

Title 13 New York Code of Rules and Regulations
Chapter V Charitable Uses and Purposes

**RULES AND REGULATIONS FOR REGISTRATION OF CHARITABLE
ORGANIZATIONS, TRUSTS AND ESTATES WITH CHARITABLE
INTERESTS AND FUND RAISING PROFESSIONALS**

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DEFINITIONS

§ 90.1 Charitable

For purposes of this Chapter, charitable shall mean:

(a) pursuant to Article 8 of the Estates, Powers and Trusts Law (the EPTL), charitable, religious, educational, scientific, literary, cultural, testing for public safety, fostering national or international sports competition, benevolent, promoting social welfare, for a public benefit or for the prevention of cruelty to children or animals.

(b) pursuant to Article 7-A of the Executive Law (Article 7-A), all purposes deemed charitable pursuant to the EPTL and also philanthropic, patriotic, eleemosynary or for law enforcement support and any other purpose included in the definition of charitable organizations in Article 7-A section 17l-a.1., as it may be amended.

§ 90.2 Charitable organization

For the purposes of this Chapter, charitable organization shall mean an organization that is organized and/or operated for charitable purposes, whether or not exempt from federal income taxation, that is required to register with the Attorney General pursuant to the EPTL and/or Article 7-A.

(a) The term charitable organization includes any domestic or foreign corporation, unincorporated association or other legal entity, other than a trust or estate with a charitable interest (defined in section 90.3 of this Chapter), that is organized and/or operated for charitable purposes, including without limitation:

(1) Type B New York not-for-profit corporations;

(2) Type A, C and D New York not-for-profit corporations that are organized and/or operated for charitable purposes;

(3) organizations exempt from federal income taxation pursuant to United States Internal Revenue Code (the Code) section 501(c)(3), including wholly charitable trusts; and

(4) organizations exempt from federal income taxation pursuant to another code section that are organized and/or operated for charitable purposes.

§ 90.3 Trust or estate with a charitable interest

For the purposes of this Chapter, trust or estate with a charitable interest (or, in the plural, trusts and estates with a charitable interest) shall mean any trust or estate holding or administering any personal or real property for charitable purposes that is required to register pursuant to the EPTL, other than a wholly charitable trust exempt from federal income taxation pursuant to code section 501(c).

(a) Estates. The term trust or estate with a charitable interest includes estates with a charitable interest.

(1) The term estate with a charitable interest includes any estate with a charitable bequest that is either to an unnamed charity or is an unspecified amount (including without limitation a bequest of all or part of the residuary estate) or indefinite property.

(b) Trusts. The term trust or estate with a charitable interest also includes charitable remainder trusts and charitable lead trusts.

(1) The term charitable remainder trust includes any trust for which a charitable beneficiary has a remainder interest, including without limitation charitable remainder annuity trusts and charitable remainder unitrusts.

(2) The term charitable lead trust includes any trust for which a charitable beneficiary has a lead interest, including without limitation charitable lead annuity trusts and charitable lead unitrusts.

§ 90.4 Fund raising Professional

For purposes of this Chapter, fund raising professional includes professional fund raisers, fund raising counsel, professional solicitors and commercial co-venturers, as such terms are defined in Article 7-A section 171-a.

CHARITABLE ORGANIZATIONS

§ 91.1 To whom this part applies

This part applies to charitable organizations as defined in section 90.2 of this Chapter. The following sections of this Part contain the registration and reporting requirements applicable to charitable organizations.

§ 91.2 Registration types

Article 7-A requires registration of charitable and other nonprofit organizations that solicit contributions from New York State (including residents, foundations, corporations, government agencies and other entities). Section 8-1.4 of the EPTL requires registration of charitable organizations that are incorporated, are formed or otherwise conduct activity in New York State. Based on these two registration statutes, there are three registration types for charitable organizations registered with the Charities Bureau:

(a) Article 7-A. Organizations registered pursuant to Article 7-A only and not registered under the EPTL.

(b) EPTL. Organizations registered pursuant to the EPTL only and not registered under Article 7-A.

(c) Dual. Organizations registered pursuant to both Article 7-A and the EPTL.

