 2017, under I.D. No. TDA-01-17-00002-ERP.

No other publication of prior notice is required by statute.

/s/ Samuel D. Roberts

05/16/17

Samuel D. Roberts
Commissioner

Date