

The proposed rulemaking satisfies the Commission's statutory obligation, pursuant to Public Officers Law section 87(1)(b), to promulgate regulations pertaining to the availability of records and procedures to be followed, including, but not limited to how the public can request records and the location and hours in which records can be reviewed. Additionally, the proposed rulemaking explains that the Commission will designate a records access officer, the process for such to respond to requests for records, as well as the process for appealing the denial of access to records, and any applicable fee associated with producing records requested.

Current Part 937 is repealed and replaced with new part 937 titled Publicly Available Information and Documents and Records Access Requests. This proposed rulemaking sets forth the Commission's procedures for requesting records and the availability of other information and documents. This regulation became effective on an emergency basis on March 28, 2023 and was published as a Notice of Emergency Adoption and Proposed Rulemaking in the State Register on April 12, 2023 with the public comment period ending June, 11, 2023.

Pursuant to the authority vested in the Commission on Ethics and Lobbying in Government by Executive Law § 94 and article six of the Public Officers Law, Part 937 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and replaced, to be effective upon filing as an Emergency Adoption and upon publication of a Notice of Adoption in the New York State Register to read as follows:

Part 937 is repealed and replaced to read as follows:

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

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

PART 937.

PUBLICLY AVAILABLE INFORMATION AND DOCUMENTS AND RECORDS ACCESS
REQUESTS.

Section 937.1 Purpose and Scope

Section 937.2 Information and Documents Publicly Available

Section 947.3 Records Access

Section 937.4 Designation of Records Access Officer

Section 937.5 Location and Hours for Public Inspection of Records

Section 937.6 Requests for Public Access to Records

Section 937.7 Subject Matter List

Section 937.8 Denial of Access to Records

Section 937.9 Fees

Section 937.10 Public Notice

Section 937.11 Severability

Section 937.1 Purpose and Scope

This Part contains information concerning the information, documents and records that are made publicly available by the Commission on Ethics and Lobbying in Government (the “Commission”) and sets forth the procedures by which such records and information may be obtained from the Commission pursuant to Executive Law §94 and article six of Public Officers Law, known as the Freedom of Information Law.

937.2 Information and Documents Publicly Available

(a) Pursuant to Executive Law section 94(13)(b), the following documents of the Commission are available on the Commission’s website:

- (1) The information set forth in annual statements of financial disclosure filed by statewide elected officials and members of the State legislature pursuant to Public Officers Law §73-a, except information that has been deleted pursuant to Executive Law § 94(9)(h);
- (2) Notices of Delinquency issued pursuant to Executive Law § 94(9);

(3) Notices of Civil Assessments imposed pursuant to Executive Law § 94, which include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the Commission, and any sanction imposed;

(4) The terms of any Settlement Agreement or compromise of a complaint or referral that includes a fine, penalty, or other remedy;

(5) Those documents required to be held or maintained publicly available pursuant to article one-A of the Legislative Law; and

(6) Non-confidential reports issued by the Commission pursuant to Executive Law § 94.

(b) In addition to the documents available pursuant to subdivision (a) of this section, the following additional information related to annual statements of financial disclosure is available upon request:

(1) With respect to a particular annual statement of financial disclosure:

(i) The date of submission;

(ii) Whether deletions have been made to the filing pursuant to Executive Law § 94(9)(h);

(a) This will not include information that is routinely redacted from all annual statements of financial disclosure by the Commission as a matter of course such as addresses of primary residence, names of minor children, email addresses, and account numbers.

(iii) If a particular filing is unavailable, the status of that filing, *i.e.*, whether it is pending, overdue, or unavailable for some other reason such as an extension of time to file, an exemption from filing, or a pending application for deletion or

exemption pursuant to Executive Law § 94(9).

(2) With respect to a particular individual, whether such individual is required to file an annual statement of financial disclosure, including:

(i) Whether the individual has been designated a Policy Maker or meets the filing rate pursuant to Public Officers Law § 73-a.

