

## 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:

Repeal of § 347.8 of Title 18 NYCRR; addition of § 347.8 to Title 18 NYCRR; amendment of § 347.9(d) of Title 18 NYCRR; repeal of §§ 347.10 and 347.26 of Title 18 NYCRR; amendment of § 422.3 of Title 18 NYCRR

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

### 2. Effective date of rule:

- Date this notice is published in the *State Register*.  
 This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:  
 Date of filing. \_\_\_\_\_  
 Other date (*specify*): \_\_\_\_\_  
 Other date (*specify*): \_\_\_\_\_  
 \_\_\_\_\_ days after filing.

### 3. Statutory authority under which the rule was adopted:

Social Services Law §§ 17(a)-(b) and (j), 20(3)(d), 111-a and 111-i; Title 42 of the United States Code §§ 651-657, 660, 663-664, and 666-667; Title 45 of the Code of Federal Regulations §§ 303.4, 303.6, and 303.8.

### 4. Subject of the rule:

Establishment, modification, and enforcement of child support obligations

### 5. Purpose of the rule:

See attached addendum

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed or emergency/proposed** rule making: TDA-40-17-00002 - P

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, 16-C  
Albany, NY 12243-0001  
Telephone (518) 486-7503 E-mail: richard.rhodesjr@otda.ny.gov

8. Additional matter required by statute:

Yes (include below material required by statute).

[Redacted area 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:

--	--	--	--

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 3<sup>rd</sup> 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 4<sup>th</sup> or 5<sup>th</sup> 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 5<sup>th</sup> 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 12/05/2017

---

---

**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.

4. *Purpose of the rule:* To amend State regulations concerning support obligations to reflect federal statutory requirements and current terminology used by the child support program, and to conform regulatory citations with federal and State laws.

**The Section Index for Part 347 of Title 18 of the NYCRR is amended to read as follows:**

Sec.  
347.8            Establishment, modification, and enforcement of support obligations.

**Section 347.8 of Title 18 of the NYCRR is REPEALED and a new § 347.8 is added to read as follows:**

**§ 347.8 Establishment, modification, and enforcement of support obligations.**

*(a) General case processing procedures.*

1. In any case receiving child support services in which the location of the noncustodial parent or putative father is known, the child support enforcement unit must:
  - i. if there is no order of child support, establish paternity if necessary pursuant to section 347.6 of this Part and establish an order of support pursuant to the child support standards set forth in section 240 of the Domestic Relations Law (DRL) and section 413 of the Family Court Act (FCA) as set forth in subdivision (b) of this section.
  - ii. if there is an order of child support, modify and/or enforce the order as set forth in subdivision (c) of this section.
  - iii. maintain in the automated case record any information from new or modified orders of support, including the factual basis for the support obligation.
  
2. Prior to any proceeding to establish, modify, or enforce an order of child support, the child support enforcement unit shall take reasonable steps to determine the noncustodial parent's income, financial circumstances, and ability to pay support in accordance with the child support standards set forth in section 240 of the DRL and section 413 of the FCA, by conducting a financial investigation pursuant to the following guidelines:
  - i. Review available local, State, and federal information sources pursuant to section 347.7(b) of this Part, including, as appropriate, electronic data from other governmental agencies, State and national directories of new hires, and State and other tax information.

- ii. Obtain information by case conferencing, interviews with either or both parties, mandatory financial disclosure, or questionnaires, as appropriate.
  - iii. Obtain information from the noncustodial parent or third parties using subpoenas or requests pursuant to sections 111-p, 111-r, and 111-s of the Social Services Law or article 31 of the Civil Practice Law and Rules, as appropriate.
  - iv. If there is insufficient evidence of the noncustodial parent's income or financial circumstances to use as the measure of the noncustodial parent's ability to pay, then any recommendation by the child support enforcement unit regarding the support obligation shall be based on available information about the specific circumstances of the noncustodial parent, including assets, residence, employment and earnings history, job skills, education, literacy, age, health, criminal record or other employment barriers, record of seeking work, job market conditions, the availability of employers willing to hire the noncustodial parent, prevailing earnings level, and other relevant background factors in the case to the extent such information is available and relevant.
  - v. Create a record of the information or documents obtained as a result of the financial investigation.
3. In any proceeding to establish or modify an order of child support, the child support enforcement unit shall provide the individual receiving services with a copy of the child support standards chart as published annually by the commissioner pursuant to section 111-i(2) of the Social Services Law and advise such individual of the amount derived from the application of the child support percentages, as defined in section 240 of the DRL and section 413 of the FCA, to the noncustodial parent's income.
4. In any proceeding to establish, modify, or enforce an order of child support, the child support enforcement unit shall review the record for information obtained from the financial investigation conducted on the noncustodial parent which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay child support in accordance with the standards set forth in section 240 of the DRL and section 413 of the FCA and provide such information to the court.
5. The attorney or other person appearing on behalf of the social services district must become thoroughly familiar with the case and the financial



circumstances of both parents. If it appears that the basic child support obligation, determined in accordance with the child support standards as set forth in section 240 of the DRL and sections 413 and 416 of the FCA, is other than the amount ordered by the court, the attorney or other person appearing on behalf of the social services district must consider and, if appropriate, submit written objections to the court and, if necessary, ensure that an appeal is filed within the statutory time period. The social services district's representative also must ensure that any support payments are payable to the support collection unit.

