

The Notice of Revised Rulemaking and Emergency Adoption amends 19 NYCRR Part 941 to conform the regulations governing the investigative and enforcement adjudicatory process to the new Section 94 of the Executive Law, as established by the Ethics Commission Reform Act of 2022. Revisions were made to this proposed regulation during the Commission meeting held on April 25, 2023, which required an additional Revised Rulemaking. This revised rulemaking became effective on an emergency basis on April 25, 2023 and was published in the State Register as a Notice of Revised Rulemaking/Emergency Adoption on May 10, 2023 with a public comment period ending on June 24, 2023.

Key changes in the law, as set forth in these amendments, provide that a Commission vote is no longer required to initiate an investigation. Instead, Commission staff or the Commission can decide to elevate a preliminary review into an investigation, and staff will present the matter to the Commission for a vote after it has investigated a potential violation(s) of the laws under the Commission's jurisdiction. At that time, the Commission may vote to proceed to hearing, return the matter to staff for further investigation, close the matter or authorize resolution of the matter through guidance.

The regulatory amendments further conform to and clarify statutory changes relating to the various notices the Commission may send, which include a Notice of Allegations, Notice of Hearing, and Notice of Closure, Continued Investigation or Guidance, and the requirements of such notices. They also clarify the definition of "victim," which is a term used in new Section 94 of the Executive Law, to Section 941.2 of the regulations.

Furthermore, this rulemaking clarifies provisions relating to the conduct of hearings and authority of hearing officers and the attorneys for the parties to issue hearing subpoenas

Pursuant to the authority vested in section 94 of the Executive Law, Part 941 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, 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:

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] COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT

PART 941 ADJUDICATORY PROCEEDINGS AND APPEALS PROCEDURES

Section 941.1 is amended to read as follows:

Executive Law §94[(14)](10)(o) authorizes the [Joint Commission on Public Ethics] Commission on Ethics and Lobbying in Government to adopt rules governing the conduct of adjudicatory proceedings and appeals consistent with the New York State Administrative Procedure Act (“SAPA”). Moreover, the [Joint Commission on Public Ethics’] Commission on Ethics and Lobbying in Government’s proceedings are otherwise subject to SAPA. These regulations set forth rules for adjudicatory proceedings and appeals relating to: potential violations of the law that fall within the [Joint Commission on Public Ethics’] Commission on Ethics and Lobbying in Government’s jurisdiction, including investigatory matters pursuant to Executive Law §94([13]10); appeals taken from denials of requests to delete or exempt certain information from a financial disclosure statement pursuant to Executive Law §§94(9)(h) or (i); or Public Officers Law §73-a(3)(8)(b-1), (b-2), or (c); exempt certain individuals from filing a financial disclosure

statement pursuant to Executive Law §94(9)(k); and appeals taken from denials of applications for exemptions under Article 1-A of the Legislative Law §§1-h, 1-j and 19 NYCRR Part 938.6.

Subdivisions (e), (g), and (i) of Section 941.2 are amended to read as follows:

(e) *Executive director* shall mean executive director of the [Joint Commission on Public Ethics] Commission on Ethics and Lobbying in Government as appointed pursuant to Executive Law §94[(9)](6)(a).

(g) *Hearing officer* shall mean the [presiding] independent hearing officer presiding over [in] adjudicatory hearings designated [conducted] pursuant to this Part and in accord with SAPA and shall include, and is synonymous with, the “independent arbitrator” referred to in Executive Law §94(10)(i).

(i) [*The Joint Commission on Public Ethics, Commission or JCOPE*] Commission on Ethics and Lobbying in Government, Commission, or COELIG shall mean the members of the New York State Commission on Ethics and Lobbying in Government [Joint Commission on Public Ethics] established pursuant to Executive Law §94, which is authorized to delegate the authority to act as provided in the Executive Law to its Executive Director.

A new subdivision (l) is added to Section 941.2 to read as follows:

(l) Victim shall mean any individual who has suffered or is alleged to have suffered direct harm from any violation of law that is subject to investigation under the jurisdiction of the Commission.

(1)The victim may also be, though is not necessarily, the same as, the “complainant.”

(2) Direct harm, as it applies to this Part, means harm of any kind, including physical, emotional or reputational injury or loss, from any violation of law that is subject to investigation under

the jurisdiction of the Commission.