(a) This shall include the date that the reporting individual's appointing authority amended the written instrument required under Public Officers Law § 73-a(1)(c)(ii) to include the individual as a required filer.

(ii) Whether such individual has sought or received an exemption from filing pursuant to Executive Law § 94(9)(k).

NB: responses to subparagraphs (i) and (ii) of paragraph (2) may vary depending on the filing year in question.

(3) For a specific state agency (as defined by subsection 1(b) of Public Officers Law § 73-a), a list of individuals who are required to submit an annual statement of financial disclosure and whether each individual has been designated as a Policy Maker by their appointing authority.

(4) A list of job titles and employment classifications that have been exempted from the requirement to file an annual statement of financial disclosure pursuant to Executive Law § 94(9)(k).

(c) In addition to the documents enumerated in subdivision (a) of this section, the Commission shall make available, pursuant to a request for information and/or request for records in accordance with this Part, the name, public office address, title and salary of all Commission staff.

(d) Requests for information, documents and/or records pursuant to this section shall be recorded in a Record Access Request Log, which shall include the date of the request, the identity of the individual or entity that made such request, the identity of the Commission staff recording the request, and identify the record or records requested and provided. The Record Access Request Log shall be made available upon a request for information and/or access to records in accordance with this Part.

Section 937.3 Records Access

(a) In addition to documents and information referenced in section 937.2 of this Part, other records, as defined in Public Officers Law § 86(4), may be made available for public inspection pursuant to article six of the Public Officers Law, subject to the exemptions and exceptions therein.

(b) Pursuant to Public Officers Law § 87(2), records and/or information made confidential or otherwise exempted or excepted from disclosure pursuant to Executive Law §§ 94(6)(d), (7)(b), 94(9)(f), 94(9)(g), 94(9)(j), 94(10)(m) and 94(11)(b) shall not be available for public inspection.

Section 937.4 Designation of Records Access Officer

(a) The Commission shall designate an individual to be the Commission's records access officer.

(b) The records access officer shall within five business days of receipt of a request:

- (1) approve the request and authorize inspection and copying of the record and certification of correctness of such copy; or
- (2) deny the request and state the reason therefor; or

(3) if requested records are maintained on the internet, inform the requester that the records are accessible via the internet and in printed form either on paper or other information storage medium; or

(4) if the request does not clearly identify the records sought, seek additional information from the requester; or

(5) acknowledge receipt of the request and provide a statement of the approximate date when the request will be granted or denied in whole or in part.

(c) If receipt of the request was acknowledged by the records access officer in writing with a stated date by which the request would be granted or denied in whole or in part, but circumstances prevent the records access officer from doing so on or before the stated date, the records access officer shall, on or before such stated date, provide a written statement specifying the reason for the delay and provide a further date, within a reasonable period under the circumstances of the request, by which the request will be granted or denied in whole or in part.

(d) The records access officer shall, in authorizing issuance of copies of records, direct such omissions or redactions as may be required to protect the personal privacy of individuals in accordance with the requirements of the Freedom of Information Law, or any other applicable law, or regulation, including the provisions of section 94 of the Executive Law and of this Part.

Section 937.5 Location and Hours for Public Inspection of Records

(a) Records shall be available for public inspection and copying at:

The Commission on Ethics and Lobbying in Government

540 Broadway

Albany, NY 12207

(b) Requests for public access to records shall be accepted and records produced at the location specified in this section on days that the Commission is regularly open for business between the hours of 9:00 am and 4:00 pm.

(c) Requesters reviewing records onsite shall create a list, for the Commission to retain, of any records the requester copies, including photographs taken on a personal device.

Section 937.6 Requests for Public Access to Records

A requester shall submit a request for records by completing the Records Request Form on the Commission's website or by other writing. A request shall reasonably describe the information or record sought. Oral requests for records will not be accepted.