§ 91.3 Registration exemption

Certain organizations are exempt from registration with the Attorney General. Unregistered organizations that are exempt from registration are not required to submit an exemption request to the Attorney General, except that an organization that receives a failure to register notice from the Attorney General but believes it is exempt from registration must claim an exemption from registration. Organizations that wish to request exemption from registration under Article 7-A or the EPTL or both, shall claim such exemption by completing the appropriate registration, amended registration or re-registration statement form, defined in sections 91.4, 91.[7]8 and 91.[8]9, respectively, of this Chapter, or a successor form, including the exemption request section of such form, and attaching Schedule E (Request for Exemption for Charitable Organizations) or a successor form along with all required attachments listed in both the registration and exemption request forms.

(a) EPTL Registration Exemption Claims. An organization is exempt from registration under the EPTL if it fits any of the following definitions:

(1) Organization is not charitable (EPTL section 8-1.4(a)).

(2) Organization does not conduct activity in NY State (EPTL section 8-1.4(a)).

(3) Organization is a government agency or is controlled by a government agency (EPTL section 8-1.4(b)(1)).

(4) Organization reports annually to either the U.S. Congress or the NY State Legislature (EPTL section 8-1.4(b)(2)).

(5) Organization is incorporated under the religious corporations law or is another type of organization with a religious purpose or is operated, supervised or controlled by or in connection with a religious organization (EPTL section 8-1.4(b)(3)).

(6) Organization is an educational institution, museum or library incorporated under the NY State Education Law or by special act (EPTL section 8-1.4(b)(4)).

(7) Organization is a hospital, skilled nursing facility or diagnostic/treatment center (EPTL section 8-1.4(b)(5)).

(8) Organization is a membership organization (fraternal, patriotic, social, student, alumni, veterans) (EPTL section 8-1.4(b)(6)).

(9) Organization is a volunteer firefighters or volunteer ambulance service organization (EPTL section 8-1.4(b)(6)).

(10) Organization is a historical society chartered by the Board of Regents of the State University of New York (EPTL section 8-1.4(b)(6)).

(11) Organization is a cemetery corporation subject to the provisions of Article 15 of the NY State Not-For-Profit Corporation Law (EPTL section 8-1.4(b)(10)).

(12) Organization is the NY State parent teachers association (PTA) or any PTA affiliated with an educational institution subject to the jurisdiction of the NY State Education Department (EPTL section 8-1.4(b)(11)).

(13) Organization is incorporated under Article 43 of the NY State Insurance Law (EPTL section 8-1.4(b)(12)).

(b) Article 7-A Registration Exemption Claims. An organization is exempt from registration under Article 7-A if it fits any of the following definitions:

(1) Organization does not solicit or receive any contributions from NY State (including residents, foundations, corporations, government agencies, etc.) (Article 7-A section 172.1.).

(2) Organization solicits and receives gross contributions from NY State (including residents, foundations, corporations, government agencies, etc.), but organization's gross contributions from NY State are less than and will continue to be less than twenty-five thousand dollars per year from NY State and organization does not and will not use the services of a professional fund raiser or fund raising counsel (Article 7-A section 172-a.2.(d)).

(3) Organization receives all or substantially all of its contributions from a single government agency to which it submits annual financial reports similar to those required by Article 7-A, and organization's gross contributions from all other NY State sources, including other government agencies, do not and will not exceed twenty-five thousand dollars per year (Article 7-A section 172-a.2.(h)).

(4) Organization receives an allocation from a federated fund, United Way or incorporated community appeal and organization's gross contributions from all other sources do not and will not exceed twenty-five thousand dollars per year and organization does not and will not use the services of a professional fund raiser or fund raising counsel (Article 7-A section 172-a.2.(e)).

(5) Organization is incorporated under the religious corporations law or is another type of organization with a religious purpose or is operated, supervised or controlled by or in connection with a religious organization (Article 7-A section 172-a.(1)).

