

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
- 01 -the *State Register* issue number
- 96 -the year
- 00001 -the Department of State number, assigned upon receipt of notice.
- E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Governing the Recreational and Commercial Fishing of Tautog (Blackfish)

I.D. No. ENV-16-18-00003-EP
Filing No. 290
Filing Date: 2018-03-30
Effective Date: 2018-03-30

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.
Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-d

Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: This rule making is necessary to remain in compliance with the Atlantic States Marine Fisheries Commission’s new Amendment to the Tautog (blackfish) Fishery Management Plan. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring. The proposed amendment will apply more restrictive tautog fishing rules for both recreational and commercial fishers specific to each area. Reductions for each area will be achieved through changes to possession limits and/or open and closed seasons for both the recreational and commercial fisheries.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with the Atlantic States Marine Fisheries Commission (ASMFC) and maintaining the sustainability of an important recreational and commercial fishery. Current tautog regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in over-harvest of tautog by New York fishers. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York’s tautog fishery if they concur with the non-compliance determination.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not adopt these regulations in time to remain in compliance with the ASMFC’s implementation schedule, and have new restrictions in place by the start of the recreational season opening, both of which occur on April 1, 2018.

Subject: Regulations governing the recreational and commercial fishing of Tautog (blackfish).

Purpose: To revise regulations concerning the recreational and commercial harvest of Tautog in New York State.

Text of emergency rule: Existing subdivision 40.1(a) of 6 NYCRR is amended to read as follows:

Paragraphs 40.1(a)(1) through (5) remain the same.

New paragraph 40.1(a)(6) is adopted to read as follows:

(6) *The Tautog Management Regions are defined as follows:*

(i) *The Long Island Sound Management Region includes all marine and coastal district waters lying east of the Throgs Neck Bridge and west of a line that runs from Orient Point, NY to Watch Hill, RI.*

(ii) *The New York Bight Management Region includes all New York marine and coastal district waters lying outside of the Long Island Sound Tautog Management Region.*

Existing subdivision 40.1(f) is amended to read as follows:

Species Striped bass through Red drum remain the same.

Species Tautog is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog (<i>Long Island Sound Management Region</i>)	[Oct. 5 – Dec. 14] <i>April 1 – 30</i> <i>Oct. 11 – Dec. 9</i>	16” TL <i>16” TL</i>	[4] 2 3
Tautog (<i>New York Bight Management Region</i>)	<i>April 1 – 30</i> <i>Oct. 15 – Dec. 22</i>	16” TL <i>16” TL</i>	2 4

Existing subdivision 40.1(i) is amended to read as follows:

Species Striped bass through Red drum remain the same.

Species Tautog is amended to read as follows:

40.1(i) Table B – Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog (<i>Long Island Sound Management Region</i>)	[April 8 to last day of Feb.] <i>May 7 – July 31</i> <i>Sept. 1 – Nov 23</i>	15” TL <i>15” TL</i>	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)

Tautog (New York Bight Management Region) April 16 – Jan. 25 15" TL 25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)

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 June 27, 2018.

Text of rule and any required statements and analyses may be obtained from: Rachel Sysak, New York State Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0469, email: Rachel.Sysak@dec.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.

Additional matter required by statute: The proposed rulemaking action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, and 13-0340-d authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for tautog (blackfish).

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters in a manner that is consistent with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is necessary for New York State to reduce the harvest of tautog and remain in compliance with the Atlantic States Marine Fisheries Commission's new amendment to the Tautog fishery management plan. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring.

The proposed amendment will apply more restrictive tautog fishing rules for both recreational and commercial fishers specific to each area. Reductions for each area will be achieved through changes to possession limits and/or open and closed seasons for both the recreational and commercial fisheries.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with the Atlantic States Marine Fisheries Commission (ASMFC) and maintaining the sustainability of an important recreational and commercial fishery. Current tautog regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in over-harvest of tautog by New York fishers. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's tautog fishery if they concur with the non-compliance determination.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational and commercial fishers, party and charter boat operators, and other recreational fishing associated businesses of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission's public comment period from May 15, 2017 through July 14, 2017. New York's fishers also had the

opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

"No action" alternative: If New York were to not adopt regulations that reduced recreational and commercial tautog fishing in 2018, the State would be out of compliance with Atlantic States Marine Fisheries Commission requirements, which could result in the complete closure of New York's tautog fishery.

9. Federal standards:

The amendments to Part 40 are in compliance with the Atlantic States Marine Fisheries Commission's tautog Fishery Management Plan.

10. Compliance schedule:

These regulations are being adopted by emergency rulemaking and therefore will take effect immediately upon filing with Department of State. Regulated parties must comply immediately and will be notified of the changes to the regulations through appropriate news releases, by mail, and through DEC's website.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will reduce the harvest of tautog in New York by implementing more restrictive fishing rules for both recreational and commercial tautog fishers. The proposed amendment will adopt the following provisions: defining the boundaries for the new Long Island Sound and New York Bight tautog management regions. It will also modify the recreational season and possession limits by changing the open season for recreational tautog fishing for the Long Island Sound management region to Apr. 1 – 30 with a possession limit of 2 fish, and Oct. 11 – Dec. 9 with a possession limit of 3 fish. It changes the open season for recreational tautog fishing for the New York Bight management region to Apr. 1 – 30 with a possession limit of 2 fish and Oct. 15 – Dec. 22 with a possession limit of 4 fish. The commercial season is also modified for both management regions. The proposed amendment changes the open season for commercial tautog fishing for the Long Island Sound management region to May 7 – Jul 31 and September 1 – November 23. It also changes the open season for commercial tautog fishing for the New York Bight management region to April 16 – Jan 25. The commercial possession limit remains the same.

