

Notice of Emergency Adoption and Proposed Rule Making

Temporary and Disability Assistance, Office of
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.
- This adoption will amend the NYCRR.
- This adoption will not amend the NYCRR.

NOTE: THIS FORM CANNOT BE USED FOR A CONSENSUS RULE MAKING.

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. A. Proposed action:

Amendment of	§ 387.12(f)(3)(v)(a)-(c) of	Title 18	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR
_____	_____	Title _____	NYCRR

2. Effective date of emergency rule:

- Date of filing.
- Other date (specify): 10/01/2020

3. History of emergency actions:

- This is the first time this emergency rule has been adopted.
- This is the first readoption of an emergency rule printed in the State Register on _____ under I.D. No. _____.

4. Statutory authority under which the rule was adopted:

Social Services Law §§ 17(a)-(b), and (k), 20(3)(d) and 95; 7 United States Code § 2014 (e)(6)(C); 7 Code of Federal Regulations § 273.9 (d)(6)(iii)

5. This emergency rule is necessary for the preservation of:

- public health
- public safety
- general welfare

6. The specific reasons underlying the finding of necessity, above, are as follows:

7. *Subject of the rule:*

Standard Utility Allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP)

8. *Purpose of the rule:*

These regulatory amendments set forth the federally-approved SUAs as of 10/1/20

9. *Public hearings* (check box and complete as applicable):

- A public hearing is not scheduled. (*SKIP TO ITEM 12*)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 60 days **after** publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

<i>Time:</i>	<i>Date:</i>	<i>Location:</i>

10. *Interpreter services* (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

11. *Accessibility* (check appropriate box only if a public hearing is scheduled):

- All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
- Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

12. *Terms of rule* (SELECT A, B **or** C. Item D is required.):

- A. The full text of the rule is attached because it does not exceed 2,000 words.
- B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
 - Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

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).

13. *Emergency expiration date* (A first emergency rule is effective and enforceable for up to 90 days from the **date of filing**. Second and subsequent emergency rules are effective and enforceable for up to 60 days from their **date of filing** UNLESS the agency specifies an earlier date). This rule expires:

- 90 days after filing
- 60 days after filing
- Other (*specify date*): _____ .

14. Proposed expiration date (check only if applicable):

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

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

<i>Agency contact</i>	Richard P. Rhodes, Jr.		
<i>Agency name</i>	N.Y.S. Office of Temporary and Disability Assistance		
<i>Office address</i>	40 North Pearl Street, 16-C		
	Albany, NY 12243-0001		
<i>Telephone</i>	(518) 486-7503	<i>E-mail</i>	richard.rhodesjr@otda.ny.gov

16. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

<i>Agency contact</i>	_____		
<i>Agency name</i>	_____		
<i>Office address</i>	_____		

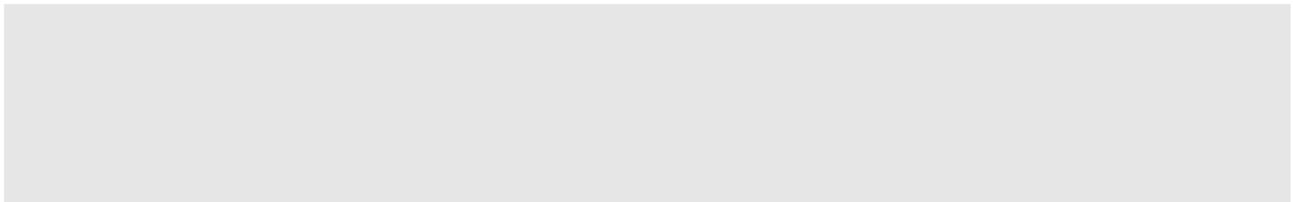
<i>Telephone</i>	_____	<i>E-mail</i>	_____

17. *Public comment will be received until:*

- 60 days after publication of this notice (MINIMUM public comment period).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).
- Other: (*specify*) _____ .

18. *Additional matter required by statute:*

- YES (include below material required by statute).



- NO additional material required by statute.

19. *Regulatory Agenda* [see SAPA §202-d(1)]:

- This action was a Regulatory Agenda item in the following issue of the *State Register*: 01/22/2020 .
- This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the *Register*.
- Not applicable.

20. Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits])

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not** attached:

because this rule is subject to a consolidated RIS printed in the *Register* under I.D. No.: _____ - _____ ; issue date: _____ .

because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

but will be published in the *Register* within 30 days of the rule's effective date.