Subdivisions (a), (a)(1), (a)(1)(i), a(1)(ii), and (a)(3) of Section 941.3 are amended to read as follows:

(a) Notice of Allegations (“15-Day Letter”). If following a preliminary review, the Commission or Commission staff decides to elevate such preliminary review into an investigation pursuant to Executive Law §94(10)(f), [receives a sworn complaint or a referral alleging that a person or entity subject to the jurisdiction of the Commission has violated a law that the Commission is authorized to enforce or if a reporting individual has filed a statement that reveals a possible violation of such laws, or if the Commission determines on its own initiative to investigate a possible violation,] the Commission shall provide written notice to the respondent [notify the subject] individual or entity [in writing, describe] setting forth, to the extent the Commission is able to do so, the possible or alleged violation or violations of [such] law[s], and [provide] a description of the allegations against [them] the respondent and the evidence, if any, already gathered pertaining to [supporting] such allegations.]; provided however that the Commission shall redact any information that, in the judgment of the Commission, may be prejudicial to either the Complainant or the investigation.] Any information that may, in the judgment of the Commission or staff, either be prejudicial to the complainant or victim, or compromise the investigation, shall be redacted.

(1) The 15-Day Letter shall provide the individual or entity with a fifteen-day period from the receipt of the 15-day Letter in which to submit a written preliminary response or information the respondent determines may benefit the Commission or Commission staff in its work, [-] including any evidence, statements, and proposed witnesses, and [-] setting forth information relating to the activities cited as possible or alleged violation(s) of law.

(i) While any response submitted will be reviewed by the Commission and/or Commission staff, [the] Commission staff is not precluded from recommending and the Commission is not precluded from voting to close or settle the matter, to advance it to a confidential due process hearing or to return it to staff for further [commence a substantial basis] investigation prior to receiving a Respondent's written response.

(ii) An extension of time to respond may be available to Respondent upon request[;however, if the requested extended deadline will lapse after the next scheduled meeting of the Commission, the Respondent must waive any claims or defenses against the Commission for failure to act in a timely manner].

(3) Pursuant to Executive Law § 94[(13)(c)](10)(k), the 15-Day Letter continues the Commission's jurisdiction over the Respondent.

Subdivision (b) of Section 941.3 is repealed.

Subdivision (c) of Section 941.3 is re-lettered as subdivision (b) and subdivision (d) is re-lettered as subdivision (c) and are amended to read as follows:

(b[c]) Notice of Hearing. (1) If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission has determined by majority vote to proceed to a hearing, having found that there is credible evidence of a violation under the Commission's jurisdiction, [At any time after commencing a substantial basis investigation,] notice shall be provided to the Respondent to inform Respondent of their right to be heard and appear in person and by attorney at a confidential hearing and to give sworn testimony, present evidence, and cross-

examine witnesses [to be held within thirty (30) days of such written notice]. The notice shall contain the following:

- (i) the alleged violations of law and the factual basis for those allegations;
- (ii) a statement of the time and place of the hearing;
- (iii) the hearing officer who will preside over the matter and instructions for the submission of any notices, filings, or other papers;
- (iv) a statement for hearing impaired parties and participants concerning the provision of deaf interpretation without charge;
- (v) notice to the Respondent that failure to appear will not preclude the [H]hearing [O]fficer or Commission from proceeding with the scheduled hearing; and
- (vi) any other information deemed necessary or appropriate.

(c[d]) Notice of [Closure] Closure, Continued Investigations or Guidance. If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission decides, by majority vote, to return the matter to the staff for further investigation, close the matter, or authorizes the resolution of the matter by guidance to the subject, or if the Commission's vote to proceed to a due process hearing does not carry, the Commission shall, within 60 days of such determination, [, upon receipt and review of a matter, it is determined at any stage that there is no violation, that any potential violation has been rectified, or if the matter is closed for any other reason, the Commission shall] provide written notice of its decision as follows:

- (1) to the Complainant and/or Victim, if any;
- (2) to the Subject or Respondent if they have been notified, by the Commission or otherwise, of a complaint or allegations against them;

(3) to any Agency that made a referral to the Commission or otherwise, notified the Commission of the allegations, or any Agency which employs the Subject or Respondent.

(4) At the discretion of the Commission, written notice shall be provided to a Subject who has not been previously notified of the allegations against them or other interested parties, including but not limited to witnesses.

