

(e) For the purpose of compliance with this Part the 2015 IMC is incorporated herein by reference.

Copies of the 2015 IMC may be obtained from the publisher at the following address:

International Code Council, Inc.
500 New Jersey Avenue, NW, 6th Floor
Washington, DC 20001

The 2015 IMC is also available for public inspection and copying at:
New York State Department of State
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

Final rule as compared with last published rule: Nonsubstantial changes were made in 160.16(a)(5) and 160.16(d).

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS DOS, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Changes made to the text of the proposed rule since it was published in the State Register on October 20, 2021 do not necessitate changes to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

No substantial changes to the rule text have been made since the proposed rule was last published. The only two non-substantial changes are extremely minor and do not impact the meaning or effect of the rule. One change inserts the word "of" at paragraph (5) of subdivision (a), and the other change inserts the word "in" at paragraph (d). The addition of these words merely corrects prior technical oversights and improves the text of § 106.16 of Title 19 of the Official Compilation of the Codes, Rules and Regulations of the State of New York.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

2019 Novel Coronavirus (COVID-19) Masking Requirements in Congregate Shelters

I.D. No. TDA-01-22-00001-EP

Filing No. 1270

Filing Date: 2021-12-15

Effective Date: 2021-12-15

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

Proposed Action: Addition of section 304.3 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (k), 20(2), (3)(d)-(e), 34(3)(c), (f), (6) and 460-c

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

Specific reasons underlying the finding of necessity: The Office of Temporary and Disability Assistance (OTDA) finds that it is necessary for the preservation of the public health, public safety and the general welfare that these amendments be adopted on an emergency basis, as authorized by the State Administrative Procedure Act (SAPA) § 202(6). The 2019 Novel Coronavirus (COVID-19) pandemic remains a significant challenge in New York State. Since March 2020, more than 2,750,000 New Yorkers have been infected by the COVID-19 virus, and the disease has killed more than 59,500 New Yorkers. The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant, which is approximately twice

as transmissible as the early SARS-CoV-2 strain. Congregate shelters for persons experiencing homelessness are high-risk settings because persons placed in these facilities have frequent contact with other with shelter staff and other residents. This regulation is necessary to prevent the spread of the COVID-19 virus in congregate shelters for persons experiencing homelessness, and to help to ensure that persons placed in congregate shelters and shelter staff are less likely to contract COVID-19 and potentially suffer severe illness or death.

It is of great importance that operators of congregate shelters require all members of the shelter staff, shelter residents, visitors, and any other persons entering the facility to wear appropriate face coverings, consistent with directives issued by OTDA and guidance issued by the CDC and the New York State Department of Health.

It is noted that the regulatory amendments are being promulgated pursuant to a Notice of Emergency Adoption and Proposed Rule Making, instead of a Notice of Proposed Rule Making, due to time constraints.

Subject: 2019 Novel Coronavirus (COVID-19) masking requirements in congregate shelters.

Purpose: Protect the well-being of shelter staff and persons staying in congregate shelters.

Text of emergency/proposed rule: Part 304 of Title 18 of the NYCRR is amended by adding a new § 304.3 to read as follows:

§ 304.3 2019 Novel Coronavirus (COVID-19) Masking Requirements in Congregate Shelters.

(a) This section shall apply to congregate shelters for persons experiencing homelessness that are reimbursed directly or indirectly from State or State-administered grants or funds. For purposes of this section, the following definitions shall apply:

(1) "Congregate shelters" means all shelters for adults, small-capacity shelters, shelters for adult families, and shelters for families, as those terms are defined in sections 491.2 and 900.2 of this Title, in which more than three unrelated persons share the same sleeping quarters.

(2) The "Office" means the State Office of Temporary and Disability Assistance.

(3) "Shelter staff" includes but is not limited to all shelter employees, volunteers, and contractors and subcontractors whose primary job responsibility is to work in the congregate shelter.

(b) Operators of congregate shelters subject to this section shall require all members of the shelter staff, shelter residents, visitors, and any other persons entering the facility to wear appropriate face coverings, consistent with directives issued by the Office and guidance issued by the Centers for Disease Control and Prevention (CDC) and the New York State Department of Health.

(c) Exemptions from face covering requirements. Face coverings are not required to be worn by:

- (1) children under two years of age;
- (2) persons with disabilities who cannot wear masks, or cannot safely wear masks, for reasons related to their disabilities; and
- (3) persons for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by an Occupational Safety and Health Administration workplace risk assessment.

(d) Enforcement. The Office may take any of the enforcement actions set forth in sections 491.23(b) and 900.23(b) of this Title to assure compliance with the requirements of this section.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 14, 2022.