Section 937.7 Subject Matter List

The Commission shall develop a record finding list in conformity with the requirements of the Freedom of Information Law.

Section 937.8 Denial of Access to Records

(a) A denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the Executive Director of the Commission or their designee.

(1) The Executive Director or their designee shall determine appeals regarding denial of access to records under the Freedom of Information Law. The request for an appeal shall be sent to:

The Commission on Ethics in Lobbying in Government

540 Broadway

Albany, NY 12207

(2) Any person denied access to records may appeal, in writing, within thirty days of a denial.

(3) The written appeal shall include:

(i) the date of request for records;

(ii) a description, to the extent possible, of the records that were denied; and

(iii) the name and return address of the person denied access.

(4) The time for deciding an appeal shall commence upon receipt of a written appeal.

(5) Copies of all appeals shall be transmitted to the Committee on Open Government upon receipt.

(6) The appellant and the Committee on Open Government shall be informed in writing of the determination of the appeal within ten business days of receipt of such appeal.

Section 937.9 Fees

(a) No photocopy charge will be made for the first five pages not larger than 9 inches by 14 inches. No charge will be made to certify a record or to certify a denial of a request for a record and the reason therefor.

(b) A charge will be made of 25 cents per page of photocopy of pages not larger than 9 inches by 14 inches apart from the aforementioned five pages furnished without charge.

(c) Charges for materials or services not specified by statute or regulation shall be based on the actual cost thereof to the department.

(d) Payment for information services should be made by check or money order payable to “New York State Commission on Ethics and Lobbying in Government.”

(e) Where it is anticipated that the fees chargeable for records on a single request will amount to more than \$25 and the requester has not indicated in advance their willingness to pay fees in such amount, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notice shall offer to the requester an opportunity to confer with Commission personnel in order to revise the request if they so desire.

(f) The Commission may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.

(g) Upon affirmation of financial hardship, the Commission may waive an otherwise imposed fee in whole or in part when making copies of records available.

Section 937. 10 Public Notice

The Commission’s website shall contain the contact information for the records access officer, the procedure for appeal of a records request, and the location where records can be viewed.

Section 937.11 Severability

If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair

the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

³ The “Combined Sewer Overflow Long Term Control Plan for Citywide/Open Waters” (September 2020) is still under review and has not been approved by the Department. The waters covered by this LTCP were not included in the cost calculations because they were not impacted by the proposed regulatory updates (Class SD waters), or current projections show present or future attainment of the proposed WQS.

Commission on Ethics and Lobbying in Government

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Publicly Available Information and Documents and Records Access Requests

I.D. No. ELG-15-23-00007-EP

Filing No. 259

Filing Date: 2023-03-28

Effective Date: 2023-03-28

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

Proposed Action: Repeal of Part 937; and addition of new Part 937 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(5)(a); Public Officers Law, section 87(1)(b)

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

Specific reasons underlying the finding of necessity: The current version of Part 937 was promulgated by the Commission’s predecessor agency and it currently contains outdated and superseded information, including reference to the predecessor agency and records that were available from that agency. The formal rulemaking process would result in a continued period of time during which Part 937 would provide the public with outdated and superseded information. Therefore, the emergency rule is necessary for the general welfare in order to provide clarity regarding the process for the public to request and gain access to records and documents of the Commission and thereby promote transparency in government.

Subject: Publicly available information and documents and records access requests.

Purpose: Provides clarity and guidance on the process for requesting and accessing information, documents and records of the Commission.

Text of emergency/proposed rule: Part 937 is repealed and replaced to read as follows:

PART 937.

PUBLICLY AVAILABLE INFORMATION AND DOCUMENTS AND RECORDS ACCESS REQUESTS.

Section 937.1 Purpose and Scope

This Part contains information concerning the information, documents and records that are made publicly available by the Commission on Ethics and Lobbying in Government (the “Commission”) and sets forth the procedures by which such records and information may be obtained from the Commission pursuant to Executive Law § 94 and article six of Public Officers Law, known as the Freedom of Information Law.