- (6) Organization is an educational institution that confines its solicitation to its student body, alumni, faculty and trustees and their families (Article 7-A section 172-a.2.(a)).
- (7) Organization is an educational institution or museum that files annual financial reports with the Board of Regents of the State University of New York as required by the NY State Education Law or with an agency having similar jurisdiction in another state (Article 7-A section 172-a.2.(g)).
- (8) Organization is a library that files annual financial reports as required by the NY State Education Department (Article 7-A section 172-a.2.(g)).
- (9) Organization is a membership organization (fraternal, patriotic, social or alumni) that confines its solicitation of contributions to its membership (Article 7-A section 172-a.2.(b)).
- (10) Organization is a law enforcement support organization that confines its solicitation of contributions to its membership (Article 7-A section 172-a.2.(b)).
- (11) Organization is a historical society chartered by the Board of Regents of the State University of New York that confines its solicitation of contributions to its membership (Article 7-A section 172-a.2.(b)).
- (12) Organization is the NY State parent teachers association (PTA) or any PTA affiliated with an educational institution subject to the jurisdiction of the NY State Education Department (Article 7-A section 172-a.2.(j)).
- (13) Organization is a chartered local post, camp, chapter or county unit of a bona fide veterans' organization, a bona fide organization of volunteer firefighters, a volunteer ambulance service organization, or a bona fide auxiliary or affiliate of such an organization and organization's fund raising is done by its members without direct or indirect compensation (Article 7-A section 172-a.2.(f)).
- (14) Organization is a police department, sheriff's department or other governmental law enforcement agency (Article 7-A section 172-a.2.(i)).
- (15) Organization is a government agency or is controlled by a government agency (Article 7-A section 172-a.2.(i)).

§ 91.4 Initial registration

Unregistered charitable organizations subject to registration requirements of either or both Article 7-A and the EPTL must register with the Attorney General.

(a) What Documents to Submit. The following documents constitute a complete initial registration for a charitable organization:

(1) CHAR410 (Registration Statement for Charitable Organizations) or a Successor Form. This form is for unregistered organizations required to register with the Charities Bureau and shall include identifying, organization structure, activities and federal tax-exempt status information.

(2) a copy of the certificate of incorporation, trust agreement or other organizing document, and any amendments; and

(3) a copy of the bylaws or other organizational rules, and any amendments; and

(4) a copy of the United States Internal Revenue Service (IRS) Form 1023 or 1024 Application for Recognition of Exemption, if applicable; and

(5) a copy of the IRS tax exemption determination letter, if applicable.

(b) What Fees to Submit. Organizations registering to solicit contributions in New York State must pay a twenty-five dollar Article 7-A registration fee or any other fee mandated by Article 7-A as amended. Organizations requesting exemption from registration under Article 7-A should not submit any fee.

(c) When to Register. The initial registration must be submitted by whichever of the following deadlines is applicable. If both are applicable, the submission is due by the earlier of the two deadlines. All submissions must be mailed, postmarked by the deadline. If the regular due date falls on a Saturday, Sunday or legal holiday, the deadline is on the next business day. A business day is any day that is not a Saturday, Sunday or legal holiday:

(1) for organizations registering under Article 7-A, prior to solicitation of contributions from New York State (including residents, foundations, corporations, government agencies and other entities); or

(2) for organizations registering under the EPTL, within six months after receiving any property or income that is required to be applied to charitable purposes within New York State.

(d) Certification. Each registration statement shall be signed as follows, and each signature shall be accompanied by the signatory's printed name and title and the date signed:

(1) Certification by a Banking Institution. Certifications must be signed by a vice president.

(2) Certification on Behalf of a Trust. Certification must be signed by at least one trustee.

(3) Certification by All Others. Certifications must be signed by both the president or another authorized officer and the chief financial officer or treasurer.

(e) Request for Registration Exemption. Organizations that wish to request exemption from registration under Article 7-A or the EPTL or both, as described in section 91.3 of this Part, shall claim such exemption by completing the CHAR410 or a successor form, including the exemption request section of such form, and attaching Schedule E (Request for Exemption for Charitable Organizations) or a successor form along with all required attachments listed in both the CHAR410 and Schedule E.

§ 91.5 Annual filing

(a) Registration Types. Charitable organizations registered with the Attorney General pursuant to Article 7-A or the EPTL or both shall file with the Attorney General annually, pursuant to their registration type, as defined in section 91.2 of this Part, and according to the following instructions.

