



Title 19 NYCRR Part 935

Procedure for requesting an exemption from requesting an exemption from filing a financial disclosure statement

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 935 PROCEDURE FOR REQUESTING AN EXEMPTION FROM FILING A FINANCIAL DISCLOSURE STATEMENT

Title 19 NYCRR Part 935 is amended to read as follows:

935.1 Definitions.

- (a) *Annual Compensation* shall mean that basic annual salary that an individual receives to perform the duties of the position in which he or she serves. Payment of overtime, a one-time bonus, a performance award that does not become part of the basic annual salary, a lump sum payment for whatever purpose including retroactive payment for a salary increase, uniform or clothing allowance, tuition reimbursement or payment or similar one-time payment that does not become part of the individual's basic annual salary shall not be included in determining Annual Compensation.
- (b) *Appointing Authority* shall mean that individual or body that has the authority by law, rule or regulation to appoint a person to a position, or that individual or body to whom such authority may be properly delegated by law, rule or regulation.
- (c) *Commission* shall mean the New York State Joint Commission on Public Ethics.

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- (d) *Employee* shall mean a State officer or employee of a State Agency, as defined in subdivision (h) of this Section, who serves in a position that has not been designated policymaking pursuant to section 73-a of the Public Officers Law and who earns Annual Compensation in excess of the Filing Rate.
- (e) *Exemption* shall mean a waiver from filing a Financial Disclosure Statement pursuant to section 73-a of the Public Officers Law.
- (f) *Filing Rate* shall mean the job rate of SG-24 as set forth in section 130 (1) (a) of the Civil Service Law as of April 1 of the year in which an annual Financial Disclosure Statement shall be filed.
- (g) *Financial Disclosure Statement* shall mean the annual statement that must be filed pursuant to section 73-a of the Public Officers Law.
- (h) *State Agency* shall mean any State department, or division, board, commission, or bureau of any State department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the Governor, or the State University of New York or the City University of New York, including all their constituent units except community colleges of the State University of New York and the independent institutions operating statutory or contract colleges on behalf of the State.
- (i) *Title* shall mean the name of the position or job in which an Employee serves.
- (j) *Job Classification* shall mean a series of Titles that may be included under one classification standard or may be part of a promotional series that may be considered for Exemption.
- (k) *Employee Organization* shall mean an employee organization that is recognized or certified pursuant to section 204 of the Civil Service Law to represent public employees of a public employer.

935.2 Procedure.

- (a) A person who is an Employee or becomes qualified as an Employee as defined in Section 935.1(d) prior to May 15 in any year shall file a Financial Disclosure Statement for the preceding year on or before May 15. Pursuant to Executive Law section 94(9)(k), the Commission permits such an Employee

to request an Exemption from this filing requirement in accordance with this Section. If requesting an Exemption, such Employee shall file the Exemption request with the Commission on or before May 15.

- (b) A person who qualifies as an Employee as defined in this Section 935.1(d) after May 15 of any year shall file the Financial Disclosure Statement for the preceding year within 30 days of commencing the qualifying employment. Pursuant to Executive Law section 94(9)(k), the Commission permits such an Employee to request an Exemption from this filing requirement in accordance with this Section. If requesting an Exemption, such Employee shall file the Exemption request with the Commission within 30 days of commencing the qualifying employment.
- (c) The Exemption request shall be in writing and sent to the Commission via mail, email or facsimile.
- (d) The Exemption request may be filed by the Employee individually, or by the Employee Organization or State Agency on behalf of persons who share the same Title or Job Classification.
- (e) Pending the initial determination by the Executive Director, as prescribed under Section 935.3 of this Title, any Employee who filed such request on an individual basis, or any person on behalf of which an Employee Organization or State Agency filed such request, is not required to file the Financial Disclosure Statement. If the Executive Director denies the individual Exemption request, the Employee who filed such request on an individual basis has 15 days from the receipt of the denial to file the Financial Disclosure Statement or appeal the determination to the Commission for reconsideration, in accordance with Part 941.17 of this Title. If the Executive Director denies the Title or Job Classification Exemption request, any person on behalf of which the Employee Organization or State Agency filed such request has 15 days from the receipt of the denial to file the Financial Disclosure Statement, or the authorized representative of the Employee Organization or State Agency that requested the Exemption has 15 days from the receipt of the denial to appeal the determination to the Commission for reconsideration, in accordance with Part 941.17 of this Title.
- (f) If the Employee or authorized representative of the Employee Organization or State Agency appeals the Executive Director's denial of the Exemption Request, such Employee who filed such request on an individual basis, or any person on behalf of which an Employee Organization or State Agency filed

such request, is not required to file the Financial Disclosure Statement until the Commission rules on the appeal, as described in Part 941 of this Title.