937.2 Information and Documents Publicly Available

(a) Pursuant to Executive Law section 94(13)(b), the following documents of the Commission are available on the Commission’s website:

(1) The information set forth in annual statements of financial disclosure filed by statewide elected officials and members of the State legislature pursuant to Public Officers Law § 73-a, except information that has been deleted pursuant to Executive Law § 94(9)(h);

(2) Notices of Delinquency issued pursuant to Executive Law § 94(9);

(3) Notices of Civil Assessments imposed pursuant to Executive Law § 94, which include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the Commission, and any sanction imposed;

(4) The terms of any Settlement Agreement or compromise of a complaint or referral that includes a fine, penalty, or other remedy;

(5) Those documents required to be held or maintained publicly available pursuant to article one-A of the Legislative Law; and

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(b) In addition to the documents available pursuant to subdivision (a) of this section, the following additional information related to annual statements of financial disclosure is available upon request:

(1) With respect to a particular annual statement of financial disclosure:

(i) The date of submission;

(ii) Whether deletions have been made to the filing pursuant to Executive Law § 94(9)(h);

(a) This will not include information that is routinely redacted from all annual statements of financial disclosure by the Commission as a matter of course such as addresses of primary residence, names of minor children, email addresses, and account numbers.

(iii) If a particular filing is unavailable, the status of that filing, i.e., whether it is pending, overdue, or unavailable for some other reason such as an extension of time to file, an exemption from filing, or a pending application for deletion or exemption pursuant to Executive Law § 94(9).

(2) With respect to a particular individual, whether such individual is required to file an annual statement of financial disclosure, including:

(i) Whether the individual has been designated a Policy Maker or meets the filing rate pursuant to Public Officers Law § 73-a.

(a) This shall include the date that the reporting individual’s appointing authority amended the written instrument required under Public Officers Law § 73-a(1)(c)(ii) to include the individual as a required filer.

(ii) Whether such individual has sought or received an exemption from filing pursuant to Executive Law § 94(9)(k).

NB: responses to subparagraphs (i) and (ii) of paragraph (2) may vary depending on the filing year in question.

(3) For a specific state agency (as defined by subsection 1(b) of Public Officers Law § 73-a), a list of individuals who are required to submit an annual statement of financial disclosure and whether each individual has been designated as a Policy Maker by their appointing authority.

(4) A list of job titles and employment classifications that have been exempted from the requirement to file an annual statement of financial disclosure pursuant to Executive Law § 94(9)(k).

(c) In addition to the documents enumerated in subdivision (a) of this section, the Commission shall make available, pursuant to a request for information and/or request for records in accordance with this Part, the name, public office address, title and salary of all Commission staff.

(d) Requests for information, documents and/or records pursuant to this section shall be recorded in a Record Access Request Log, which shall include the date of the request, the identity of the individual or entity that made such request, the identity of the Commission staff recording the request, and identify the record or records requested and provided. The Record Access Request Log shall be made available upon a request for information and/or access to records in accordance with this Part.

Section 937.3 Records Access

(a) In addition to documents and information referenced in section 937.2 of this Part, other records, as defined in Public Officers Law § 86(4), may be made available for public inspection pursuant to article six of the Public Officers Law, subject to the exemptions and exceptions therein.

(b) Pursuant to Public Officers Law § 87(2), records and/or information made confidential or otherwise exempted or excepted from disclosure pursuant to Executive Law §§ 94(6)(d), (7)(b), 94(9)(f), 94(9)(g), 94(9)(j), 94(10)(m) and 94(11)(b) shall not be available for public inspection.

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(1) approve the request and authorize inspection and copying of the record and certification of correctness of such copy; or

(2) deny the request and state the reason therefor; or

(3) if requested records are maintained on the internet, inform the requester that the records are accessible via the internet and in printed form either on paper or other information storage medium; or

(4) if the request does not clearly identify the records sought, seek additional information from the requester; or

(5) acknowledge receipt of the request and provide a statement of the approximate date when the request will be granted or denied in whole or in part.