The proposed rule is more restrictive than last year's regulations. In 2017, there were 977 Food Fish license holders, 503 Food Fish and Crustacea Shipper/Dealers license holders, and 508 licensed party and charter business in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York. Data available from 2016 New York State Vessel Trip Reports shows that there were 2,591 commercial fishing trips that caught and kept tautog, and 640 party and charter trips that caught and kept tautog. These statistics do not include federally permitted commercial and recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's Marine Recreational Information Program estimates that there were 165,129 recreational trips targeting tautog in New York. The proposed amendment decreases the number of days both recreational and commercial fishers can fish for tautog, and the amount of tautog that can be kept. This could result in a loss of revenue for Food Fish and Food Fish and Crustacea Shipper/Dealer license holders, bait and tackle shops, and some party charter businesses. These effects could be more pronounced in the Long Island Sound tautog management region, which is facing larger reductions than the NY Bight management region.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry that complies with the emergency rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may decrease the income of commercial fishers, commercial food fish dealers and shippers, party and charter businesses, marinas and marine bait and tackle shops that depend heavily upon the recreational tautog fishery, especially in the Long Island Sound management area.

6. Minimizing adverse impact:

This rule making is necessary for New York State to reduce the harvest of tautog and remain in compliance with the Atlantic States Marine Fisher-

ies Commission’s (ASMFC) new Amendment to the Fishery Management Plan for Tautog. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring. The proposed amendment is consistent with the required restrictions to tautog fishing rules for both recreational and commercial fishers specific to each area, and DEC anticipates that New York State will therefore remain in compliance with the ASMFC.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including Food Fish and Food Fish and Crustacea Shipper/Dealer license holders, party and charter boat fisheries, as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply and take required actions to protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries.

7. Small business and local government participation:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission’s public comment period from May 15, 2017 through July 14, 2017. New York’s fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Pursuant to the State Administrative Procedure Act § 202-b(1-a)(b) (SAPA), a cure period is not included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure that the general welfare of the public and the resource are both protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch.462:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(1)(b).

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The Tautog fishery is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

This rule making will reduce the harvest of tautog in New York by implementing more restrictive fishing rules for both recreational and commercial tautog fishers. The proposed amendment will adopt the following provisions: defining the boundaries for the new Long Island Sound and NY Bight tautog management regions. It will also modify the recreational season and possession limits by changing the open season for recreational tautog fishing for the Long Island Sound management region to Apr. 1 – 30 with a possession limit of 2 fish, and Oct. 11 – Dec. 9 with a possession limit of 3 fish. It changes the open season for recreational tautog fishing for the New York Bight management region to Apr. 1 – 30 with a possession limit of 2 fish and Oct. 15 – Dec. 22 with a possession limit of 4 fish. The commercial season is also modified for both management regions. The proposed amendment changes the open season for commercial tautog fishing for the Long Island Sound management region to May 7 – Jul 31 and September 1 – November 23. It also changes the open season for commercial tautog fishing for the New York Bight management region to April 16 – Jan 25. The commercial possession limit remains the same.

In 2017, there were 977 Food Fish license holders, 503 Food Fish and Crustacea Shipper/Dealers license holders, and 508 licensed party and charter business in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York.

Data available from 2016 New York State Vessel Trip Reports and Dealer Reports show that there were 2,591 commercial fishing trips that caught and kept tautog in 2016, with an estimated value of \$500,369. These statistics do not include federally permitted commercial and recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration’s (NOAA) Marine Recreational Information Program estimates that there were 165,129 recreational trips targeting tautog in New York in 2016. NOAA’s 2014 report on The Economic Contribution of Marine Angler Expenditures on Durable Goods in the United States estimates that there were 693,000 total recreational anglers that year. The report estimates that 2014 recreational angler expenditures contributed 7,417 jobs to the state’s economy, and \$567 million to the states gross domestic product, an unknown portion of which was the result of recreational tautog fishing.

3. Regions of adverse impact:

The proposed regulation is more restrictive and will likely impact recreational and commercial fishers and associated businesses throughout most of New York’s Marine and Coastal District in a negative manner. The proposed amendment decreases the number of days both recreational and commercial fishers can fish for tautog, and the amount of tautog that can be kept. This could result in a loss of revenue for commercial permit holders, retail and wholesale bait and tackle shops, and some party charter businesses. These effects could be more pronounced in the Long Island Sound tautog management region, which is facing larger reductions than the New York Bight management region.

4. Minimizing adverse impact:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the Tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission’s public comment period from May 15, 2017 through July 14, 2017. New York’s fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including Food Fish and Food Fish and Crustacea Shipper/Dealer permit holders, party and charter boat fisheries, as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries.

5. Self-employment opportunities:

Commercial fishers, party and charter boat businesses, bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational and commercial fishing industry is mostly self-employed. This rule will likely have a negative effect upon opportunities for businesses related to the harvest of tautog. However, failing to adopt this rulemaking and comply with the Atlantic States Marine Fisheries Commission’s requirements could lead to a complete closure of New York’s tautog fishery.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(b).

**EMERGENCY/PROPOSED
RULE MAKING
NO HEARING(S) SCHEDULED**

Regulations Governing the Recreational Fishing of Scup and Summer Flounder (Fluke)

I.D. No. ENV-16-18-00004-EP

Filing No. 291

Filing Date: 2018-03-30

Effective Date: 2018-03-30

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b and 13-0340-e

Finding of necessity for emergency rule: Preservation of general welfare. **Specific reasons underlying the finding of necessity:** This rule making is necessary for New York State to liberalize the recreational harvest of scup and summer flounder by the start of the recreational fishing season, and remain in compliance with the Atlantic States Marine Fisheries Commission (ASMFC). The new proposed regulations were developed in response to the ASMFC and Mid-Atlantic Fishery Management Council increasing the recreational harvest limits for scup and summer flounder for 2018. Liberalization options for summer flounder and scup were approved by the ASMFC management board on February 8, 2018. The final summer flounder and scup options for New York were supported by a consensus of the Marine Resource Advisory Council on March 6, 2018. These options involve lowering the minimum size limit for scup, and increasing the possession limit and extending the fishing season for summer flounder.