(5) Pursuant to §94(10)(1), where the Commission's vote to proceed to a due process hearing has not carried, the notice shall not include any personally identifying information or information tending to identify any party involved in the investigation.

Subdivision (b) of Section 941.6 is amended as follows:

(b) The Commission shall select at random from the list of independent hearing officers a hearing officer to preside over each hearing or appeal, when applicable. In the event the independent hearing officer so selected is unavailable or unable for any reason to sit as a hearing officer in the matter, the Commission shall select at random from the list of independent hearing officers another hearing officer to preside over the hearing or appeal, as applicable.

Subdivision (a)(2) of Section 941.7 is amended to read as follows:

(2) Sign and issue subpoenas in the name of the Commission, at the request of any party or the direction of the Commission, requiring attendance and testimony by witnesses at the confidential hearing and the production of books, papers, documents and other evidence at such hearing.

Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue [such] subpoenas under the provisions of the

Civil Practice Law and Rules requiring attendance and testimony by witnesses at the confidential hearing and the production of books, papers, documents and other evidence at such hearing.

Subdivisions (a), (b), (d) and (e) of Section 941.9 are amended as follows:

(a) At least seven (7) days before the hearing, or at such earlier time as the parties may agree or the hearing officer may direct, the Commission shall provide to the Respondent any additional evidence supporting the allegations that was not previously described in the notice sent pursuant to Executive Law §94[(13)(a)](10)(f) and subsection 941.[8(c)]3(a) in sufficient detail to enable the Respondent to respond at the hearing.

(b) At least seven (7) days before the hearing, or at such earlier time as the parties may agree or the hearing officer may direct, the Respondent shall provide the Commission and hearing officer a list of possible witnesses and notice of any defenses to be presented, and supporting evidence, in sufficient detail to permit the Staff of the Commission to prepare for the hearing.

(d) Except by consent of the parties, every hearing conducted pursuant to these rules shall be concluded within 180 days of the date of the hearing specified in the [n]Notice of [substantial basis investigation and h]Hearing. An adjournment or continuance granted by the hearing officer at the request of the Respondent or by mutual consent of the parties will extend the period of time for conclusion by the length of time the adjournment or continuance is granted.

(e) The Commission, the Executive Director, or the hearing officer may, at any time before the time limits delineated above expire, extend such time period by making a determination that the time provided is insufficient to complete the hearing and shall state sufficient reasons therefor. Except for good cause shown, [T]this extension shall not be for a period longer than 90 days after the expiration of the original 180 day period during which the hearing should have been concluded.

Subdivision (a) of Section 941.10 is amended to read as follows:

(a) All hearings and proceedings before the hearing officer or Commission related thereto commenced under these rules are confidential in accordance with Executive Law § 94(10)(f) and (11)[(13(b))].

Section 941.13 and subdivisions (b)(2) and (c) thereof are amended to read as follows:

Section 941.13 Proposed Findings of Fact and Recommendation, Substantial Basis [Investigation] Report, and Notice of Civil Assessment and/or Other Penalty.

(2) The Commission's staff shall have an opportunity to respond in writing, in the form of a brief directed to the Commission, to the findings of fact and recommendation of the hearing officer, and shall submit a proposed Substantial Basis [Investigation] Report to the Commission for its consideration.

(c) The Commission shall have sixty (60) days from receipt of the proposed Substantial Basis [Investigation] Report, or as soon thereafter as possible, in which to vote on whether or not to issue a Substantial Basis [Investigation] Report and issue a Notice of Civil Assessment and/or Other Penalty. In the Substantial Basis [Investigation] Report, the Commission may adopt the findings of fact and recommendation of the hearing officer in whole or in part, or it may reverse, remand and/or dismiss the hearing officer's finding of fact and recommendation based upon the record produced at the hearing.

Subdivision (e) of Section 941.13 is re-lettered to subdivision (d) and is amended to read as follows:

([e]d) With respect to the investigation of a Respondent subject to the jurisdiction of the Commission, other than a member of the legislature or a legislative employee or candidate for member of the legislature, if after its investigation and the hearing the Commission has found by a majority vote a substantial basis to conclude that Respondent violated the Public Officers Law, Civil Service Law or the Legislative Law, the Commission shall [send] issue a [Substantial Basis Investigation R]report containing its determinations, including its findings of fact and conclusions of law, to the complainant, if any, and the respondent [individual or entity].

