

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:

Amendment of §§ 387.1, 387.9(a)(3), and 387.22 of Title 18 NYCRR and addition of § 387.26 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:

7 United States Code (USC) Ch. 51 (generally) and 7 USC §§ 2011, 2013, and 2026; Social Services Law §§ 17(a)-(b) and (k), 20(3)(d), and 95

4. Subject of the rule:

Elderly Simplified Application Project (ESAP) for the Supplemental Nutrition Assistance Program (SNAP)

5. Purpose of the rule:

To simplify the SNAP eligibility process for certain elderly and/or disabled residents in New York State

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: TDA-51-21-00002 - 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]:

[Redacted boxes for nonsubstantive changes]

● *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:

[Redacted boxes for rate making details]

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. _____ -

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, 16C
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 for additional matter]

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:

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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 2025, 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, 16C, Albany, NY 12243-0001

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

Date 03/24/2022

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.

Part 387 of Title 18 NYCRR is amended to read as follows:

The index for Part 387 of Title 18 NYCRR is amended to read as follows:

Sec.

387.26 Elderly Simplified Application Project.

Subdivisions (n)–(as) of § 387.1 are relettered as subdivisions (o)–(at) and a new subdivision (n) is added to read as follows:

(n) *Elderly Simplified Application Project (ESAP)* is a federally-approved demonstration project which streamlines the SNAP application, recertification and verification processes for eligible seniors and/or disabled individuals.

Paragraph (3) of subdivision (a) of section § 387.9 is amended to read as follows:

(3) Student. To be eligible, students must meet the requirements for student status as defined in section 387.1[(ee)] of this Part.

Section 387.22 is amended to read as follows:

§ 387.22 Referenced material. Material referenced in this Part is available for inspection and copying by contacting [the Food Stamp Bureau of the Division of Income Maintenance of the New York State Department of Social Services, 40 North Pearl Street, Albany, NY 12243.]:

New York State Office of Temporary and Disability Assistance
Attn: Public Information Office
40 North Pearl Street
Albany, New York 12243

Email: nyspio@otda.ny.gov

A new § 387.26 is added to Title 18 NYCRR to read as follows:

§ 387.26 Elderly Simplified Application Project (ESAP).

The ESAP is a federally-approved demonstration project which streamlines the SNAP application, recertification and verification processes for eligible seniors and/or disabled individuals. The operation of the ESAP, as set forth in this section, is subject to continued federal approval and funding.

(a) *Eligible Households.* Unless ineligible under subdivision (b) of this section, households eligible to participate in the ESAP are as follows:

Households in which all adult members are:

(1) Age 60 or older and/or disabled; and,

(2) Not in receipt of earned income.

(b) *Ineligible Households.* Households ineligible to participate in the ESAP are as follows:

(1) Households that are eligible to participate in the SNAP under the NYSNIP or the NYSCAP;

(2) Individuals residing in Group Living Facilities as defined in section 387.1 of this Part.

(3) Households in which any member is in receipt of ongoing public assistance as defined by Parts 369 and 370 of Title 18 NYCRR.

(4) Households not meeting the requirements of subdivision (a) of this section.

(c) Shortened and Simplified Application.

As part of the implementation process, a shortened and simplified SNAP application will be made available. In addition to availability for use at initial application, the application will be distributed with an ESAP-specific Notice of Expiration (NOE) to participating households at recertification.

(1) Use of the shortened and simplified application:

(i) The shortened and simplified application is intended for use by elderly and/or disabled SNAP applicants; however:

(a) Filing the shortened and simplified application is not a requirement for participation in the ESAP. An ESAP-eligible household may apply for SNAP using any currently available SNAP application and still be determined eligible for the ESAP;

(b) All SNAP applications, filed in accordance with section 387.5 of this Part, will be screened for ESAP eligibility as part of the eligibility determination process; and,

(c) ESAP-eligible households, regardless of which application is used at application, will be sent a notification of their eligibility for SNAP benefits under the ESAP.

(ii) There is no restriction on who may complete and submit the shortened and simplified application for consideration; however:

(a) Filing the shortened and simplified application does not, in and of itself, entitle an individual to participate in the ESAP; and

(b) Individuals who are determined ineligible for the ESAP after filing the shortened and simplified application are not entitled to receive notice thereof. Such applicants shall receive notification pursuant to section 387.20 of this Part.