6. If the court or administrative authority dismisses a petition to establish, modify, or enforce a support order without prejudice, the child support enforcement unit must, at the time of the dismissal, examine the reasons for dismissal and determine when, in the future, it would be appropriate to petition for an order of support, and, at that time, again file a petition for such order.

(b) Establishment of a Child Support Order.

1. Elements of a guidelines order. A child support order must include the following elements, where appropriate, pursuant to the child support standards as set forth in section 240 of the DRL and section 413 of the FCA:
  - i. a support amount derived from application of the appropriate child support percentage to the noncustodial parent's income in accordance with the child support standards including the establishment of the amount of retroactive support, if any;
  - ii. reasonable child care expenses incurred by the custodial parent, if the custodial parent is working or receiving elementary or secondary education, or if the custodial parent is receiving higher education or vocational training which will lead to employment, and order that the noncustodial parent's share of such expenses be in the same proportion as his or her income is to the combined parental income;
  - iii. reasonable child care expenses incurred by the custodial parent when seeking work and order that the noncustodial parent's portion of such expenses be in the same proportion as his or her income is to the combined parental income;
  - iv. a direction for either or both parents to obtain and maintain health insurance benefits as defined in section 416 of the FCA and section 240 of the DRL, including the execution and delivery of any forms, notices, documents or instruments necessary to

ensure timely payments of any health insurance claims for the person on whose behalf the petition is brought, where such health insurance is available;

v. cash medical support pursuant to section 240 of the DRL and section 413 of the FCA either in addition to, or in lieu of, health insurance benefits;

vi. expenses necessary for the provision of present or future post-secondary, private, special, or enriched education for the child(ren), where appropriate; and

vii. other requirements, as directed by the Office and as provided by articles 4, 5 and 5-A, and 5-B of the FCA.

2. Voluntary agreements to support. Where appropriate, the child support enforcement unit may seek to obtain a written voluntary agreement to support from the noncustodial parent using forms provided by the Office, and in accordance with the following requirements:

i. the noncustodial parent shall be advised, orally or using digital, audio or video recording, and in writing, of the consequences of such agreement;

ii. the parties may enter a written voluntary agreement or stipulation to support for a support obligation greater than, equal to, or less than the presumptively correct child support obligation computed pursuant to the child support standards as set forth in section 240 of the DRL and section 413 of the FCA provided that the agreement or stipulation complies with the provisions of subparagraph (iii) of this paragraph and is approved in writing by the court; and

iii. in all cases in which a validly executed support agreement or voluntary stipulation between the parties is obtained and presented to a court for incorporation in an order or judgment, the recipient of services must be provided with a copy of the child support standards chart as published annually by the commissioner pursuant to section 111-i(2) of the Social Services Law. In addition, the agreement or stipulation must state that the parties have been advised of the child support standards as set forth in section 240 of the DRL and section 413 of the FCA and that the basic child support obligation provided for therein would be the presumptively correct amount of child support to be awarded by the court. In the event that any such agreement or stipulation deviates from the basic child support obligation, the

agreement or stipulation must also specify the amount that the basic child support obligation would have been and the reason or reasons that the agreement or stipulation does not provide for payment of that amount.

3. In all other cases, the child support enforcement unit shall petition the Family Court for an order of support pursuant to paragraph (1) of subdivision (b) of this section and
  - i. within 90 calendar days of locating a noncustodial parent or putative father regardless of whether paternity has been established, establish an order of support or complete service of process necessary to commence proceedings to establish an order of support and, if necessary, paternity, or document on the automated case record the unsuccessful diligent efforts to serve process as defined in section 347.7(b) of this Part; and
  - ii. advise the custodial parent that all payments received from the noncustodial parent must be transmitted to the support collection unit for crediting to the noncustodial parent's account and for distribution and disbursement as necessary.

(c) *Modification and Enforcement of a Child Support Order.*

1. *General Provisions.*

- i. Pursuant to section 571 of the FCA, the child support enforcement unit must send a notice to the parties advising that the order of support is payable to the support collection unit.
- ii. The child support enforcement unit must advise the custodial parent that all payments received from the noncustodial parent must be transmitted to the support collection unit for crediting to the noncustodial parent's account and for distribution and disbursement as necessary.