C. A **statement is attached** claiming exemption pursuant to SAPA §202-a (technical amendment).

21. 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 RFA contains:

The full text of the RFA.

A summary of the RFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not attached**:

because this rule is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____ - _____ ; issue date: _____ .

because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

but will be published in the *Register* within 30 days of the rule's effective date.

22. Rural Area Flexibility Analysis (RAFA)

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

A. The attached RAFA contains:

 The full text of the RAFA. A summary of the RAFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated RAFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached**: because this rule is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____ - _____ ; issue date: _____ . because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. but will be published in the *Register* within 30 days of the rule's effective date.**23. Job Impact Statement (JIS)**

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

A. The attached JIS contains:

 The full text of the JIS. A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated JIS, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and 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.

 A JIS/Request for Assistance is submitted with this notice.C. A JIS is **not attached** : because this rule is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____ - _____ ; issue date: _____ . because this rule is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. because this rule was proposed by the State Comptroller or Attorney General. but will be published in the *Register* within 30 days of the rule's effective date.

24. Referenced material:

- No information is being incorporated by reference in this rule making.
- This rule making contains referenced material in the following Parts, sections, subdivisions, or paragraphs:

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 09/15/2020

Please read before submitting this notice:

Reset Form

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.

6. The specific reasons underlying the finding of necessity, above, are as follows:

It is of great importance that the federally-approved standard utility allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP) are applied to SNAP benefit calculations effective October 1, 2020, and thereafter until new amounts eventually are approved by the United States Department of Agriculture (USDA). It is equally important that the new federally-approved SUA amount for the Heating/Cooling SUA in New York City be implemented by the October 1, 2020 deadline. The use of a SUA that is not authorized by the USDA could result in severe fiscal sanctions by the federal government against the State. These emergency amendments protect the public health and general welfare by setting forth the federally-approved SUAs effective as of October 1, 2020, and by helping to prevent such hardships.

As stated above, there is no federal authority to use past SUAs after the October 1, 2020 effective date of the new federally-approved allowance amounts. For New York to continue the State option to use the SUA in lieu of the actual utility cost portion of SNAP household shelter expenses, new allowances must be in place. Otherwise, the State may be forced to use the actual utility cost portion of the shelter expenses of each SNAP household. This policy would result in all 58 social services districts (districts) in New York State having to require up to 1.6 million SNAP households to provide verification of the actual utility cost portions of their shelter expenses. This policy would create a tremendous burden on both districts as well as recipient households. In addition, as actual utility costs are generally significantly less than the SUAs, SNAP households would have a much smaller shelter deduction resulting in a sizeable reduction in their SNAP benefits. This reduction in SNAP benefits for up to 1.6 million SNAP households would result in significant harm to the health and welfare of these households.

It is noted that the regulatory amendments are being promulgated pursuant to a combined Notice of Emergency Adoption and Proposed Rule Making, instead of a Notice of Proposed Rule Making, due to time constraints. On August 3, 2020, the USDA approved the Office of Temporary and Disability Assistance's (OTDA's) SUA calculation methodology and the resulting federal fiscal year 2020 SUAs for heating/air conditioning and for basic utilities effective October 1, 2020. This did not provide sufficient time for OTDA to publish a Notice of Proposed Rule Making and for the new SUA for Heating/Cooling in New York City to become effective on October 1, 2020. An emergency adoption is necessary to have the new SUA be effective on October 1, 2020. Although these regulations are being promulgated on an emergency basis to protect the public health and general welfare, OTDA will receive public comments on its combined Notice of Emergency Adoption and Proposed Rule Making until 60 days after publication of this notice.

Clauses (a)–(c) of subparagraph (v) of paragraph (3) of subdivision (f) of § 387.12 of Title 18 NYCRR is amended to read as follows:

