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:

Section 941.1 is amended to read as follows:

Executive Law §94(14) authorizes the Joint Commission on Public Ethics [the “Commission”] to adopt rules governing the conduct of adjudicatory proceedings and appeals consistent with the New York State Administrative Procedure Act (“SAPA”). Moreover, the [Commission’s] Joint Commission on Public Ethics’ 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 [Commission’s] Joint Commission on Public Ethics’ jurisdiction, including investigatory matters pursuant to Executive Law §94(13); 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.

A new subdivision (a) is added to section 941.2 and subdivisions (a) and (b) are re-lettered (b) and (c) to read as follows:

(a) *Agency* shall have the same meaning as “state agency” in Public Officers Law §§ 73, 73-a and 74 and Article 1-a of the Legislative Law.
Subdivision (c) of section 941.2 is repealed.

New subdivision (d) of section 941.2 is added to read as follows and subdivisions (d) – (g) are re-lettered (e) – (h):

(d) Complainant shall mean an individual who submits a tip or complaint to the Commission regarding a violation of Public Officers Law §§73, 73-a or 74, Civil Service Law §107 or Article 1-A of the Legislative Law.

New subdivision (i) of section 941.2 is added to read as follows and subdivision (h) is re-lettered (j):

(i) The Joint Commission on Public Ethics, Commission or JCOPE shall mean the members of the New York State 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.

New subdivision (k) of section 941.2 is added to read as follows:

(k) Subject shall mean any individual or entity identified in a tip, complaint, referral or in a matter initiated by the Commission as allegedly having violated or being in violation of Public Officers Law §§ 73, 73-a or 74, Civil Service Law §107 or Article 1-A of the Legislative Law.

Section 941.3 is amended to read as follows:

Section 941.3 Notices [of Substantial Basis Investigation and Hearing].
(a) Notice of Allegations (“15-Day Letter”). If the Commission 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 notify the subject individual or entity in writing, describe the possible or alleged violation of such laws, and provide a description of the allegations against them and the evidence, if any, 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.

(1) The 15-Day Letter shall provide the individual or entity with a fifteen-day period in which to submit a written response - including any evidence, statements, and proposed witnesses - 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, the Commission is not precluded from voting to 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.

(2) The 15-Day Letter shall include a copy of the Commission’s rules regarding the conduct of adjudicatory proceedings and appeals and shall also contain a plain language summary of the rules contained in this Part.
(3) Pursuant to Executive Law § 94(13)(c), the 15-Day Letter continues the Commission’s jurisdiction over the Respondent.

(b) Notice of Commission Vote. (1) Within sixty calendar days after a sworn complaint or a referral is received or an investigation is initiated on the Commission’s own initiative, the Commission shall vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred. The Commission shall provide written notice of its decision in accordance with this section.

   (i) When an investigation is initiated on the Commission’s own initiative, the date from which the sixty days will run is the date on which the Commission sent the 15-Day Letter to Respondent.

   (ii) Within the statutorily required sixty-day period, the Commission may vote not to commence a substantial basis investigation and reserve the right to reconsider the matter as alleged in the 15-Day Letter; at any time thereafter, the Commission may vote to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude a violation of law has occurred. The Commission shall provide written notice of any such decision.

(2) Within sixty days of such vote, the Commission shall provide written notice of its decision as follows:

   (i) to the Complainant, if any;

   (ii) to the Subject or Respondent, if the Subject or Respondent has been notified of the allegations against them;

   (iii) 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; and

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

(a) Written notice shall be provided to the Respondent of the Commission’s decision to commence an investigation and conduct a hearing to determine whether a substantial basis exists to conclude a violation of law has occurred.

(c) Notice of Hearing. (1) At any time after commencing a substantial basis investigation, [The] notice [of substantial basis investigation and hearing] shall be provided to the Respondent to inform [the] Respondent of [his or her] their right to be heard and appear by attorney at a confidential hearing to be held within thirty (30) days of such written notice. The notice shall contain the following:

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

(b) (2) The notice of [substantial basis investigation and] hearing shall include a copy of the
Commission’s rules regarding the conduct of adjudicatory proceedings and appeals and shall also contain a plain language summary of the rules in this Part.

(d) Notice of Closure. If, 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 as follows:

(1) to the Complainant, 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.

Subdivision (b) of section 941.9 is amended to read as follows:

(b) At least seven (7) days before the hearing, 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.

Section 941.16 is 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), the Commission, by majority vote of the full Commission in accordance with section 94(6), 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, 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 or others;

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

(4) Whether the fact of the Commission’s inquiry or investigation is public knowledge;

(5) Whether the matter, in the judgment of or as determined by the Commission, is, or involves facts or issues that are, of significant public concern;

(6) Whether disclosure relating to the matter will address public safety concerns;
(7) Whether there are public calls for an investigation;

(8) Whether there is a need for public assurance that the Commission is or has considered the matter;

(9) Whether there have been any inaccurate or misleading statements made publicly about the Commission’s action or inaction with respect to the matter;

(10) Whether the allegation is an attempt to utilize the Commission for partisan political or electoral gain;

(11) Whether there is pending civil litigation that is related, directly or indirectly, to the allegations, and if so, whether the information will be used to impact the litigation in a manner that is relevant to the proceedings or appears to be aimed at harassment of a party;

(12) Whether a prosecutor has asked the Commission to defer action, and if so, whether in the view of the requesting prosecutor disclosure would adversely affect the criminal action;

(13) Whether there are alleged victims who have a particular interest in the proceeding;

(14) Whether the Commission’s ability to proceed is inhibited because of a lack of jurisdiction over the Subject or conduct; and

(15) Any other factor the Commission deems relevant to determining whether the release of such information is in, or would otherwise serve, the public interest.

(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, if not public, shall not be made public absent a vote of the Commission;
(2) Publicly acknowledge that a matter is “pending before JCOPE” until such time as the matter has been closed for any reason;

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

(4) Publicly acknowledge if the Commission has received a request from law enforcement to defer the Commission’s inquiry, and whether such deferral is in place.

(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)(l), 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, 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 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), that such disclosure is in the public interest considering the criteria set forth in subdivision (c) of this section.

[The records or documents made available for public inspection and copying are set forth in Executive Law § 94(19) and the Commission’s regulations.]

Subdivision (b) of section 941.19 is amended to read as follows:

(b) Except in matters ex parte, members or employees of the Commission assigned to make, or assist in making a decision or [to make] 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.

The introduction to section 941.20 is amended to read as follows:

Section 941.20 Savings Clause.