2. *Modification.*

- i. If the child support order does not include all of the appropriate elements of support as set out in paragraph 1 of subdivision (b) of this section, including but not limited to provisions mandating health care coverage and/or cash medical support, and such obligations that may be appropriate considering the parties' financial circumstances, the child support enforcement unit must immediately petition the Family Court or the Supreme Court, if the

Supreme Court has retained jurisdiction over support issues in the case, for modification of the order of support.

- ii. If a review of the terms of the order of child support and/or the results of the financial investigation demonstrate a change in the parties' financial or factual circumstances such that modification of the support obligation may be appropriate, the child support enforcement unit must immediately petition or otherwise assist the recipient of services to petition the Family Court or the Supreme Court, if the Supreme Court has retained jurisdiction over support issues in the case, for modification of the order of support.
- iii. Upon receipt of information that a noncustodial parent will be incarcerated for more than 180 calendar days, the child support enforcement unit shall provide notice to both parties informing them of the right to seek a modification of the order of support.

### 3. Enforcement.

- i. Where an order of support payable to the custodial parent is not being complied with, the child support enforcement unit must ensure that any petition to the Family Court or the Supreme Court, if the Supreme Court has retained jurisdiction over support issues in the case, alleges a violation of the order of support, includes a request for the adjudication of the delinquency amount and the award of a money judgment, and provides clear notice to the noncustodial parent that his or her inability to pay child support as ordered is a defense to a finding of willful violation or contempt.
- ii. The child support enforcement unit must review the case file and provide the court with information contained therein regarding the noncustodial parent's ability to pay, or otherwise comply with the child support order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay a purge amount or comply with any conditions set in a hearing pursuant to sections 454 or 455 of the FCA.

#### (d) Child Support Services for a Noncustodial Parent.

Where a noncustodial parent has applied for child support services pursuant to section 347.17 of this Part, the child support enforcement unit shall provide all child support services under this Part and Part 346 of this Title, as appropriate.

**Subdivision (d) of § 347.9 of Title 18 of the NYCRR is amended to read as follows:**

(d) *Additional enforcement action.*

The child support enforcement unit, in addition to following the procedures set forth in subdivisions (a) and (b) of this section, must employ all appropriate statutory support enforcement remedies, within 30 calendar days of identifying a failure to comply with the support provisions of the order, or of locating the absent parent, whichever occurs later. Every petition to find the noncustodial parent in violation or motion to hold a noncustodial parent in contempt of an order to pay child support shall provide clear notice to the noncustodial parent that his or her inability to pay child support as ordered by the court is a defense to a finding of willful violation or contempt. If service of process is necessary prior to initiating an enforcement action, such service must be completed and enforcement action taken or the child support enforcement unit must document in the automated case record unsuccessful diligent efforts to serve process, as defined in section 347.7 of this Part, no later than 60 calendar days after identifying a failure to comply with the support provisions of the order or of locating the absent parent, whichever occurs later.

**Sections 347.10 and 347.26 of Title 18 of the NYCRR are REPEALED.**

**Section 422.3 of Title 18 of the NYCRR is amended to read as follows:**

**§ 422.3 Child support enforcement requirements.**

Upon receipt of a referral, the child support enforcement unit of the social services district will determine which actions are necessary to secure child support, including establishing paternity, if necessary. Where no support order exists, the child support enforcement unit of the social services district will petition the court for an order of support pursuant to the child support standards as set forth in [section 347.10 of this Title] section 240 of the Domestic Relations Law and section 413 of the Family Court Act. Where the basic child support obligation as determined [by section 347.10 of this Title] in accordance with the child support standards exceeds the costs of care as set forth in section 422.5(d)(3)(i)–(iii) of this Part, the child support enforcement unit of the social services district may advise the court that the basic child support obligation is unjust or inappropriate and that the amount of support ordered to be paid should not exceed the actual costs of foster care plus any costs attributable to the costs of medical assistance paid on behalf of the child.



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 repealing current § 347.8, adding a new § 347.8, amending § 347.9(d), repealing §§ 347.10 and 347.26, and amending § 422.3, all of Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, are duly adopted by me, Executive Deputy Commissioner Barbara C. Guinn, acting pursuant to designation under Public Officers Law § 9, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance by Social Services Law §§ 17(a)-(b) and (j), 20(3)(d), 111-a and 111-i; Title 42 of the United States Code §§ 651-657, 660, 663-664, and 666-667; and Title 45 of the Code of Federal Regulations §§ 303.4, 303.6, and 303.8.

These amendments shall be effective upon publication of the Notice of Adoption in the New York State Register.

The Notice of Proposed Rule Making for these amendments was previously published in the New York State Register on October 4, 2017, under I.D. No. TDA-40-17-00002-P.

No other publication of prior notice is required by statute.

/s/ Barbara C. Guinn

11/29/2017

---

Barbara C. Guinn  
Executive Deputy Commissioner

---

Date