The Department of Environmental Conservation is adopting these changes in order to protect the general welfare of New York state citizens by complying with the ASMFC, and optimizing New York recreational fishing opportunities while maintaining their sustainability. The proposed rules are more liberal than recreational regulations that were in place during the 2017 fishing season for both species. However, the emergency rule that was in place for summer flounder during 2017 was never permanently adopted because the season had ended by the time the emergency rule expired. Current summer flounder regulations are not in compliance with ASMFC requirements. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, the ASMFC determines if states have implemented the requirements of the summer flounder fishery management plan. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's summer flounder fishery if they concur with the non-compliance determination.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not adopt these regulations in time for the start of the recreational fishing season on May 1, 2018. These rules must be in place by the start of the fishing season to remain in compliance with ASMFC requirements, and to give New York recreational fishers and associated industries the maximum benefit from these more liberal fishing regulations.

Subject: Regulations governing the recreational fishing of scup and summer flounder (fluke).

Purpose: To revise regulations concerning the recreational harvest of scup and summer flounder in New York State.

Text of emergency/proposed rule: Existing subdivision 6 NYCRR 40.1(f) is amended to read as follows:

Species Striped bass (except the Hudson River north of the George Washington Bridge) through Species Atlantic cod## remain the same.

Species Summer flounder is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Summer flounder	[May 17 – Sept. 21] May 4 – Sept. 30	[18"] 19" TL	[5] 4

Species Yellowtail flounder through Species Winter flounder remain the same.

Species Scup (porgy) licensed party/charter boat anglers**** and Species Scup (porgy) all other anglers are amended to read as follows:

Species	Open Season	Minimum Length	Possession Limit
Scup (porgy) licensed party/charter boat anglers****	May 1 – Aug. 31	[10"] 9" TL	30
	Sept. 1 – Oct. 31	[10"] 9" TL	45
	Nov. 1 – Dec 31	[10"] 9" TL	30
Scup (porgy) all other anglers	May 1 – Dec. 31	[10"] 9" TL	30

Existing paragraph 40.1(h)(3) is amended to read as follows:

(3) Party and [charter boat license] *Charter Boat License* holders must provide each customer who possess more than [20] 30 scup during the period of September [1st] 1 through October [31st] 31 with a com-

mercially printed, dated original fare receipt, bearing the vessel's name and the permit number. The customer of any [party/charter] *licensed party or charter* boat who lands or possesses more than [20] 30 scup during the period of September [1st] 1 through October [31st] 31 must possess an original receipt from [a licensed] *that* party or charter boat.

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 June 27, 2018.

Text of rule and any required statements and analyses may be obtained from: Rachel Sysak, New York State Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0469, email: Rachel.Sysak@dec.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.

Additional matter required by statute: The proposed rulemaking action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, 13-0340-b, and 13-0340-e authorize the Department of Environmental Conservation (DEC) to establish by regulation the open season, size, catch limits, possession and sale restrictions, and manner of taking for scup and summer flounder.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for recreational harvesters in a manner that is consistent with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is necessary for New York State to liberalize the recreational harvest of scup and summer flounder by the start of the 2018 recreational fishing season, and remain in compliance with the Atlantic States Marine Fisheries Commission (ASMFC). The new proposed regulations were developed in response to the ASMFC and Mid-Atlantic Fishery Management Council (MAFMC) increasing the recreational harvest limits for scup and summer flounder for 2018. This amendment proposes to address these increases to the recreational harvest limits for scup through changes to the size limit, and for summer flounder through a season extension and increase to the possession limit.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with the ASMFC, and maintaining the sustainability of an important recreational fishery. The proposed rules are more liberal than recreational regulations that were in place during the 2017 fishing season for both species. However, the emergency rule that was in place for summer flounder during 2017 was never permanently adopted because the season had ended by the time the emergency rule expired. Current summer flounder regulations are not in compliance with ASMFC requirements. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's summer flounder fishery if they concur with the non-compliance determination.

Ultimately, the proposed amendment is a relaxation of regulations in place during the 2017 fishing season which should stimulate interest from the recreational fishing community, and could result in increases in revenue to recreational fishing industries in New York.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs related to notifying recreational fishers, party and charter boat operators, and other recreational fishing associated businesses of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

New York State marine recreational fishers had an opportunity to comment upon these new recreational fishing measures for scup and summer flounder, including the measures proposed in this rule making, during the Marine Resource Advisory Council (MRAC) meeting on March 6, 2018. Alternative management measures, which included various combinations of possession limits, size limits, and seasons, were suggested and discussed. While some fishers questioned why measures couldn't be even

less restrictive, support was in favor of the measures included in this rule making when compared to alternative liberalization options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on March 6, 2018.

“No action” alternative: if New York were to not adopt these proposed regulations in 2018, New York would be denied the potential benefits of increased recreational fishing opportunities. In addition, the emergency rule in place during 2017 for recreational summer flounder fishing has expired and current regulations are not in compliance with ASMFC requirements. An out of compliance determination by ASMFC could result in the complete closure of New York’s summer flounder fishery.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and MAFMC scup and summer flounder Fishery Management Plans.