Subdivision (d) of Section 941.13 is re-lettered to subdivision (e) and is amended to read as follows:

([d]e) The Commission shall release such report publicly and publish it on its website within twenty days of its delivery to the complainant, if any, and the respondent [forty-five days of its issuance].

Subdivision (f) of Section 941.13 is amended to read as follows:

(f) A [substantial basis investigation] report issued pursuant to Executive Law § 94[(14-a)](10)(p)(i) shall be delivered to the Legislative Ethics Commission and to the individual who is the subject of the report, and shall be made public in accordance with and otherwise be governed by Legislative Law §80. The Commission shall provide to the Legislative Ethics Commission copies of the full investigative file and hearing record.

Subdivision (a) of Section 941.14 is amended as follows:

(a) The Commission's assessment of civil assessments and other penalties made pursuant to

Executive Law §94[(14)](10) shall not preclude its referral of violations of law to a prosecutor for criminal prosecution in accordance with the provisions of Executive Law 94(10)(n)(iv) .

Subdivisions (a), (b), (c)(1)-(3), (d)(1)-(3), and (e) of Section 941.16 are amended to read as follows:

(a) Executive Law § 94 provides that proceedings, as well as information and evidence obtained, relating to the Commission's determination as to whether a substantial basis exists that there has been a violation of the laws it enforces are confidential while a matter is pending and unless and until the Commission issues a [substantial basis investigation] report, except that the Commission may authorize the disclosure of such information to the extent necessary in furtherance of its investigations.

(b) Notwithstanding any other provision of law, pursuant to Executive Law 94 [(9-a)(b)](11), the Commission, by majority vote of the full Commission in accordance with section 94[(6)](4)(h), may disclose to any person or entity outside the Commission any testimony or information obtained by a Commissioner or staff upon a determination that such disclosure is in the public interest as set forth below. Disclosure so authorized may be by full public release or to designated persons or entities as directed by the Commission. The Commission may further direct that disclosure to designated persons or entities be conditioned upon the recipient's agreement to maintain confidentiality and to limit further dissemination.

(c) In determining whether release or disclosure of information relating to a matter is in the public interest, the Commission may consider any one or more of the following criteria:

- (1) Whether the Complainant, Victim, Subject or Respondent has made public statements relating to an allegation submitted to the Commission;

(2) Whether the Complaint itself or the allegations therein have been publicly disclosed by the Complainant, Victim or others;

(3) Whether the identity of the Complainant or Victim is a matter of public knowledge;

(d) In accordance with this section, the Commission has also delegated to staff the authority to consider the criteria in subdivision (c) of this section, and upon a determination that disclosure is in the public interest, staff shall:

(1) Publicly acknowledge receipt of a complaint. However, the complaint itself, including the identity of the Complainant or Victim, if not public, shall not be made public absent a vote of the Commission;

(2) Publicly acknowledge that a matter is “pending before the Commission [JCOPE]” until such time as the matter has been closed for any reason;

(3) Publicly acknowledge that a matter is “no longer pending before the Commission [JCOPE]” after the matter has been closed for any reason; and

(e) Pursuant to this section, the Commission has determined that it is in the public interest to publicly release information relating to investigative and enforcement matters as follows:

(1) its annual report, in accordance with the requirements in Executive Law § 94[(9)(1)](12), shall include:

(i) a listing by assigned number of each complaint and referral received which alleged a possible violation within the Commission’s jurisdiction, including the current status of each complaint; and

(ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, with redactions, as necessary, to protect the identity of the Subject, Respondent, Victim and Complainant as required under the confidentiality

requirements in Executive Law § 94.

(2) its website shall include, within sixty days of resolution or closure of a matter for any reason other than issuance of a substantial basis investigation report or settlement, a listing by assigned case number, setting forth the nature of the matter, the alleged violation of law, and the date and nature of the disposition, with redactions, as necessary, to protect the identity of the Subject, Respondent, Victim and Complainant under the confidentiality requirements in Executive Law § 94 and in accordance with these regulations.