(c) If receipt of the request was acknowledged by the records access officer in writing with a stated date by which the request would be granted or denied in whole or in part, but circumstances prevent the records access officer from doing so on or before the stated date, the records access officer shall, on or before such stated date, provide a written statement specifying the reason for the delay and provide a further date, within a reasonable period under the circumstances of the request, by which the request will be granted or denied in whole or in part.

(d) The records access officer shall, in authorizing issuance of copies of records, direct such omissions or redactions as may be required to protect the personal privacy of individuals in accordance with the requirements of the Freedom of Information Law, or any other applicable law, or regulation, including the provisions of section 94 of the Executive Law and of this Part.

Section 937.5 Location and Hours for Public Inspection of Records

(a) Records shall be available for public inspection and copying at:

The Commission on Ethics and Lobbying in Government

540 Broadway

Albany, NY 12207

(b) Requests for public access to records shall be accepted and records produced at the location specified in this section on days that the Commission is regularly open for business between the hours of 9:00 a.m. and 4:00 p.m.

(c) Requesters reviewing records onsite shall create a list, for the Commission to retain, of any records the requester copies, including photographs taken on a personal device.

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(1) The Executive Director or their designee shall determine appeals regarding denial of access to records under the Freedom of Information Law. The request for an appeal shall be sent to:

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Albany, NY 12207

(2) Any person denied access to records may appeal, in writing, within thirty days of a denial.

(3) The written appeal shall include:

(i) the date of request for records;

(ii) a description, to the extent possible, of the records that were denied; and

(iii) the name and return address of the person denied access.

(4) The time for deciding an appeal shall commence upon receipt of a written appeal.

(5) Copies of all appeals shall be transmitted to the Committee on Open Government upon receipt.

(6) The appellant and the Committee on Open Government shall be informed in writing of the determination of the appeal within ten business days of receipt of such appeal.

Section 937.9 Fees

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(b) A charge will be made of 25 cents per page of photocopy of pages not larger than 9 inches by 14 inches apart from the aforementioned five pages furnished without charge.

(c) Charges for materials or services not specified by statute or regulation shall be based on the actual cost thereof to the department.

(d) Payment for information services should be made by check or money order payable to "New York State Commission on Ethics and Lobbying in Government."

(e) Where it is anticipated that the fees chargeable for records on a single request will amount to more than \$25 and the requester has not indicated in advance their willingness to pay fees in such amount, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notice shall offer to the requester an opportunity to confer with Commission personnel in order to revise the request if they so desire.

(f) The Commission may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.

(g) Upon affirmation of financial hardship, the Commission may waive an otherwise imposed fee in whole or in part when making copies of records available.

Section 937.10 Public Notice

The Commission's website shall contain the contact information for the records access officer, the procedure for appeal of a records request, and the location where records can be viewed.

Section 937.11 Severability

If any provision of these regulations or the application thereof to any

person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

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 25, 2023.

Text of rule and any required statements and analyses may be obtained from: Megan Mutolo, Commission on Ethics and Lobbying in Government, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: megan.mutolo@ethics.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.

Regulatory Impact Statement

1. Statutory Authority: Section 94(5)(a) of the Executive Law authorizes the Commission on Ethics and Lobbying in Government ("Commission") to adopt, amend, and rescind regulations pertaining to, inter alia, "any procedures of the commission." Additionally, section 87(1)(b) of the Public Officers Law requires each agency to promulgate rules and regulations in conformance with Article 6 of the Public Officers Law.

2. Legislative Objectives: This regulation provides clarity and guidance on the process for requesting and accessing information, documents and records of the Commission.