10. Compliance schedule:

These regulations are being adopted by emergency rule making and therefore will take effect immediately upon filing with Department of State. Regulated parties must comply immediately and will be notified of the changes to the regulations through appropriate news releases, by mail, and through DEC’s website.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will liberalize the harvest of scup and summer flounder in New York by implementing less restrictive fishing rules for recreational fishers compared to rules in place during 2017. The proposed amendment will adopt the following provisions: For recreational scup, it will lower the minimum size from 10 to 9 inches, and change the party and charter boat receipt requirement from 20 to 30 fish for September 1 through October 31. Recreational summer flounder had a previous emergency rule which expired at the end of the 2017 fishing season. The 2017 emergency rule was never permanently adopted. The 2017 rule increased the minimum size to 19 inches and decreased the possession limit to 3 fish. The proposed rule will maintain the 19-inch size limit, but increase the possession limit to 4 fish, and extend the fishing season from May 4 through September 30.

The proposed rule is less restrictive than regulations in place during 2017. In 2017, there were 508 licensed party and charter businesses, and a number of retail and wholesale marine bait and tackle shops operating in New York State. Data available from 2016 New York State Vessel Trip Reports shows that there were 3,594 party and charter trips that caught and kept scup and/or summer flounder. These statistics do not include federally permitted recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration’s Marine Recreational Information Program estimates that there were 439,765 recreational trips targeting scup and 1,371,102 trips targeting summer flounder in New York during 2016. The proposed amendment increases the number of days recreational fishers can fish for summer flounder, and is likely to increase the amount of scup and summer flounder that can be kept. This will create more recreational fishing opportunities for recreational fishers in New York, and could result in an increase in revenue for bait and tackle shops, and some party charter businesses.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry that complies with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may increase the income of some party and charter businesses, marinas, and marine bait and tackle shops that depend upon the recreational scup and summer flounder fisheries.

6. Minimizing adverse impact:

This rule making is necessary for New York State to liberalize the recreational harvest of scup and summer flounder, providing the maximum benefit to New York recreational fishers and associated industries, while maintaining compliance with the Fishery Management Plans (FMPs) for scup and summer flounder. Since these regulatory amendments are consistent with the Interstate FMPs, DEC anticipates that New York State will remain in compliance with the Atlantic States Marine Fisheries Commission and the National Marine Fisheries Service.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries, as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to regulate and protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries.

7. Small business and local government participation:

New York State marine recreational fishers had an opportunity to comment on these new recreational fishing measures for scup and summer flounder, including the measures proposed in this rulemaking, during the Marine Resource Advisory Council Meeting on March 6, 2018. Alternative management measures, which included various combinations of possession limits, size limits, and seasons, were suggested and discussed. While some fishers questioned why measures couldn’t be even less restrictive, support was in favor of the measures included in this rule making when compared to alternative liberalization options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on March 6, 2018.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Pursuant to the State Administrative Procedure Act § 202-b(1-a)(b) (SAPA), a cure period is not included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure that the general welfare of the public and the resource are both protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(1)(b).

Rural Area Flexibility Analysis

The Department of Environmental Conservation (DEC) has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The scup and summer flounder fisheries are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

This rule making will liberalize the harvest of scup and summer flounder in New York by implementing less restrictive fishing rules for recreational fishers compared to rules in place during 2017. The proposed amendment will adopt the following provisions: For recreational scup, it will lower the minimum size from 10 to 9 inches, and change the party and charter boat receipt requirement from 20 to 30 fish for September 1 through October 31. Recreational summer flounder had a previous emergency rule which expired at the end of the 2017 fishing season. The expired rule increased the minimum size to 19 inches and decreased the possession limit to 3 fish. The proposed rule will maintain the 19-inch size limit, but increase the possession limit to 4 fish, and extend the fishing season from May 4 through September 30.

2. Categories and numbers affected:

In 2017, there were 508 licensed party and charter businesses, and a number of retail and wholesale marine bait and tackle shops operating in New York State. Data available from 2016 New York State Vessel Trip Reports shows that there were 3,594 party and charter trips that caught and kept scup and/or summer flounder. These statistics do not include federally permitted recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration’s (NOAA) Marine Recreational Information Program estimates that there were 439,765 recreational trips targeting scup and 1,371,102 trips targeting summer flounder in New York during 2016. NOAA’s 2014 report on The Economic Contribution of Marine Angler Expenditures on Durable Goods in the United States estimates that there were 693,000 total recreational anglers that year. The report estimates that 2014 recreational angler expenditures contributed 7,417 jobs to the state’s economy, and \$567 million to the states gross domestic product, an unknown portion of which was the result of recreational scup and summer flounder fishing.

3. Regions of adverse impact:

The proposed regulation is less restrictive than rules in place for the 2017 fishing season and therefore should not result in any adverse impacts.

4. Minimizing adverse impact:

There will not be any substantial adverse impact on jobs or employment opportunities as a consequence of this rule making.

5. Self-employment opportunities:

Party and charter boat businesses, bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational fishing industry is mostly self-employed. This rule will likely have a positive effect upon businesses related to the recreational harvest of scup and summer flounder by providing more opportunities to fish for summer flounder, increasing the amount of summer

flounder that can be kept, and increasing the chances of encountering a legal sized scup by lowering the minimum size limit.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(b).

Higher Education Services Corporation

EMERGENCY RULE MAKING

NYS Part-Time Scholarship (PTS) Award Program

I.D. No. ESC-16-18-00001-E

Filing No. 287

Filing Date: 2018-03-28

Effective Date: 2018-03-28

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

Action taken: Addition of section 2201.20 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 667-c-1

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the 2017-18 academic year, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a community college at the State University of New York or the City University of New York. Decisions on applications for student financial aid programs are customarily made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to begin processing scholarship applications. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: NYS Part-time Scholarship (PTS) Award Program.