(3) Information relating to an investigation or enforcement proceeding that would otherwise be confidential pursuant to Executive Law § 94, when a legal proceeding is initiated in court by the Subject or Respondent of such investigation, as deemed necessary by counsel representing the Commission in furtherance of its interests in such legal proceeding. With respect to other legal proceedings, the Commission may release such information by majority vote of the full Commission, in accordance with Executive Law section 94[(6)](4)(h), that such disclosure is in the public interest considering the criteria set forth in subdivision (c) of this section.

Subdivision (a)(2) of Section 941.17 is amended to read as follows:

(2) Any person required to file a financial disclosure statement whose written request for exemption from any requirement to report one or more items of information that pertain to such person's spouse, domestic partner, or unemancipated children as provided in Executive Law §94(9)(i) has been denied in writing by the Executive Director, may file a written appeal of the denial, called a notice of appeal, as provided in Subpart 941.17(d) of this Title.

Subdivision (a) of Section 941.18 is amended to read as follows:

(a) An appeal of a denial of an application for exemption to a judicial hearing officer, pursuant to Article 1-A of the Legislative Law §1-h and 19 NYCRR Part 938, is available only to a Client Filer who submitted an application under 19 NYCRR Part 938.4(a). A Client Filer who submitted an application under 19 NYCRR Part 938.4(b) is not entitled to such an appeal.

Subdivisions (a), (b), and (c) of Section 941.19 are amended to read as follows:

- (a) All final recommendations of the hearing officer and all of the decisions of the Executive Director and the Commission shall be in writing or stated in the record and shall include findings of fact, conclusions of law, reasons for the decision and, when appropriate, direct that specific action be taken by the Commission. The final decisions of the Commission shall be binding upon the Commission.
- (b) Except in matters *ex parte*, members or employees of the Commission assigned to make, or assist in making, a decision or findings of fact and conclusions of law in any hearing shall not communicate, directly or indirectly, in connection with any issue of law[,] with any person, party or its representative of record, except upon notice and opportunity for all parties to participate. Any such member or employee may communicate with other Commission members or employees and may seek the aid and advice of agency staff, including counsel to the Commission, other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.
- (c) The Commission shall maintain all substantial basis [investigation] reports and notices of civil assessments and make them publicly available as required by law.

Section 941.20 is amended to read as follows:

Section 941.20 Savings Clause.

All matters where the Commission has issued a Substantial Basis [Investigation] Report will be governed by the laws and adjudicatory rules in effect when such Substantial [Basis] Investigation Report was issued. All other matters and investigations will be governed by the provisions of this Part.

of-cell therapeutic programming along with three hours out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional one hour of recreation for a total of seven hours out-of-cell on a daily basis.

Amend Section 330.4 subdivision (a). Incarcerated individuals will be offered at least six hours of daily out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional hour for recreation, a minimum of one hour out-of-cell time shall be scheduled for outdoor exercise. The additional seven hours of out-of-cell time may be used for activities listed in directive(s).

Text of proposed rule and any required statements and analyses may be obtained from: Cathy Sheehan, Deputy Commissioner and Counsel, Department of Corrections and Community Supervision, 1220 Washington Avenue, Harriman State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.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:

On March 18, 2021, the “Humane Alternatives to Long-Term Solitary Confinement” (HALT) Act was passed with an effective date of March 31, 2022, which made significant changes to Article 6, Section 137, of the Correction Law relating to the hearing process, housing, and rules concerning incarcerated individual discipline.

Article 6, section 112, subdivision 1 of the Correction Law provides the commissioner of corrections and community supervision with the superintendence, management and control of the correctional facilities in the department and of the incarcerated individuals confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. In this regard, the commissioner is authorized to make rules and regulations for the government, housing and discipline for each correctional facility and to cause such rules and regulations to be recorded by the superintendent of each facility.

2. Legislative Objectives:

To decrease the use and improve the conditions of segregated housing at State Correctional Facilities by limiting the time an incarcerated individual may spend in segregated confinement, end the segregated confinement of vulnerable populations, restrict the criteria that can result in such confinement, and create more humane and effective alternatives to such confinement.