(b) Annual Filing. Charitable organizations registered with the Attorney General are required to file annually with the Charities Bureau. In any reporting period where the organization's finances exceed certain thresholds, the organization must submit a detailed financial report and a filing fee, as described in paragraphs (c) and (d) of this section. In any reporting period where the organization's finances do not exceed certain financial thresholds, however, the organization may use the annual filing form to claim exemption from the annual report requirement and submit that annual filing without additional information, attachments or fees, as described in paragraph (e) of this section.

(c) What Documents to Submit. The following documents constitute a complete annual filing for a charitable organization:

(1) CHAR500 (Annual Filing for Charitable Organizations) or a successor form, which shall include identifying and contact information, annual report exemption claim information (see paragraph (e) of this section) and information regarding the submission of schedules required under Article 7-A.

(2) CHAR500 Article 7-A Schedules.

(i) Schedule 4a (Professional Fund Raisers (PFR), Fund Raising Counsels (FRC), Commercial Co-Venturers (CCV)) or a successor form schedule is required for organizations that contracted with or used the services of a PFR, FRC or CCV for fund raising activity in New York State during the reporting period and shall indicate the type of fund raising professional, as defined in Article 7-A section 171-a, and include contact information and information regarding the services provided, terms of the contract and fees paid.

(ii) Schedule 4b (Government Contributions (Grants)) or a successor form schedule is required for organizations that received a contribution or grant from a government agency during the reporting period and shall include the name of each agency from which contributions were received and the amount of each contribution.

(iii) Schedule EDS (Electioneering Disclosure Schedule) or a successor form is required for covered organizations that must file such form pursuant to section 91.6 of this part.

(3) CHAR500 Attachments.

(i) All organizations that do not claim annual report exemptions for all laws under which they are registered, as described in paragraph (e) of this section, must include a copy of the following IRS forms with their submission of the CHAR500, regardless of whether such IRS forms are submitted or required to be submitted to the IRS:

(a) a copy of the complete IRS Form 990, 990-EZ or 990-PF with schedules; and

(b) a copy of the complete IRS Form 990-T, if applicable.

(ii) Organizations with Article 7-A and Dual Registration Types, as defined in section 91.2 of this Chapter, that are not claiming the Article 7-A annual report exemption, as described in paragraph (e) of this section, and whose total support and revenue for the reporting period exceed one hundred thousand dollars must include additional attachments according to the following schedule:

(a) a copy of an independent accountant's review report and financial statements with accompanying notes prepared in accordance with generally accepted accounting principles (GAAP), if total support and revenue for the reporting period is more than one hundred thousand but less than two hundred fifty thousand dollars.

(b) a copy of an independent accountant's audit report and financial statements with accompanying notes prepared in accordance with GAAP, if total support and revenue for the reporting period is more than two hundred fifty thousand dollars.

(iii) Organizations with Article 7-A and dual registration types whose financial information is included in a consolidated certified public accountant's audit or review report may file such consolidated audit or review report with its annual financial report in lieu of filing a separate audit or review report for the registrant alone, as long as such consolidated audit or review report includes or attaches supplemental schedules containing the following:

(a) a statement of financial position for each consolidated entity; and

(b) a statement of activities for each consolidated entity; and

(c) consolidating adjustments.

(d) What Fees to Submit.

(1) Article 7-A Filing Fee. Any Article 7-A or Dual registrant that contracted with or used the services of a professional fund raiser or fund raising counsel, as defined in

Article 7-A, during the reporting period must pay an Article 7-A filing fee of twenty-five dollars, or any other fee mandated by Article 7-A as amended. Otherwise, the Article 7-A filing fee is based on the total support and revenue of the organization for the reporting period, as indicated in the following schedule:

(i) No fee, if the organization is exempt from filing an annual report under Article 7-A (see paragraph (e) of this section);

(ii) Ten dollars, or any other fee mandated by Article 7-A as amended, if the organization's total support and revenue for the reporting period is less than two hundred fifty thousand dollars;

(iii) Twenty-five dollars, or any other fee mandated by Article 7-A as amended, if the organization's total support and revenue for the reporting period is two hundred fifty thousand dollars or more.