- (a) The standard allowance for heating/cooling consists of the costs for heating and/or cooling the residence, electricity not used to heat or cool the residence, cooking fuel, sewage, trash collection, water fees, fuel for heating hot water and basic service for one telephone. The standard allowance for heating/cooling is available to households which incur heating and/or cooling costs separate and apart from rent and are billed separately from rent or mortgage on a regular basis for heating and/or cooling their residence, or to households entitled to a Home Energy Assistance Program (HEAP) payment or other Low Income Home Energy Assistance Act (LIHEAA) payment. A household living in public housing or other rental housing which has central utility meters and which charges the household for excess heating or cooling costs only is not entitled to the standard allowance for heating/cooling unless they are entitled to a HEAP or LIHEAA payment. Such a household may claim actual costs which are paid separately. Households which do not qualify for the standard allowance for heating/cooling may be allowed to use the standard allowance for utilities or the standard allowance for telephone. As of October 1, [2018] 2020, but subject to subsequent adjustments as required by the United States Department of Agriculture (“USDA”), the standard allowance for heating/cooling for SNAP applicant and recipient households residing in New York City is [\$800] \$801; for households residing in either Suffolk or Nassau Counties, it is \$744; and for households residing in any other county of New York State, it is \$661.
- (b) The standard allowance for utilities consists of the costs for electricity not used to heat or cool the residence, cooking fuel, sewage, trash collection, water fees, fuel for heating hot water and basic service for one telephone. It is available to households billed separately from rent or mortgage for one or more of these utilities other than telephone. The standard allowance for utilities is available to households which do not qualify for the standard allowance for heating/cooling. Households which do not qualify for the standard allowance for utilities may be allowed to use the standard allowance for telephone. As of October 1, [2018] 2020, but subject to subsequent adjustments as required by the USDA, the standard allowance for utilities for SNAP applicant and recipient households residing in New York City is \$316; for households residing in either Suffolk or Nassau Counties, it is \$292; and for households residing in any other county of New York State, it is \$268.
- (c) The standard allowance for telephone consists of the cost for basic service for one telephone. The standard allowance for telephone is available to households which do not qualify for the standard allowance for heating/cooling or the standard allowance for utilities. As of October 1, [2017] 2020, but subject to subsequent adjustments as required by the USDA, the standard allowance for telephone for all SNAP applicant and recipient households residing in New York State is \$30.

Regulatory Impact Statement

1. Statutory authority:

The *United States Code* (U.S.C.), at 7 U.S.C. § 2014 (e) (6) (C), provides that in computing shelter expenses for budgeting under the federal Supplemental Nutrition Assistance Program (SNAP), a State agency may use a standard utility allowance (SUA) as provided in federal regulations.

The *Code of Federal Regulations* (C.F.R.), at 7 C.F.R. § 273.9 (d) (6) (iii), provides for SUAs in accordance with SNAP. Clause (A) of this subparagraph states that with federal approval from the Food and Nutrition Services (FNS) of the United States Department of Agriculture (USDA), a State agency may develop SUAs to be used in place of actual costs in calculating a household's excess shelter deduction. Federal regulations allow for the following types of SUAs: a SUA for all utilities that includes heating or cooling costs; a limited utility allowance that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection; and an individual standard for each type of utility expense. Clause (B) of the subparagraph provides that a State agency must review the SUAs annually and adjust them to reflect changes in costs. State agencies also must provide the amounts of the SUAs to the FNS when the SUAs are changed and submit the methodologies used in developing and updating the SUAs to the FNS for approval whenever the methodologies are developed or changed.

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 “exercise such other powers and perform such other duties as may be imposed by law.”

SSL § 20 (3) (d) authorizes OTDA to promulgate regulations to carry out its powers and duties.

SSL § 95 authorizes OTDA to administer SNAP in New York State (NYS) and to perform such functions as may be appropriate, permitted or required by or pursuant to federal law.

2. Legislative objectives:

It was the intent of the Legislature to implement the federal SNAP Act in NYS in order to provide SNAP benefits to eligible NYS residents.

3. Needs and benefits:

The regulatory amendments set forth the SUAs within NYS as of October 1, 2020. OTDA is amending its SUAs in 18 NYCRR § 387.12 (f) (3) (v) (a) to reflect an increase in fuel and utility costs, which is indicated in the Consumer Price Index (CPI) fuel and utilities values (which includes components for water, sewage and trash collection). Specifically, OTDA is amending the standard allowance for heating/cooling for SNAP applicant and recipient households residing in New York City from \$800 to \$801; the standard allowance for heating/cooling for such households residing in either Nassau or Suffolk Counties and for such households residing in any other county of NYS remain unchanged from FFY 2020 (from October 1, 2019 through September 31, 2020), at \$744 and \$661, respectively. The standard allowances for utilities and telephone also remain unchanged from FFY 2020 through FFY 2021 (from October 1, 2020 through September 31, 2021) across NYS.