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. Statutory authority:
Social Services Law (SSL) § 17(a)-(b) and (k) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "determine the policies and principles upon which public assistance, services and care shall be provided within the [S]tate both by the [S]tate itself and by the local governmental units ..." shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers ..." and shall "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(2) provides, in part, that the OTDA shall "supervise all social

services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work.” Pursuant to SSL § 20(3)(d) and (e), OTDA is authorized to promulgate rules, regulations, and policies to fulfill its powers and duties under the SSL and “to withhold or deny State reimbursement, in whole or in part, from or to any social services district [“SSD”] or any city or town thereof, in the event of [their] failure... to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof.”

SSL § 34(3)(c) requires OTDA’s Commissioner to “take cognizance of the interests of health and welfare of the inhabitants of the [S]tate who lack or are threatened with the deprivation of the necessities of life and of all matters pertaining thereto.” In addition, pursuant to SSL § 34(3)(d), OTDA’s Commissioner must exercise general supervision over the work of all SSDs, and SSL 34(3)(e) provides that OTDA’s Commissioner must enforce the SSL and the State regulations within the State and in the local governmental units. Pursuant to SSL § 34(3)(f), OTDA’s Commissioner must establish regulations for the administration of public assistance and care within the State by the SSDs and by the State itself, in accordance with the law. Pursuant to SSL § 34(6), OTDA’s Commissioner “may exercise such additional powers and duties as may be required for the effective administration of the department and of the [S]tate system of public aid and assistance.”

SSL § 460-c confers authority upon OTDA to “inspect and maintain supervision over all public and private facilities or agencies whether [S]tate, county, municipal, incorporated or not incorporated which are in receipt of public funds,” which includes emergency shelters.

2. Legislative objectives:

It is the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations, and policies to provide for the health, safety and general welfare of vulnerable families and individuals who are placed in emergency shelters for persons or families experiencing homelessness.

3. Needs and benefits:

The 2019 Novel Coronavirus (COVID-19) pandemic remains a significant challenge in New York State. Since March 2020, more than 2,750,000 New Yorkers have been infected by the COVID-19 virus, and the disease has killed more than 59,500 New Yorkers. The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant, which is approximately twice as transmissible as the early SARS-CoV-2 strain. Congregate shelters for persons experiencing homelessness are high-risk settings because persons placed in these facilities have frequent contact with shelter staff and other residents. This regulation is necessary to prevent the spread of the COVID-19 virus in congregate shelters for persons experiencing homelessness, and to help to ensure that persons placed in congregate shelters and shelter staff are less likely to contract COVID-19 and potentially suffer severe illness or death.

4. Costs:

To the extent that the regulatory amendments would require residents of congregate shelters and shelter staff, visitors and other persons entering the facility to wear face coverings, the amendments would not result in significant costs to the State, to local governments, or to the operators of regulated congregate shelters.

5. Local government mandates:

Only local governments that operate congregate shelters for persons experiencing homelessness would be impacted by the regulatory amendments. There are six congregate shelters in New York City (NYC) that are operated by the NYC Department of Homeless Services. There are no congregate shelters outside of NYC that are operated by a local government.

6. Paperwork:

There are no paperwork requirements.

7. Duplication:

The regulatory amendments do not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives:

The alternative is to remain silent, which may result in additional exposure of shelter residents and staff to the COVID-19 virus, which could result in severe illness or death.

9. Federal standards:

This regulation does not conflict with federal standards.

10. Compliance schedule:

This rulemaking will be effective immediately upon the filing of the Notice of Emergency Adoption and Proposed Rule Making with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The regulation will not impact local governments or small businesses

unless they operate congregate shelters. For purposes of this RFASBLG, “small business” means “any business which is resident in this state, independently owned and operated, and employs one hundred or less individuals.” (State Administrative Procedure Act § 102[8]). There are approximately 380 publicly-funded congregate shelters operating within the State. Six of those congregate shelters are in New York City (NYC) and are operated by the NYC Department of Homeless Services. Of the remaining congregate shelters operating within the State, and especially those located outside of NYC, many are independently owned and operated by entities that employ 100 or fewer individuals. If a local government or a small business does operate a congregate shelter, it will need to require that all members of the shelter staff, shelter residents, visitors and any other persons entering the facility wear appropriate face coverings. The face coverings need to be worn in a manner consistent with directives issued by the Office of Temporary and Disability Assistance (OTDA) and with guidance issued by the Centers for Disease Control and Prevention (CDC) and the New York State Department of Health.

2. Compliance requirements:

Operators of congregate shelters will need to periodically check their shelter staff, shelter residents, visitors and any other persons entering the facility to confirm that face coverings are being worn correctly.

3. Professional services:

Professional services are not required by this regulation.

4. Compliance costs:

There are no anticipated costs to local governments or small businesses as a result of this regulation.

5. Economic and technological feasibility:

It is not anticipated that there would be economic or technical impediments to the regulation.

6. Minimizing adverse impact:

Any adverse impacts are expected to be minimal and are outweighed by the regulation’s health and safety benefits to residents and shelter staff.