Purpose: To implement the NYS Part-time Scholarship (PTS) Award Program.

Text of emergency rule: New section 2201.20 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.20 New York State Part-time Scholarship (PTS) Award Program.

(a) *Definitions. As used in Education Law, section 667-c-1 and this section, the following terms shall have the following meanings:*

(1) *Good academic standing shall mean having a minimum cumulative grade point average of 2.0.*

(2) *Interruption of study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.*

(3) *Program shall mean the New York State Part-time Scholarship (PTS) Award Program codified in Education Law, section 667-c-1.*

(b) *Eligibility. An applicant must satisfy the requirements of Education Law, section 667-c-1 and the general eligibility requirements provided in Education Law, section 661.*

(c) *Administration.*

(1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *For purposes of determining priority, financial need shall be*

established based on the federal expected family contribution reflected on the applicant's federal student aid report, with the lowest expected family contribution evidencing the greatest financial need.

(3) *Recipients of an award shall:*

(i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *provide any information necessary for the corporation to determine compliance with the program's requirements.*

(4) *The corporation shall maintain data relating to the performance of award recipients including, but not limited to, degree completion rates. All such data shall be deemed confidential and the corporation shall only disclose aggregate data unless otherwise required by law.*

(d) *Awards.*

(1) *The amount of the award shall be determined in accordance with section 667-c-1 of the education law.*

(2) *A recipient of an award must remain in good academic standing, as defined in this section, and remain continuously enrolled (excluding summer and winter terms) to be eligible for payment of future awards, excluding any allowable interruption of study.*

(3) *Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time after verification and certification by the institution of the recipient's grade point average and other eligibility requirements.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 25, 2018.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the NYS Part-time Scholarship (PTS) Award Program (Program) is codified within Article 14 of the Education Law. In particular, Part KKK of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-c-1 to the Education Law. Subdivision 6 of section 667-c-1 of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC, and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 667-c-1 to create the Program, which is aimed at reducing tuition expenses for students who attend a State University of New York (SUNY) or City University of New York (CUNY) community college.

Needs and benefits:

Many studies have underscored the necessity of a college degree in today's global economy. The Center on Education and the Workforce (CEW) at Georgetown University found that by 2020, 65 percent of all jobs will require some form of postsecondary education or training, compared to 59 percent of jobs in 2010. The CEW report finds that having a skilled workforce is critical if the United States is to "remain competitive, attract the right type of industry, and engage the right type of talent in a knowledge-based and innovative economy." At the current pace, the United States will fall short of its skilled workforce needs by 5 million workers. Furthermore, the disparity in earning potential between high school graduates and college graduates has never been greater, nor has the

student loan debt – which stands at \$1.3 trillion – being carried by those who have pursued a postsecondary education.

Recognizing the growing need for workers with postsecondary education and training, the wage earnings benefits for those with training beyond a high school diploma, the rapidly rising college costs and mounting student loan debt, this Program awards students attending a public community college up to \$1,500 per semester to offset their tuition costs. To be eligible for a Program award, students must be enrolled in at least six but less than 12 credits per semester at a SUNY or CUNY community college and maintain a grade point average of 2.0. Payments will be made directly to colleges on behalf of students upon certification of their eligibility at the end of the academic term.

Costs:

- a. The estimated cost to the agency for the implementation of, or continuing compliance with this rule is \$719,344.
- b. The maximum cost of the program to the State is \$3,129,000 in the first year based upon budget estimates.
- c. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.
- d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application together with supporting documentation for each year they wish to receive an award up to and including two consecutive years of eligibility.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC’s outreach efforts to financial aid professionals at SUNY and CUNY with regard to this Program. Several alternatives were considered in the drafting of this regulation, such as the definition of financial need. Given the statutory language as set forth in section 667-c-1 of the Education Law, a “no action” alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (HESC) Emergency Rule Making, seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This rule implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a community college at the State University of New York or City University of the State of New York. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State’s small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making, seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New

York State Higher Education Services Corporation’s Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

**EMERGENCY
RULE MAKING**

New York State Masters-in-Education Teacher Incentive Scholarship Program

I.D. No. ESC-16-18-00002-E

Filing No. 288

Filing Date: 2018-03-29

Effective Date: 2018-03-29

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

Action taken: Addition of section 2201.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-f

Finding of necessity for emergency rule: Preservation of general welfare. **Specific reasons underlying the finding of necessity:** This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (“HESC”) Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2016 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Masters-in-Education Teacher Incentive Scholarship Program.

Purpose: To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

Text of emergency rule: New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.

(a) Definitions. As used in section 669-f of the Education Law and this section, the following terms shall have the following meanings:

(1) Academic excellence shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.

(2) Approved master’s degree in education program shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.

(3) Award shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.

(4) Classroom instruction shall mean elementary and secondary education instruction, as required by the New York State Education Department, including enrichment and supplemental instruction that may be offered to a subset of students. Classroom instruction shall not include support services, such as counseling, speech therapy or occupational therapy services.

(5) Elementary and secondary education shall mean pre-kindergarten

through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.

(6) Full-time study shall mean the number of credits required by the institution in each term of the approved master's degree in education program. A recipient may complete fewer credits than required for full-time study if he or she is in their last term and fewer credit hours are necessary to complete their degree program. In this case, the award amount shall be based on the tuition reported by the institution.

(7) Initial certification shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.

(8) Interruption in graduate study or employment shall mean an allowable temporary period of leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(9) Program shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.

(10) Public institution of higher education shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(11) Rank shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.

(12) School year shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(13) Successful completion of a term shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.

(14) Teach in a classroom setting on a full-time basis shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools, Boards of Co-operative Educational Services (BOCES) and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.