(iii) If, upon screening, a shortened and simplified application is determined ineligible for the ESAP, the application must still be considered a SNAP

application, and the application process must be completed in compliance with all SNAP application processing requirements as set forth in this Part.

(d) Certification Period. Certification period for individuals enrolled in the ESAP.

(1) Individuals found eligible for the SNAP and participating in the ESAP shall receive a certification period of up to 36 months.

(2) An ESAP household determined ineligible for continuing participation in the ESAP during their certification period but remaining eligible for the SNAP shall not have their certification period shortened.

(e) Recertification. Recertification process for households enrolled in the ESAP.

All SNAP households enrolled under the ESAP shall be required to apply for continued participation in the SNAP prior to the end of their certification in accordance with section 387.17(f) of this Part, with the following exceptions:

(1) Along with an ESAP-specific NOE, ESAP-participating households will receive the shortened and simplified application.

(2) Recertification interviews will not be required for every recertification application.

(3) No recertification application may be denied without first attempting to schedule a recertification interview; however, the social services district need not make an effort to schedule an interview unless a recertification application has first been filed. Upon receipt of a recertification application submitted by an ESAP-participating household, an interview will only be required in the following situations:

(i) If the recertification application would be denied;

(ii) If information on the recertification application is questionable; or

(iii) Upon request by the ESAP-participating household.

(f) Reporting Requirements. Reporting requirements for households enrolled in the ESAP.

All households enrolled in the ESAP will be considered simplified reporters, and subject to the reporting rules as set forth in section 387.17(d) of this Part, with the following exceptions:

(1) Households are not required to submit a periodic report. At the midway point of the certification period, a contact letter will be sent to the household, which will:

(i) Include a non-mandatory Interim Report, affording the household an opportunity to update their case information; and,

(ii) Instruct the household that any reported change resulting in an increased SNAP benefit must be documented and verified in accordance with subdivision (g) of this section.

(2) In addition to the simplified reporting requirements, households are required to report:

(i) Any change in household composition;

(ii) If any member of the household begins to receive earned income; or

(iii) If any member of the household has substantial lottery and/or gambling winnings, as defined in applicable federal rules and regulations.

(g) Verification. Verification requirements under the ESAP.

(1) In order to ease the household burden of providing verification, social services districts may, to the extent possible, use computer matching to verify information related to current household circumstances such as:

(i) Details concerning the household's gross nonexempt income, namely:

(a) The amount of unearned income; and,

(b) Whether all sources of household income are unearned.

(ii) Social Security Number;

(iii) Date of Birth;

(iv) Death;

(v) Residency;

(vi) Identity; and

(vii) Medical Expenses.

(2) All ESAP participants shall be permitted to self-declare expenses for standard utility allowances and other shelter expenses.

(3) Any other information that is required to be verified but is not able to be verified by computer matching shall be subject to the SNAP verification requirements as set forth in section 387.8 of this Part.



Office of Temporary and Disability Assistance

KATHY HOCHUL
Governor

DANIEL W. TIETZ
Commissioner

BARBARA C. GUINN
Executive Deputy Commissioner

CERTIFICATION

I hereby certify that the attached amendments of §§ 387.1, 387.9 and 387.22 and the addition of new § 387.26 of Title 18 of the *Official Compilation of Codes, Rules, and Regulations of the State of New York* are duly readopted by me, Commissioner Daniel W. Tietz, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance (OTDA) by 7 *United States Code* (USC) Ch. 51 (generally) and 7 USC §§ 2011, 2013, and 2026 and Social Services Law §§ 17(a)-(b) and (k), 20(3)(d), and 95. 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 relative to the regulatory amendments was published in the *New York State Register* on December 22, 2021 under I.D. No. TDA-51-21-00002-EP.

The first readoption of the regulatory amendments was published in the in the *New York State Register* on March 16, 2022 under I.D. No. TDA-51-21-00002-E.

No other publication of prior notice is required by statute.

/s/ Daniel W. Tietz

3/21/22

Daniel W. Tietz
Commissioner

Date