3. Needs and Benefits: The proposed rulemaking satisfies the Commission's statutory obligation, pursuant to Public Officers Law section 87(1)(b), to promulgate regulations pertaining to the availability of records and procedures to be followed, including, but not limited to how the public can request records and the location and hours in which records can be reviewed. Additionally, the proposed rulemaking explains that the Commission will designate a records access officer, the process for such to respond to requests for records, as well as the process for appealing the denial of access to records, and any applicable fee associated with producing records requested.

4. Costs:

a. Costs to regulated parties for implementation and compliance: Minimal.

b. Costs to the agency, State and local governments for the implementation and continuation of the rule: No costs to such entities.

c. Cost information is based on the fact that the cost to reproduce electronic records is usually de minimis and article 6 of the Public Officers Law provides for shifting much of the cost of reproduction of records to the party seeking the records.

Cost information is based on the fact that this rule implements the requirements set forth in Section 94 of the Executive Law and Article 6 of the Public Officers Law.

5. Local Government Mandates: The proposed regulation does not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal.

7. Duplication: This regulation does not duplicate any existing federal, state, or local regulations.

8. Alternatives: This regulation duplicates some provisions of the Committee on Open Government's model Freedom of Information Law (FOIL) rules, but the proposed rulemaking expands upon the types of information and documents that will be available upon request outside of the FOIL process to increase transparency and access of such records to the public.

9. Federal Standards: This regulation pertains to requirements that specifically relate to record access at the Commission. This regulation does not exceed any minimum standards of the federal government with regard to a similar subject area.

10. Compliance Schedule: Compliance shall take effect upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Proposed Rulemaking because the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, recordkeeping, or other affirmative acts on the part of these entities for compliance purposes. The Commission on Ethics and Lobbying in Government makes this finding based on the fact that the rule implements current law and, therefore, imposes no new requirements on such entities.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Proposed Rulemaking because the proposed rulemaking will not impose any adverse economic impact on rural areas, nor will it require or impose

any reporting, recordkeeping, or other affirmative acts on the part of rural areas. The Commission on Ethics and Lobbying in Government makes this finding based on the fact that the rule implements current law and, therefore, imposes no new requirements on such entities. Rural areas are not affected.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Proposed Rulemaking because the proposed rulemaking will have limited, if any, impact on jobs or employment opportunities. This regulation implements current law and, therefore, imposes no new requirements. This regulation does not relate to job or employment opportunities.

NOTICE OF ADOPTION

Ethics Training for Lobbyists and Clients

I.D. No. ELG-01-23-00006-A

Filing No. 257

Filing Date: 2023-03-27

Effective Date: 2023-04-12

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

Action taken: Amendment of Part 943 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 94(1), (5)(a), (8)(d); Legislative Law, art. 1-a, section (1-d)(a) and (h)

Subject: Ethics training for lobbyists and clients.

Purpose: To establish requirements related to ethics training for lobbyists and clients mandated by law.

Text of final rule: CHAPTER XX. [JOINT COMMISSION ON PUBLIC ETHICS] COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

PART 943 LOBBYING

Subdivision (b) of section 943.5 is amended to read as follows:

(b) Online Ethics Training for Lobbyists and Clients

(1) All [Individual] Lobbyists (*Principal Lobbyists and Individual Lobbyists*) and all Clients (*Contractual Clients and Beneficial Clients*) listed on a Statement of Registration commencing with the biennial period 2023-2024 and thereafter, must complete [an] the online ethics training for Lobbyists and Clients, as provided by the Commission[.].

(i) For organizations that engage in lobbying activity as either a Lobbyist or Client, the organization's Chief Administrative Officer is responsible for completing the training on behalf of the organization.