The following chart sets forth the SUA categories; the past SUAs (“Past SUA”) that were in effect for federal fiscal year (FFY) 2020, from October 1, 2019 through September 31, 2020; and the new SUAs (“New SUA”) that are in effect for FFY 2021, effective October 1, 2020:

	New York City		Nassau / Suffolk Counties		Rest of State	
	Past SUA	New SUA	Past SUA	New SUA	Past SUA	New SUA
Heating/Air Conditioning SUA	\$800	\$801	\$744	\$744	\$661	\$661
Basic Utility SUA	\$316	\$316	\$292	\$292	\$268	\$268
Phone SUA	Past SUA: \$30 (for all Counties) (Unchanged for all Counties)					

The aforementioned values have been determined in accordance with the current methodology approved by USDA for adjusting NYS's SUA values. To determine the Heating/Cooling and Limited Utility SUA values for FFY 2021, normally, the Consumer Price Index (CPI) Fuel and Utility value for All Urban Consumers, Not Seasonally Adjusted, for June 2020 would be compared to the same CPI Fuel and Utility value for June 2019. (The June 2019 CPI value was used to determine the adjustment for the current FFY 2020 SUA values.) There was no change in SUA amounts from FFY 2019 to FFY 2020 because of the small change in the CPI. Therefore, OTDA used June 2018 CPI as the base for this year's calculations. The percentage change between June 2018 and June 2020 was then applied to OTDA's current SUA figures and rounded as shown below. The June 2020 CPI-U Fuel and Utility value is 0.064% higher than the June 2018 value; consequently, the SUA figures provided above are 0.064% higher than the current FFY 2020 SUA. Rounded to the nearest whole dollar, the resultant values are reflected in the chart above.

To determine the Telephone SUA value for FFY 2021, the Consumer Price Index (CPI) Telephone Services value for All Urban Consumers, Not Seasonally Adjusted, for June 2020 was compared to the same CPI Telephone Services value for June 2019, the CPI value that was used to determine the current FFY 2020 SUA value. The percentage change between June 2019 and June 2020 was then applied to OTDA's current SUA figure and rounded; the June 2020 CPI-U Telephone Services value is 1.394% higher than the June 2019 value. Rounded to the nearest whole dollar, this means that the Telephone SUA value for FFY 2021 is unchanged from the current FFY 2020 SUA.

OTDA has all required approvals from the FNS pertaining to these changes and is required to apply the SUAs for FFY 2021 in its SNAP budgeting effective October 1, 2020. As

of October 1, 2020, OTDA does not have federal approval or authority to apply past SUAs in its prospective SNAP budgeting.

It is of great importance that the federally-approved SUAs for the SNAP are applied to SNAP benefit calculations effective October 1, 2020, and thereafter until new amounts eventually are approved by the USDA. It is equally important that the new federally-approved SUA amount for Heating/Cooling in New York City be implemented by the October 1, 2020 deadline. The use of a SUA that is not authorized by the USDA could result in severe fiscal sanctions by the federal government against the State. These emergency amendments protect the public health and general welfare by setting forth the federally-approved SUAs effective as of October 1, 2020, and by helping to prevent such hardships.

As stated above, there is no federal authority to use past SUAs after the October 1, 2020 effective date of the new federally-approved allowance amounts. For New York to continue the State option to use the SUA in lieu of the actual utility cost portion of SNAP household shelter expenses, new allowances must be in place. Otherwise, the State may be forced to use the actual utility cost portion of the shelter expenses of each SNAP household. This policy would result in all 58 social services districts (districts) in NYS having to require up to 1.6 million SNAP households to provide verification of the actual utility cost portions of their shelter expenses. This policy would create a tremendous burden on both districts as well as recipient households. In addition, as actual utility costs are generally significantly less than the SUAs, SNAP households would have a much smaller shelter deduction resulting in a sizeable reduction in their SNAP benefits. This reduction in SNAP benefits for up to 1.6 million SNAP households would result in significant harm to the health and welfare of these households.

4. Costs:

The regulatory amendments will not result in any impact to the State financial plan, they will not impose costs upon the districts because SNAP benefits are 100 percent federally-

funded, and they comply with federal statute and regulation to implement federally-approved SUAs.