(b) Eligibility. An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f of the education law.

(c) Priorities. If there are more applicants than available funds, the following provisions shall apply:

(1) First priority shall be given to applicants who have received payment of an award pursuant to section 669-f of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) Second priority shall be given to up to five hundred new applicants, within the remaining funds available for the Program, if any. If there are more applicants than available funds, recipients shall be chosen by rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done by lottery.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) request payment at such times, on forms and in a manner specified by the corporation;

(iii) receive such awards for not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;

(iv) facilitate the submission of information from their employer

attesting to the recipient's job title, the full-time work status of the recipient, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and

(v) provide any other information necessary for the corporation to determine compliance with the program's requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-f of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's grade point average and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-f of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this capitalized amount shall continue to accrue and be calculated using simple interest until the amount is paid in full.

(5) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or take such other appropriate action.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the State Register at some future date. The emergency rule will expire June 26, 2018.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objectives and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship

Program” (Program). The objective of this Program is to incent New York’s highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master’s degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master’s degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master’s degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

- a. There are no application fees, processing fees, or other costs to the applicants of this Program.
- b. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.
- c. The maximum cost of the Program to the State is \$1.5 million in the first year, based upon budget estimates.
- d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.
- e. The source of the cost data in (c) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC’s outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a “no action” alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal undergraduate unsubsidized Stafford loan rate in the event that the award is converted to a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (“HESC”) Emer-

gency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master’s degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State’s small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master’s degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master’s degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

New York State Joint Commission on Public Ethics

NOTICE OF EMERGENCY

ADOPTION

AND REVISED RULE MAKING

NO HEARING(S) SCHEDULED

Financial Disclosure Statements

I.D. No. JPE-42-17-00003-ERP

Filing No. 292

Filing Date: 2018-04-02

Effective Date: 2018-04-02

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

Action Taken: Amendment of Parts 935, 936, 941 and 942 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c), (k), (i-1), (14), (17); Public Officers Law, section 73-a(8)(b-1), (b-2) and (c)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The regulations are being amended to add a right to appeal a determination on applications for exemptions from disclosing certain information in, or filing, annual statements of financial disclosure ("FDS") pursuant to Executive Law § 94(9) and Public Officers Law § 73-a. The next filing deadline is May 15, 2018 for filing FDS forms and applications for exemptions, and related notices are distributed to filers in April. To allow time for proper notice of filers' rights under the law, this emergency rule is necessary for the public welfare.

Subject: Financial Disclosure Statements.

Purpose: To add a right of appeal to provisions governing exemptions related to filing a financial disclosure statement.

Substance of emergency/revised rule (Full text is posted at the following State website: www.jcpe.ny.gov): Parts 935 and 942 are amended to provide that applications for exemption from filing a financial disclosure statement or from disclosing client information in a financial disclosure statement are decided in the initial instance by the Executive Director, and a denial by the Executive Director may be appealed to the Commission pursuant to the provisions in Part 941. Part 941 is amended to provide a procedure by which the Executive Director's denial of an application under Part 935 or 942 is appealed to the Commission. Part 936 is amended for a technical change, and includes no substantive amendments.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on October 18, 2017, I.D. No. JPE-42-17-00003-P. The emergency rule will expire June 30, 2018.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 935.2 and 935.3.

Text of rule and any required statements and analyses may be obtained from: Carol C. Quinn, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: carol.quinn@jcpe.ny.gov

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

Public comment will be received until: 30 days after publication of this notice.

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

A Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted with this Notice of Emergency Adoption and Revised Rulemaking because changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

State Commission on Judicial Conduct

NOTICE OF ADOPTION

Issuing of Subpoenas

I.D. No. JDC-02-18-00003-A

Filing No. 289

Filing Date: 2018-03-29

Effective Date: 2018-04-18

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

Action taken: Amendment of section 7000.6(e) of Title 22 NYCRR.

Statutory authority: Judiciary Law, section 42(5)

Subject: Issuing of subpoenas.

Purpose: To clarify that only the referee has subpoena issuing power in Commission hearings.

Text or summary was published in the January 10, 2018 issue of the Register, I.D. No. JDC-02-18-00003-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Marisa E. Harrison, Commission on Judicial Conduct, Corning Tower, Suite 2301, Empire State Plaza, Albany, New York 12223, (518) 453-4600, email: harrison@cjc.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, 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.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Company-Owned LED Street Lighting

I.D. No. PSC-16-18-00005-P

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

Proposed Action: The Commission is considering a proposal filed by New York State Electric & Gas Corporation to modify its electric tariff schedule, P.S.C. No. 121, to offer revised and additional Company-owned LED street lighting options for customers under SC No. 3.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Company-owned LED street lighting.

Purpose: To consider a tariff change proposing revised and additional Company-owned LED street lighting options.

Substance of proposed rule: The Public Service Commission (Commission) is considering a proposal filed by New York State Electric & Gas Corporation (NYSEG) on March 6, 2018, to modify its electric tariff schedule, P.S.C. No. 121. NYSEG proposes to offer revised and additional Company-owned Light Emitting Diode (LED) street lighting options for customer serviced under Service Classification (SC) No. 3 – Standard Street Lighting Service. NYSEG proposes to offer six LED wattage range options that meet the Company's standards, at color temperatures of 3,000 Kelvin and 4,000 Kelvin: 12 to 19 watts, 20-29 watts, 30-49 watts 50-69 watts, 70-90 watts, and 111-133 watts to replace the 50, 70, 100, 150, 175, 250 and 400-watt Cobra head luminaires that are currently offered. The proposed amendments have an effective date of April 23, 2018, but were subsequently postponed to July 17, 2018. The full text of the filing and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0141SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Company-Owned LED Street Lighting

I.D. No. PSC-16-18-00006-P

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

Proposed Action: The Commission is considering a proposal filed by Rochester Gas and Electric Corporation to modify its electric tariff sched-

ule, P.S.C. No. 18, to offer revised and additional Company-owned LED street lighting options for customers under SC No. 1.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Company-owned LED street lighting.