- (g) If, pursuant to Part 941.17 of this Title, the Commission upholds the decision of the Executive Director to deny the Exemption request, such Employee, or any such person on behalf of which an Employee Organization or State Agency filed such request, has 15 days from receipt of the Commission's determination to file the Financial Disclosure Statement with the Commission.

- (h) The request for Exemption shall include the following information:
 - (1) name and address of the Employee, if the request is on an individual basis, or the name of the Employee Organization filing or the name of State Agency filing and the address and name of the individual authorized to file on behalf of the Employee Organization or State Agency;

 - (2) the Title(s) of the position(s) or the Job Classification(s) and a list of each State Agency where such Title(s) or Job Classification(s) is located, if known

 - (3) a copy of the duties and specifications of the Title(s) or Job Classification(s) for which an Exemption is requested; and

 - (4) a statement to support the position of the filing individual or entity that the Title(s) or Job Classification(s) do not involve the duties that would otherwise preclude an Exemption from filing a Financial Disclosure Statement.

- (i) The request for Exemption must be signed by the individual requesting such Exemption or by the authorized representative of the Employee Organization or State Agency that is requesting such an Exemption on behalf of Title(s) or Job Classification(s).

- (j) (1) An individual who files a request for Exemption, must also file a copy of such request with his or her Appointing Authority and an Employee Organization that files a request for Exemption must also file a copy with all agencies where the Title(s) or Job Classification(s) are located.

- (2) The Appointing Authority, or any State Agency where the Title or Job Classification exists, within seven working days, may file a written objection to such a request with the Commission based solely on the grounds that the duties of the Title(s) or Job Classification(s) do not permit an Exemption to be granted. The objection shall also be filed with the individual or Employee Organization, as appropriate.
- (3) The individual or Employee Organization, as appropriate, may, within seven working days, file a written response to the objection of the Appointing Authority or State Agency with the Commission. The written response shall also be filed with the Appointing Authority.
- (4) Should no filing under paragraph (2) or (3) of this Subpart occur within the time limits provided, the Executive Director may act upon the request for Exemption based on the material available.
- (5) The Executive Director shall provide the Commission with information regarding the nature and number of Exemption applications received and disposition thereof.

935.3 Commission action.

- (a) All requests for Exemption shall be reviewed and decided in the initial instance by the Executive Director. A denial of a request for Exemption may be appealed to the Commission for reconsideration as described in Section 935.2.
- (b) Upon receipt of a request for an Exemption from filing a Financial Disclosure Statement, the Executive Director shall review the material filed to determine whether the duties of the Title(s) or Job Classification(s) include any of the duties that are set forth in section 94(k) of the Executive Law, without further inquiry. If no further information is required, the Executive Director shall render a decision on the request.
- (c) (1) Upon a determination that the Title(s) or Job Classification(s) do not include the duties that would otherwise exclude such an Exemption, the Executive Director shall, if he determines it is in the public interest, grant such Exemption on an individual, Title or Job Classification basis as requested, except as provided in paragraph (e)(3) of this subdivision.

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- (2) Upon a determination that the Title(s) or Job Classification(s) do include such duties, the Executive Director shall deny the request for an Exemption.
- (d) The Executive Director shall notify the requesting individual or the Employee Organization or State Agency, as appropriate, of its determination on a request for Exemption.
- (e) Once an Exemption has been granted to an individual, or to a Title or Titles, or to a Job Classification, an individual, as long as he or she serves in that Title or Job Classification, will not be required to submit a Financial Disclosure Statement in any subsequent year for which one would otherwise be required unless:
- (1) the individual is appointed or promoted to a new Title or Job Classification in which such a filing is required; or
 - (2) the duties of the Title or Job Classification change to include duties that would preclude an Exemption from filing a Financial Disclosure Statement; or
 - (3) the individual serves in a position that is designated as policymaking by his or her Appointing Authority; or
 - (4) the Executive Director, upon review of the determination to grant such exception, determines the Exemption is no longer appropriate under the law or this rule and regulation; however, only the Commission may revoke an Exemption previously granted pursuant to an appeal under Part 941 of this Title.