(2) Such training must be completed [by an Individual Lobbyist] once every three years, as follows:

(i) Complete the training within 60 days of the submission of the initial Statement of [r]Registration commencing with the 2023-2024 biennial period;

(ii) Complete the training again within three years of the date the Lobbyist or Client first or subsequently completed the training, if such Lobbyist or Client is still listed on an active Statement of Registration [registered to lobby] at such time; and/or

(iii) If there is a lapse in a Lobbyist[']s or Client being listed on an active Statement of [r]Registration, such Lobbyist or Client must complete the training again within 60 days of either being listed on a Statement of [re-r]Registration [to lobby] or three years from the date such Lobbyist or Client last completed such training, whichever is later.

(iv) The 60-day period for completing training will be measured from the earliest submission date listing a Lobbyist or Client on a Statement of Registration, commencing with the 2023-2024 biennial period and thereafter.

(3) Lobbyists and Clients (including the Chief Administrative Officers of organizations engaged in lobbying activity as a Lobbyist or Client, as applicable) must enter training compliance information into the Commission's online lobbying application, as directed by the Commission.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 943.5(b)(3).

Text of rule and any required statements and analyses may be obtained from: Megan Mutolo, Commission on Ethics and Lobbying in Government, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: ethics.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 2026, which is no later than the 3rd year after the year in which this rule is being adopted.

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement (RIS) is not submitted with this Notice of Adoption because the non-substantive changes did not necessitate a revision to the previously published RIS.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis (RFA) for Small Businesses and Local Governments is not submitted with this Notice of Adoption because the non-substantive changes did not necessitate a revision to the previously published RFA.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis (RAFA) is not submitted with this Notice of Adoption because the non-substantive changes did not necessitate a revision to the previously published RAFA.

Revised Job Impact Statement

A revised Job Impact Statement (JIS) is not submitted with this Notice of Adoption because the non-substantive changes did not necessitate a revision to the previously published JIS.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Registration of Pharmacy Benefit Managers

I.D. No. DFS-15-23-00001-E

Filing No. 256

Filing Date: 2023-03-27

Effective Date: 2023-03-27

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

Action taken: Amendment of Part 451 (Regulation 221) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, 302, 306; Insurance Law, sections 301, 316; Public Health Law, section 280-a

Finding of necessity for emergency rule: Preservation of public health and general welfare.

Specific reasons underlying the finding of necessity: The New York Legislature passed chapter 828 of the Laws of 2021 on December 31, 2021, requiring the New York State Department of Financial Services ("Department") to regulate pharmacy benefit managers ("PBMs") operating in New York, including requiring PBMs to have certain duties, accountability, and transparency obligations to New York health plans. The legislation was subsequently amended by chapter 128 of the Laws of 2022, which went into effect on February 24, 2022.

Specifically, the legislation amended Public Health Law section 280-a(2) to require PBMs to disclose and report certain information to health plans related to the pharmacy benefit management services they provide to their health plans, and to provide an accounting of all funds received by the PBM for pharmacy benefit management services attributable to the health plan. Authorized by Public Health Law section 280-a, the Superintendent of Financial Services ("Superintendent"), in consultation with the Commissioner of Health, promulgated 11 NYCRR Part 451 (Insurance Regulation 221), which implements provisions defining, limiting, and relating to the duties, obligations, requirements, and other matters relating to PBMs contained in Public Health Law section 280-a.

Given the impending expiration of the moratorium imposed by 11 NYCRR 451 (Insurance Regulation 221) on the duties, obligations, and requirements of PBMs, and the need for additional guidance and regulations with respect to the PBM reporting provisions set forth in Public Health Law Section 280-a(2), this emergency amendment is necessary to maintain the status quo and provide certainty to the industry until fully promulgated regulations are effectuated so that PBMs subject to the statutory requirements have clear guidance and detailed instructions on the application of, and how to comply with, those Public Health Law section 280-a requirements.

This amendment is necessary to ensure that there is no disruption in the management or administration of prescription drug benefits by PBMs for New York health plans, which management or administration is integral to the public health, safety, and general welfare of the New York health plan beneficiaries. In the absence of this amendment, New York health plan beneficiaries could be prevented from accessing necessary prescription