7. Small business and local government participation:

The issues addressed by the regulation have existed since the formal declaration of the 2019 Novel Coronavirus (COVID-19) pandemic in March of 2020. Throughout the pandemic, OTDA has been in regular contact with the social services districts (districts) to help ensure the health and safety of residents and staff in congregate shelters. Districts have had an opportunity to express any concerns or questions throughout the COVID-19 pandemic. OTDA remains committed to continuing these relationships.

8. Cure period:

This regulation does not include a cure period given the serious threat the COVID-19 virus presents and the urgent need to have face coverings worn in congregate shelters.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

For purposes of this RAFA, “rural area” means areas of the State defined by Executive Law § 481(7) (see State Administrative Procedure Act § 102[10]). Per Executive Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” Based upon United States Census Bureau estimated county populations for 2010, there are: (a) 43 counties that have populations of less than 200,000; and (b) 11 counties with populations of over 200,000 that have towns with population densities of 150 persons or fewer per square mile. There are 28 congregate shelters operating in 13 of these counties: Cattaraugus County (3), Cayuga County (2), Chautauqua County (1), Chemung County (1), Franklin County (1), Oswego County (4), Otsego County (2), Rensselaer County (3), Schenectady County (4), Tompkins County (1), Ulster County (2), Warren County (1), and Yates County (3).

2. Reporting, recordkeeping and other compliance requirements; and professional services:

Operators of congregate shelters in rural areas will require all members of the shelter staff, shelter residents, visitors and any other persons entering the facility to wear appropriate face coverings. There are no reporting or recordkeeping requirements, and professional services will not be required.

3. Costs:

There are no anticipated costs to the State, local governments, or shelter operators as a result of this regulation.

4. Minimizing adverse impact:

Any adverse impacts are expected to be minimal and are outweighed by the regulation’s health and safety benefits to residents and shelter staff.

5. Rural area participation:

Since the outset of the 2019 Novel Coronavirus (COVID-19) pandemic, the Office of Temporary and Disability Assistance (OTDA) has continuously worked with all social services districts operating congregate shelters for persons experiencing homelessness that are reimbursed directly or indirectly from State or State-administered grants or funds regarding actions to help minimize the spread of COVID-19. OTDA anticipates continuing these relationships.

Job Impact Statement

A JIS is not required for the regulatory amendments. It is apparent from the nature and purpose of the regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in the public and private sectors of the State. The regulatory amendments will not substantively affect the jobs of employees at the state or social service district (district) level. Adoption of the regulatory amendments will not impose any new annual costs or administrative burdens upon the districts.

**HEARINGS SCHEDULED
FOR PROPOSED RULE MAKINGS**

Agency I.D. No.	Subject Matter	Location—Date—Time
Education Department		
EDU-48-21-00008-P.....	Special Education Impartial Hearing Officers and the Special Education Due Process System Procedures	<p>Zoom—February 1, 2022, 12:00 p.m. Link: https://zoom.us/j/95291448709?pwd=S1E2a3pvRjYvZlQ0eHZKNFpOaTZ6dz09, Meeting ID: 952 9144 8709, Passcode: MTbs02</p> <p>Zoom—February 9, 2022, 5:00 p.m. Link: https://zoom.us/j/95132788304?pwd=QmVvaWxwZ2JaRi91bW1pTUxBZ2JHdz09, Meeting ID: 951 3278 8304, Passcode: 8p4dru</p> <p>Zoom—February 17, 2022, 9:00 a.m. Link: https://zoom.us/j/99029637239?pwd=eHcyYEdYRmY3SVFzMnNhdzdpdFZzdz09, Meeting ID: 990 2963 7239, Passcode: 8iqjHd</p>
Environmental Conservation, Department of		
ENV-51-21-00003-P.....	Environmental Remediation Programs	<p>Electronic Webinar—April 5, 2022, 2:00 p.m.</p> <p>Electronic Webinar—April 7, 2022, 5:30 p.m.</p> <p>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 375 by December 22, 2021. The proposed regulations webpage for 6 NYCRR Part 375 may be accessed at: https://www.dec.ny.gov/regulations/propregulations.html</p> <p>Persons who wish to receive the instructions by mail or telephone may call the Department at (518) 402-9764 and leave a message for Jenn Dawson. Please provide your first and last name, address, and telephone number and reference the Part 375 public comment hearing.</p> <p>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 March 22, 2022. The written request must be addressed to Deputy Commissioner, NYS DEC Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550 or emailed to the Office of Hearings and Mediation Services at ohms@dec.ny.gov. Please include “Part 375 Public Comment Hearing” in the subject line.</p> <p>The public comment period for Part 375 is open until 8:00 p.m., April 21, 2022. Comments may be entered during the hearing, e-mailed to derweb@dec.ny.gov, or mailed to NYS DEC, Division of Environmental Remediation, 625 Broadway, Albany, NY 12233, Attn: Jenn Dawson. Please include “Part 375 Comments” in the subject or memo line of the correspondence.</p>
Labor, Department of		
LAB-51-21-00007-P.....	Workplace Safety Committees	Location to be announced on Department of Labor website—February 9, 2022, 11:00 a.m.