

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

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

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. [STATE ETHICS COMMISSION] COMMISSION ON PUBLIC
INTEGRITY

PART 935

PROCEDURE FOR REQUESTING AN EXEMPTION FROM FILING A FINANCIAL
DISCLOSURE STATEMENT

935.1 Definitions.

(a) *Annual compensation* shall mean that basic annual salary [which] 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 [which] 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 [which] 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 [which] 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 [State Ethics Commission] New York State Commission on Public Integrity.

(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 [which] 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 [paragraph a of subdivision one of section one hundred thirty] section 130 (1) (a) of the Civil Service Law as of April [first] 1st of the year in which an annual statement of financial disclosure shall be filed.

(g) *Financial disclosure* statement shall mean [that] the annual statement [which] that must be filed pursuant to section 73-a of the Public Officers Law.

(h) *State agency* shall mean any [S]state department, or division, board, commission, or bureau of any [S]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 [S]state.

[(i) *Filing* shall mean personal delivery to the offices of the commission for which the individual shall obtain a receipt, or service by certified mail, return receipt requested, postmarked by April 1st of the year for which the request for exemption is made. The date of postmark where service is by certified mail shall be determinative of the date of filing.]

[(j) *Title* shall mean the name of the position or job in which an employee serves.

[(k) *Job classification* shall mean a series of titles [which] that may be included under one classification standard or may be part of a promotional series [which] that may be considered for exemption.

[(l) *Employee organization* shall mean an employee organization [which] 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) Each employee, individually, or employee organization or State agency, on behalf of persons who share the same job title or job classification, requesting an exemption from filing a financial disclosure statement, shall file such request with the commission by or before March 31st for statements due on or before May 15th. An employee who commences service or employment or whose job title changes on or after April 1st who wishes to seek an individual exemption may file such request with the commission within 30 days of commencing service or employment or changing job title. Such filing shall delay the employee's requirement to file a financial disclosure statement until the commission has acted on the request. In the event the commission denies the request, the employee shall have 15 days from receipt of the denial decision to file the financial disclosure statement.]

(a) A person who, prior to April 15 of each year, qualifies as an employee as defined in Subpart 935.1(d) shall file an exemption request from filing a financial disclosure statement on or before May 1. The request may be filed by the employee individually, or by the employee organization or State agency on behalf of persons who share the same

job title or classification. Pending the Commission's determination of a request for exemption, an individual serving in a title or job classification for which an exemption has been requested or an individual who has requested an exemption on his or her own behalf shall be required to file a financial disclosure statement on or before May 15 of each year in which such a statement is required.

(b) A person who, after April 15 of each year, qualifies as an employee as defined in this Subpart 935.1(d) shall, within 30 days of qualifying as an employee, either file the financial disclosure statement, or file the exemption request. Pending the Commission's determination of an exemption request, such employee is not required to file the financial disclosure statement. If the Commission denies the exemption request, such employee has 20 days from receipt of the denial to file the financial disclosure statement with the Commission.

([b]c) 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 positions 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 [which] that would otherwise preclude an exemption from filing a financial disclosure statement.

([c]d) 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 [which] that is requesting such an exemption on behalf of title(s) or job classification(s).

([d]e) (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 [which] 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 job title or classification exists, within seven working days, may file a written objection to such a request with the [c]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 [c]Commission. The written response shall also be filed with the appointing authority.

(4) Should no filing under paragraph (2) or (3) of this section occur within the time limits provided, the [c]Commission may act upon the request for exemption based on the material available to it.

935.3 Commission action.

(a) Upon receipt of a request for an exemption from filing a financial disclosure statement, the [c]Commission shall review the material filed to determine whether the duties of the title(s) or job classification(s) include any of the duties [which] that are set forth in section 94(k) of the Executive Law, without further inquiry. If no further information is required, the [c]Commission shall render its decision on the request before it.

[(b) If the [c]Commission determines that additional information concerning the content of the duties of a title or job classification is necessary before a determination on an exemption can be made, it may forward the duties description and/or the job title(s) or job classification(s) for which a request for exemption has been filed to the Director of Classification and Compensation for positions in the service of the State of New York or to the authorized individual for other State agencies who is responsible to classify and allocate positions for those State agencies, for a determination of the content of such title(s) or job classification(s).]

[(c) The Director of Classification and Compensation for the State of New York or the authorized individual for other State agencies shall review the duties of the title(s) or job classification(s) referred by the commission and shall provide information to the commission as to whether the duties of the title(s) or job classification(s) for which an exemption is requested include any of the duties which are set forth in §94(9)(k) of the Executive Law.]

[(d)] (b) (1) Upon a determination that the title(s) or job classification(s) do not include the duties [which] that would otherwise exclude such an exemption, the commission shall, if it 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 (3) of this subdivision.

(2) Upon a determination that the title(s) or job classification(s) do include such duties, the [c]Commission shall deny the request for an exemption [except as provided in paragraph (3) of this subdivision].

[(3) Where the commission determines that it is in the public interest to require that an individual file a financial disclosure statement even though the duties may not exclude an exemption, or where the commission determines that the duties of a position require the filing of a disclosure statement and the requirement to file the disclosure statement as set forth in section 73-a of the Public Officers Law may not be in the public interest, the commission may require the individual(s) who serve in such title(s) or job classification(s) to file a short form financial disclosure statement, which shall contain only that information from the financial disclosure statement required by section 73-a which the commission determines is appropriate and necessary for that title or job classification.]

[(e)] (c) The [c] Commission shall notify the requesting individual or the employee organization or State agency, as appropriate, of its determination on a request for exemption.

[(f) Pending a determination of a request for exemption, an individual serving in a title or job classification for which an exemption has been requested or an individual who has requested an exemption on his or her own behalf shall be required to submit a financial disclosure statement with the commission on or before May 15th of each year in which such a statement is required. The party requesting the exemption may, under compelling circumstances, apply to the commission for an extension to submit a financial disclosure statement until the exemption request is acted upon by the commission. Only in special circumstances as determined by the commission will an extension for submission of a disclosure statement because of a pending exemption request be granted.]

[(g)] (d) Once an exemption has been granted to an individual or to a title or titles or 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 [which] that would preclude an exemption from filing a financial disclosure statement; or

(3) the individual serves in a position [which] that is designated as policymaking by his or her appointing authority; or

(4) the [c] Commission, upon review of its determination to grant such exception, determines the exemption is no longer appropriate under the law or this rule and regulation.