3. Needs and Benefits:

The Department needs to amend its regulations related to segregated confinement consistent with the changes to the correction law in the areas of housing, hearing process, and rules relating to incarcerated individual discipline and operational processes. The amended regulations will ensure alignment with HALT legislation and will revise the previously published HALT regulations in accordance with comments received during the previous rule-making process. Examples include, but are not limited to, amending the rules to remove loss of visitation as a sanction for Tier II violations, and permitting attorneys to attend disciplinary hearing in facilities in person. The anticipated benefits include acknowledging the public comments the Department received that requested certain policies be in regulations concerning segregated housing and RRUs, ensuring proper due process for disciplinary hearings, avoiding overly harsh penalties for incarcerated individuals, and providing clarity for Department employees and for the public.

4. Costs:

(a) This proposed rulemaking imposes no costs on any local agency.
(b) As the proposed rulemaking does not apply to private parties, no costs are imposed on private parties.

(c) DOCCS was appropriated \$45,280,000 in the Executive Budget for the Fiscal Year 2022-2023 for costs associated with the implementation of HALT. Funding in the amount of \$45,685,000 is requested and may be appropriated in the Executive Budget for the Fiscal Year 2023-2024 for costs associated with the implementation of HALT.

5. Local Government Mandates:

This rulemaking imposes no program, service, duty or responsibility on any county, city, town, village, school district, or other special district. It applies only to NYS DOCCS.

6. Paperwork:

No new paperwork requirements are required as a result of this rule proposal.

7. Duplication:

There is no overlap or conflict with any other legal requirements of the State or Federal government.

8. Alternatives:

There is no viable alternative that would be acceptable based on legislative and public comments.

9. Federal Standards:

There are no federal standards that apply to the proposed rulemaking.

10. Compliance Schedule:

The regulation will become effective upon publication of the Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal amends Departmental regulations relating to the administration of Special Housing Units in New York State Correctional Facilities consistent with the “Humane Alternatives to Long-Term Solitary Confinement” (HALT) Act, which was signed into law in March 2021.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice since the proposed rule will have no impact upon rural areas, nor does the proposed rule impose any reporting, recordkeeping or other compliance requirements upon rural areas. This proposal amends Departmental regulations relating to the administration of Special Housing Units in New York State Correctional Facilities consistent with the “Humane Alternatives to Long-Term Solitary Confinement” (HALT) Act, which was signed into law in March 2021.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice, for the proposed rule will have no adverse impact upon jobs or employment opportunities, nor does the proposed rule impose any reporting, recordkeeping or other compliance requirements upon employers. This proposal amends Departmental regulations relating to the administration of Special Housing Units in New York State Correctional Facilities consistent with the “Humane Alternatives to Long-Term Solitary Confinement” (HALT) Act, which was signed into law in March 2021.

Commission on Ethics and Lobbying in Government

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Adjudatory Proceedings and Appeals Procedures for Matters Under the Commission’s Jurisdiction

I.D. No. ELG-45-22-00024-ERP

Filing No. 352

Filing Date: 2023-04-25

Effective Date: 2023-04-25

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

Action Taken: Amendment of Part 941 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(1)(a), (5)(a), (10) and (11)

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

Specific reasons underlying the finding of necessity: The regulatory amendments are necessary to conform to the Ethics Commission Reform Act of 2022, L 2022, ch 56, § 1, Part QQ (“ECRA”) which established the Commission on Ethics and Lobbying in Government (“Commission”) as the agency responsible for administering, enforcing, and interpreting New York State’s ethics and lobbying laws. The regulatory amendments are necessary to facilitate the expeditious and efficient performance of the Commission’s investigative and enforcement duties as set forth in Section 94 of the Executive Law, the Commission’s enabling statute.

The emergency rule is necessary for the general welfare to enforce ethics laws that are critical matters of public interest. Therefore, upon Emergency Adoption, these amendments will take effect immediately.

Subject: Adjudatory proceedings and appeals procedures for matters under the Commission’s jurisdiction.

Purpose: To conform Part 941 to the new Executive Law section 94 established by the Ethics Commission Reform Act of 2022.

Substance of emergency/revised rule (Full text is posted at the following State website: ethics.ny.gov): The Notice of Revised Rulemaking and Emergency Adoption amends 19 NYCRR Part 941 to conform the regulations governing the investigative and enforcement adjudicatory process to the new Section 94 of the Executive Law, as established by the Ethics Commission Reform Act of 2022.

Key changes in the law, as set forth in these amendments, provide that a Commission vote is no longer required to initiate an investigation. Instead, Commission staff or the Commission can decide to elevate a preliminary review into an investigation, and staff will present the matter to the Commission for a vote after it has investigated a potential violation(s) of the laws under the Commission’s jurisdiction. At that time, the Commission may vote to proceed to hearing, return the matter to staff for further investigation, close the matter or authorize resolution of the matter through guidance.