5. Local government mandates:

The regulatory amendments do not impose any mandates upon districts since the amendments simply set forth the federally-approved SUAs, effective October 1, 2020. Additionally, the calculation of SNAP budgets, which incorporates the SUAs, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using OTDA's Welfare Management System. To the extent that these processes are not automated, the regulatory amendments do not impose any additional requirements upon the districts in terms of calculating SNAP budgets.

6. Paperwork:

The regulatory amendments do not impose any new forms, new reporting requirements or other paperwork upon the State or the districts.

7. Duplication:

The regulatory amendments do not duplicate, overlap or conflict with any existing State or federal statutes or regulations.

8. Alternatives:

An alternative to the regulatory amendments would be to refrain from implementing the revised SUAs. However, this alternative is not a viable option because if NYS were to opt not to implement the new SUAs or were otherwise judicially precluded from doing so, then NYS would be out of compliance with federal statutory and regulatory requirements.

9. Federal standards:

The regulatory amendments do not conflict with or exceed minimum standards of the federal government.

10. Compliance schedule:

Since the regulatory amendments set forth the federally-approved SUAs effective October 1, 2020, the State and all districts will be in compliance with the regulatory amendments upon the adoption date of the regulatory amendments.

Regulatory Flexibility Analysis for Small Businesses and Local Governments

1. Effect of rule:

The regulatory amendments will have no effect on small businesses. The regulatory amendments do not impose any mandates upon social services districts (districts) since the amendments simply set forth the federally-approved standard utility allowance (SUA) amounts, effective October 1, 2020. The calculation of Supplemental Nutrition Assistance Program (SNAP) budgets, which incorporates the SUAs, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using the Office of Temporary and Disability Assistance's (OTDA's) Welfare Management System, and to the extent these processes are not automated, the regulatory amendments do not impose any additional requirements upon the districts in terms of calculating SNAP budgets.

2. Compliance requirements:

The regulatory amendments do not impose any reporting, recordkeeping or other compliance requirements on districts.

3. Professional services:

The regulatory amendments do not require districts to hire additional professional services to comply with the new regulations.

4. Compliance costs:

The regulatory amendments do not impose initial costs or any annual costs upon districts because SNAP benefits are 100 percent federally-funded, and these regulatory amendments also comply with federal statute and regulation to implement federally-approved SUAs.

5. Economic and technological feasibility:

All districts have the economic and technological abilities to comply with the regulatory amendments.

6. Minimizing adverse impact:

The regulatory amendments will not have an adverse impact on districts.

7. Small business and local government participation:

On September 2, 2020, OTDA provided a General Information System (GIS) release to districts in New York State setting forth, in part, the SUAs for SNAP effective October 1, 2020 (see GIS 20 TA/DC087, *Upstate and NYC – Updated Supplemental Nutrition Assistance Program [SNAP] Standards for October 2020*). Since the release of OTDA's GIS reflecting the SUAs effective October 1, 2020, districts have not raised any concerns or objections related to the implementation of the new SUAs. The GIS is also posted to OTDA's internet website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulatory amendments have no effect on small businesses in rural areas. The regulatory amendments do not impose any mandates upon the 44 social services districts (districts) in rural areas of the State. Rather, the regulatory amendments simply set forth the federally-approved standard utility allowance (SUA) amounts for the Supplemental Nutrition Assistance Program (SNAP), effective October 1, 2020. The calculation of SNAP budgets, which incorporates the SUAs, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using the Office of Temporary and Disability Assistance's (OTDA's) Welfare Management System. To the extent these processes are not automated, the regulatory amendments do not impose any additional requirements upon the districts in terms of calculating SNAP budgets.

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

The regulatory amendments do not impose any reporting, recordkeeping or other compliance requirements on the districts in rural areas. Districts in rural areas do not need to hire additional professional services to comply with the regulations.

3. Costs:

The regulatory amendments do not impose initial capital costs or any annual costs upon the districts in rural areas because SNAP benefits are 100 percent federally-funded, and these regulatory amendments comply with federal statute and regulation to implement federally-approved SUAs.

4. Minimizing adverse impact:

The regulatory amendments do not have an adverse impact on the districts in rural areas.

5. Rural area participation:

On September 2, 2020, OTDA provided a General Information System (GIS) release to districts in New York State setting forth, in part, the SUAs for SNAP effective October 1, 2020 (see GIS 20 TA/DC087, *Upstate and NYC – Updated Supplemental Nutrition Assistance Program [SNAP] Standards for October 2020*). Since the release of

OTDA's GIS reflecting the SUAs effective October 1, 2020, districts have not raised any concerns or objections related to the implementation of the new SUAs . The GIS is also posted to OTDA's internet website.