Purpose: To consider a tariff change proposing revised and additional Company-owned LED street lighting options.

Substance of proposed rule: The Public Service Commission (Commission) is considering a proposal filed by Rochester Gas and Electric Corporation (RG&E) on March 6, 2018, to modify its electric tariff schedule, P.S.C. No. 18. RG&E proposes to offer revised and additional Company-owned Light Emitting Diode (LED) street lighting options for customer serviced under Service Classification (SC) No. 1 – Street Lighting Service. RG&E proposes to offer six LED wattage range options that meet the Company’s standards, at color temperatures of 3,000 Kelvin and 4,000 Kelvin: 12 to 19 watts, 20-29 watts, 30-49 watts 50-69 watts, 70-90 watts, and 111-133 watts to replace the 50, 70, 100, 150, 175, 250 and 400-watt Cobra head luminaires that are currently offered. The proposed amendments have an effective date of April 23, 2018, but were subsequently postponed to July 17, 2018. The full text of the filing and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (18-E-0142SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Regulatory Treatment of Utilities Regarding Recent Changes in Federal Tax Law

I.D. No. PSC-16-18-00007-P

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

Proposed Action: The Commission is considering a Staff Proposal filed on March 29, 2018 on whether and how to incorporate into utility rates modifications necessary to reflect recent changes in federal tax law affecting the utilities.

Statutory authority: Public Service Law, sections 65(1), 66(1), (4), 79(1), (7), 89-b(1), 89-c(1), (3), 91(1), 94(2) and 95(2)

Subject: Regulatory treatment of utilities regarding recent changes in Federal tax law.

Purpose: To ensure just and reasonable utility rates.

Substance of proposed rule: The Commission is considering a Staff Proposal filed on March 29, 2018 by the Staff of the Department of Public Service (Staff) on whether and how to incorporate into utility rates modifications necessary to reflect recent changes in federal tax law affecting the utilities. Income and other federal taxes paid by utilities while providing utility service are generally treated as necessary expenses, the cost of which is recoverable in utility rates paid by customers. On December 22, 2017, the Tax Cuts and Jobs Act (Tax Act) was signed into law. The Tax Act makes significant changes to the federal tax structure, which will impact the tax liabilities of New York’s utilities. Large investor owned utilities will realize immediate reductions in federal income tax expenses through a change in the corporate tax rate from a graduated rate varying from 15% to 35%, to a flat 21% corporate tax rate for all levels of income beginning January 1, 2018. Some smaller utilities may experience tax expense increases as their income tax rate increases from 15% to 21%. Some utilities may realize additional tax expense reductions from the repeal of the corporate alternative minimum tax. Some utilities may experience

tax expense increases due to the elimination of bonus depreciation for utilities effective September 27, 2017, the enactment of new limitations on the treatment of net operating losses, and, for water utilities, implementation of taxation of contributions in aid of construction. On December 29, 2017, the Commission issued an Order commencing a proceeding to consider the Tax Act’s changes and its effects on utilities and ratepayers, and directed Staff, among other things, to file recommendations on accounting and ratemaking modifications that should be considered because of the Tax Act. The Staff Proposal includes recommendations that: (a) the utilities use deferred accounting, together with carrying charges on the accumulated balances, as an interim procedure to preserve the benefits of the Tax Act, until the net tax benefits and the ongoing effects of the tax law changes can be incorporated in each utility’s next rate filing to preserve the net benefits for customers and to allow for an orderly transition to appropriate rate adjustments;(b) the utilities that have not had an opportunity to incorporate the Tax Act changes in a recently approved rate plan, be required to file for a tariff rate change, specifically for the implementation of a sur-credit, to be effective October 1, 2018, to both incorporate the ongoing net tax benefits into utilities’ rates, and to begin to return the deferred regulatory liabilities, in a timely manner; (c) for any company that has a pending rate filing before the Commission as of October 1, 2018, the immediate and ongoing effects of the Tax Act changes be required to be incorporated into the pending case and the associated revenue requirement(s) such that implementation of a sur-credit to be effective October 1, 2018 would not be required, but a comprehensive resolution that addresses the net benefits resulting from the Tax Act would be addressed in the pending rate case; and (d) flexibility should be afforded when a utility credibly demonstrates that pass back of the full net benefits is not in the customer’s long term interest (e.g. the cost of a credit downgrade will have significant impact on future rates). The Staff Proposal also includes recommendations on a number of special considerations, including that: (a) telephone companies that have been effectively removed from rate of return regulation or have previously agreed to not request State Universal Service Fund (SUSF) support, or are not receiving SUSF support should be exempt; (b) telephone companies receiving SUSF support should have their level of SUSF support reduced effective October 1, 2018 to reflect the Tax Act changes and should be required to propose how they will reimburse the SUSF for the overpayment of SUSF support from January 1, 2018 to September 30, 2018, inclusive of carrying charges; and (c) Class C and D water companies and Class B, C and D gas companies should be exempted from the deferral accounting requirements but the ongoing effects of the Tax Act changes should be included in their future rate filings. The full text of the filing and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (17-M-0815SP1)

**Susquehanna River Basin
Commission**

INFORMATION NOTICE

Susquehanna River Basin Commission

General Policies

ACTION: Final rule.

SUMMARY: This document contains rules that amend the regulations of the Susquehanna River Basin Commission (Commission) to codify the Commission’s Access to Records Policy providing rules and procedures for the public to request and receive the Commission’s public records.