The regulatory amendments further conform to and clarify statutory changes relating to the various notices the Commission may send, which include a Notice of Allegations, Notice of Hearing, and Notice of Closure, Continued Investigation or Guidance, and the requirements of such notices.

Furthermore, this rulemaking clarifies provisions relating to the conduct of hearings and authority of hearing officers and the attorneys for the parties to issue hearing subpoenas.

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 November 9, 2022, I.D. No. ELG-45-22-00024-EP. The emergency rule will expire July 23, 2023.

Revised rule making(s) were previously published in the State Register on March 15, 2023.

Emergency rule compared with proposed rule: Substantial revisions were made in section 941.2(l).

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: 45 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory Authority: Executive Law § 94(1)(a) provides the Commission on Ethics and Lobbying in Government (“Commission”) with the responsibility to administer, enforce and interpret New York State’s ethics and lobbying laws, and Subsection 94(5)(a)(i) and (ii) authorize the Commission to adopt, amend and rescind any rules and regulations pertaining to the statutes within its jurisdiction and to adopt, amend and rescind any procedures of the Commission, including procedures for investigations and enforcement. Section 94(10) further authorizes the Commission to adopt rules governing the conduct of adjudicatory proceedings and appeals. In addition, Part 941 sets forth rules for adjudicatory proceedings and appeals relating to potential violations of the laws that fall within the Commission’s jurisdiction, including investigatory matters conducted pursuant to and in accordance with Executive Law § 94(10) and (11).

2. Legislative Objectives: To set forth procedures regarding the conduct of preliminary reviews and investigations in conjunction with adjudicatory proceedings and appeals for matters arising under the Commission’s jurisdiction, as set forth in Section 94 of the Executive Law.

3. Needs and Benefits: This Emergency Adoption and Revised Rule amends 19 NYCRR Part 941 to conform to new Section 94 of the Executive Law, established by the Ethics Commission Reform Act of 2022, relating to the Commission’s investigative and enforcement process.

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 there will be minimal costs to regulated parties and state and local government for training staff on changes to the requirements. The cost to the agency is based on the estimated slight increase in staff resources to implement the regulations.

5. Local Government Mandates: The Emergency Adoption and Revised Rule 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: Section 94(10)(o) of the Executive law imposes an af-

firmative duty on the Commission to adopt rules governing the conduct of adjudicatory proceedings and appeals. Therefore, there is no alternative to amending the Commission’s existing regulation if the Commission changes its procedures.

9. Federal Standards: This regulation does not exceed any minimum standards of the federal government with regard to a similar subject area.

10. Compliance Schedule: Compliance with the emergency regulation will take effect on the date it is filed with the Department of State. The Revised Rulemaking will take effect upon adoption.

Revised Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Emergency Adoption and Revised Rulemaking because the rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping, 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.

Revised Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Emergency Adoption and Revised Rulemaking because the rulemaking will not impose any adverse economic impact on rural areas, nor will it require or impose any reporting, record-keeping, 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.

Revised Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Emergency Adoption and Revised Rulemaking because the 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.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Investigation of Communicable Disease

I.D. No. HLT-16-23-00004-E

Filing No. 349

Filing Date: 2023-04-24

Effective Date: 2023-04-24

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

Action taken: Amendment of Part 2, section 405.3; addition of section 58-1.14 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225, 576 and 2803

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: Where compliance with routine administrative procedures would be contrary to public interest, the State Administrative Procedure Act (SAPA) § 202(6) empowers state agencies to adopt emergency regulations necessary for the preservation of public health, safety, or general welfare. In this case, compliance with SAPA for filing of this regulation on a non-emergency basis, including the requirement for a period of time for public comment, cannot be met because to do so would be detrimental to the health and safety of the general public.

New York continues to experience significant community levels of COVID-19 disease. The levels of COVID-19 illness that hospitals are still experiencing is the equivalent of a regular flu season, but for more than 36 months in a row. New York still has a 7-day average of over 1,300 cases per day, and over 1,700 people in the hospital affected by COVID each day. Regrettably, New York still averages about 20 deaths per day associated with COVID-19.