Job Impact Statement

A Job Impact Statement is not required for the regulatory amendments. It is apparent from the nature and the purpose of the regulatory amendments that they do not have a substantial adverse impact on jobs and employment opportunities in either the public or the private sectors in New York State (NYS). The regulatory amendments have no effect on small businesses. The regulatory amendments do not affect, in any significant way, the jobs of the workers in the social services districts (districts) or the State. These regulatory amendments set forth the federally-approved standard utility allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP) as of October 1, 2020. The calculation of SNAP budgets, which incorporates the SUAs, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using the Office of Temporary and Disability Assistance's Welfare Management System. To the extent these processes are not automated, the regulatory amendments do not impose any additional requirements upon the districts in terms of calculating SNAP budgets. Thus, the regulatory amendments do not have any adverse impact on jobs and employment opportunities in either the public or private sectors of NYS.



Office of Temporary and Disability Assistance

ANDREW M. CUOMO
Governor

MICHAEL P. HEIN
Commissioner

BARBARA C. GUINN
Executive Deputy Commissioner

CERTIFICATION

I hereby certify that the attached amendments to § 387.12(f)(3)(v)(a)–(c) of Title 18 of the *Official Compilation of Codes, Rules, and Regulations of the State of New York* are duly adopted by me, Commissioner Michael P. Hein, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance (OTDA) by Social Services Law (SSL) §§ 17(a)-(b), and (k), 20(3)(d), and 95; 7 *United States Code* § 2014(e)(6)(C); and 7 *Code of Federal Regulations* § 273.9(d)(6)(iii). These amendments shall be effective on October 1, 2020.

I have determined that it is necessary for the preservation of the public health and the general welfare that these amendments be adopted on an emergency basis, as authorized by the State Administrative Procedure Act (SAPA) § 202(6).

It is of great importance that the federally-approved standard utility allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP) are applied to SNAP benefit calculations effective October 1, 2020, and thereafter until new amounts eventually are approved by the United States Department of Agriculture (USDA). It is equally important that the new federally-approved SUA amount for Heating/Cooling in New York City be implemented by the October 1, 2020 deadline. The use of a SUA that is not authorized by the USDA could result in severe fiscal sanctions by the federal government against the State. These emergency amendments protect the public health and general welfare by setting forth the federally-approved SUAs effective as of October 1, 2020, and by helping to prevent such hardships.

As stated above, there is no federal authority to use past SUAs after the October 1, 2020 effective date of the new federally-approved allowance amounts. For New York to continue the State option to use the SUA in lieu of the actual utility cost portion of SNAP household shelter expenses, new allowances must be in place. Otherwise, the State may be forced to use the actual utility cost portion of the shelter expenses of each SNAP household. This policy would result in all 58 social services districts (districts) in New York State having to require up to 1.6 million SNAP households to provide verification of the actual utility cost portions of their shelter expenses. This policy would create a tremendous burden on both districts as well as recipient households. In addition, as actual utility costs are generally significantly less than the SUAs, SNAP households would have a much smaller shelter deduction

resulting in a sizeable reduction in their SNAP benefits. This reduction in SNAP benefits for up to 1.6 million SNAP households would result in significant harm to the health and welfare of these households.

It is noted that the regulatory amendments are being promulgated pursuant to a combined Notice of Emergency Adoption and Proposed Rule Making, instead of a Notice of Proposed Rule Making, due to time constraints. On August 3, 2020, the USDA approved OTDA's SUA calculation methodology and the resulting federal fiscal year 2020 SUAs for heating/air conditioning and for basic utilities effective October 1, 2020. This did not provide sufficient time for OTDA to publish a Notice of Proposed Rule Making and for the new SUA for Heating/Cooling in New York City to become effective on October 1, 2020. An emergency adoption is necessary to have the new SUA be effective on October 1, 2020. Although these regulations are being promulgated on an emergency basis to protect the public health and general welfare, OTDA will receive public comments on its combined Notice of Emergency Adoption and Proposed Rule Making until 60 days after publication of this notice.

No other publication of prior notice is required by statute.

/s/ Michael P. Hein

Michael P. Hein
Commissioner

9/10/2020

Date