DATES: The rule is effective March 19, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General Counsel, 717-238-0423, ext. 1312; joyler@srbc.net. Also, for further information on the final rule, visit the Commission's website at <http://www.srbc.net>.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published in the Federal Register on October 12, 2017 (82 FR 47407); New York Register on October 25, 2017; Pennsylvania Bulletin on October 21, 2017; and Maryland Register on October 27, 2017. The Commission convened a public hearing on November 2, 2017, in Harrisburg, Pennsylvania. A written comment period was held open through November 13, 2017.

The Commission received one comment on the proposed rule, which was supportive of the Commission's efforts to formalize its Access to Records Policy. The Commission also received two comments after the close of the official public comment period suggesting some changes to rulemaking.

Based upon input from the Commission's member jurisdictions, subsection (b)(4) is amended and a new subsection (f) is added to create an exception to records subject to public access for those internal, pre-decisional deliberations between staff and member jurisdictions working in cooperation with the Commission. The Commission will also modify § 801.14(b)(1) to clarify that it does not prohibit the Commission from providing salary information in response to records requests, as the Commission has historically released these records upon request. Section 801.14(b)(8) is also modified to exclude the provision of financial documents related to critical infrastructure.

Based on public input the Commission clarifies the following:

- The Commission does intend to review and revisit its Access to Records Policy after adoption of the final rule to update its procedures.
- The final rule, § 801.14(c)(3), provides that the Commission must respond in a reasonable time frame. The Commission works with requesters and generally responds to records requests within 30 days of the request. The reasonable timeframe language allows the Commission to deal with requests varying in complexity and magnitude while continuing to balance prompt access to records with the agency's other obligations and limitations.

Through this final rule, the Commission continues its long tradition of transparency by formalizing the key elements of its Access to Records Policy in duly promulgated regulations. The Commission's 2009 Access to Records Policy, which remains in effect, can be found at: http://www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf. The Commission's current records processing fee schedule can be found at: <http://www.srbc.net/pubinfo/docs/RecordsProcessingFeeScheduleUpdatedAddress.pdf>.

List of Subjects in 18 CFR Part 801

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 801 as follows:

PART 801—GENERAL POLICIES

1. The authority citation for part 801 is revised to read as follows:

Authority: Secs. 3.1, 3.4, 3.5(1), 15.1 and 15.2, Pub. L. 91-575 (84 Stat. 1509 et seq.)

2. Add § 801.14 to read as follows:

§ 801.14 Public access to records.

(a) Purpose. The Commission, as an independent compact agency, is not subject to any of its member jurisdictions' laws regarding public access to records. Nevertheless, the Commission wishes to assure, to the maximum extent practicable, the availability of Commission records consistent with the Susquehanna River Basin Compact. The Commission shall maintain an "Access to Records Policy" that outlines the details and procedures related to public access to the Commission's records. Any revisions to this policy shall be consistent with this section and undertaken in accordance with appropriate public notice and comment consistent with requirements of 18 CFR 808.1(b).

(b) Scope. This section shall apply to all recorded information, regardless of whether the information exists in written or electronic format. There is a strong presumption that records shall be public, except where considerations of privacy, confidentiality, and security must be considered and require thoughtful balancing. The Commission shall identify types of records that are not subject to public access:

- (1) Personnel or employment records, excluding salary information;
- (2) Trade secrets, copyrighted material, or any other confidential business information;
- (3) Records exempted from disclosure by statute, regulation, court order, or recognized privilege;

(4) Records reflecting internal pre-decisional deliberations, including deliberations between the commission and representatives of member jurisdictions;

(5) Records reflecting employee medical information, evaluations, tests or other identifiable health information;

(6) Records reflecting employee personal information, such as social security number, driver's license number, personal financial information, home addresses, home or personal cellular numbers, confidential personal information, spouse names, marital status or dependent information;

(7) Investigatory or enforcement records that would interfere with active enforcement proceedings or individual due process rights, disclose the identity of public complainants or confidential sources or investigative techniques or endanger the life or safety of Commission personnel; or

(8) Records related to critical infrastructure, excluding financial records, emergency procedures, or facilities.

(c) Procedures. The Access to Records Policy will detail the necessary procedures for requesting records and processing records requests:

(1) Requests shall be in writing and shall be reasonably specific;

(2) The Commission shall identify an Access to Records Officer to handle requests;

(3) The Commission shall respond to a records request within a reasonable time and in consideration of available resources and the nature of the request;

(4) The Commission shall not be required to create a record that does not already exist, or to compile, maintain, format or organize a public record in a manner in which the Commission does not currently practice;

(5) A procedure shall be identified for electronic transfer, copying or otherwise providing records in a manner that maintains the integrity of the Commission's files; and

(6) A procedure shall be identified for handling review of requests that seek access to information that has been identified as confidential and for notifying the person(s) who submitted the confidential information that it is subject to a records request.

(d) Fees. The Commission shall adopt and maintain a "Records Processing Fee Schedule." The fees shall be calculated to reflect the actual costs to the Commission for processing records requests and may include the costs of reproducing records and the cost to search, prepare and/or redact records for extraordinary requests.

(e) Appeals. Any person aggrieved by a Commission action on a records request shall have 30 days to appeal a decision in accordance with 18 CFR 808.2.

(f) Disclosure to consultants, advisory committees, and State and local government officials and employees. Data and information otherwise exempt from public disclosure may be disclosed to Commission consultants, advisory committees, and state and local government officials and employees for use only in their work in cooperation with the Commission. Such persons are thereafter subject to the same restrictions with respect to the disclosure of such data and information as any other Commission employee.

Dated: March 13, 2018.

Stephanie L. Richardson,

Secretary to the Commission.