(2) EPTL Filing Fee. The EPTL filing fee for EPTL and Dual registrants is based on the net worth of the organization at the end of the reporting period, as indicated in the following schedule:

(i) No fee, if the organization is exempt from filing an annual report under the EPTL (see paragraph (e) of this section);

(ii) Twenty-five dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is less than fifty thousand dollars;

(iii) Fifty dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is fifty thousand dollars or more but less than two hundred fifty thousand dollars;

(iv) One hundred dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is two hundred fifty thousand dollars or more but less than one million dollars;

(v) Two hundred fifty dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is one million dollars or more but less than ten million dollars;

(vi) Seven hundred fifty dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is ten million dollars or more but less than fifty million dollars; or

(vii) One thousand five hundred dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is fifty million dollars or more.

(3) Total Filing Fee. The total filing fee is based on the registration type, as defined in section 91.2 of this Chapter:

(i) Article 7-A. The total fee for Article 7-A registrants equals the Article 7-A filing fee. Article 7-A only registrants do not need to calculate or pay an EPTL filing fee.

(ii) EPTL. The total fee for EPTL registrants equals the EPTL filing fee. EPTL only registrants do not need to calculate or pay an Article 7-A filing fee.

(iii) Dual. The total filing fee for dual registrants is the sum of the Article 7-A and EPTL filing fees.

(e) Annual Report Exemption. In any reporting period where the organization's finances do not exceed certain financial thresholds, the organization may use the annual filing form to claim exemption from the annual report requirement and submit that annual filing without additional information, attachments or fees. To claim the relevant annual report exemption(s), the organization must check the Article 7-A annual report exemption box and/or the EPTL annual report exemption box on the CHAR500 (Annual Filing for Charitable Organizations) or a successor form and complete the certification, as described in paragraph (g) of this section, under penalty for perjury attesting that it qualifies for an annual report exemption for the reporting period. No fees and no schedules or attachments are required for any registrant claiming the annual report exemption for all laws under which it is registered (i.e., an Article 7-A registrant claiming the Article 7-A annual report exemption, an EPTL registrant claiming the EPTL annual report exemption, a Dual registrant claiming both the Article 7-A and the EPTL annual report exemptions).

(1) Organizations registered with the Attorney General pursuant to Article 7-A are exempt from the Article 7-A annual report requirement applicable to this period, but must still submit an annual filing to claim an annual report exemption, if:

(i) the organization:

(a) had total contributions from New York State (including residents, foundations, corporations, government agencies and other entities) that did not exceed twenty-five thousand dollars for the reporting period; and

(b) did not use the services of a professional fund raiser (PFR) or fund raising counsel (FRC) to solicit contributions during the reporting period; or if

(ii) the organization:

(a) received an allocation from a federated fund, United Way or incorporated community appeal; and

(b) had contributions from all other sources that did not exceed twenty-five thousand dollars for the reporting period; and

(c) did not use a PFR or FRC to solicit contributions during the reporting period; or if

(iii) the organization:

(a) received all or substantially all of its contributions for the reporting period from a single government agency to which it submitted an annual financial report similar to that required by Article 7-A; and

(b) did not use a PFR or FRC to solicit contributions during the reporting period.

(2) Organizations registered with the Attorney General pursuant to the EPTL are exempt from the EPTL reporting requirement applicable to this period, but must still submit an annual filing to claim the annual report exemption, if the organization's:

(i) total gross receipts were less than twenty-five thousand dollars for the reporting period; and

(ii) total assets did not exceed twenty-five thousand dollars at any time during the reporting period.

(f) When to File. All submissions must be mailed, postmarked by the deadline. If the regular due date falls on a Saturday, Sunday or legal holiday, the deadline is on the next business day. A business day is any day that is not a Saturday, Sunday or legal holiday. The submission deadline is based on the registration type, as defined in section 91.2 of this Chapter:

(1) Article 7-A and Dual. Submissions must be filed electronically or mailed and postmarked by the fifteenth day of the fifth month after the organization's accounting period ends. For example, a report for the fiscal year ended December 31, 2004 is due by May 15, 2005.

(2) EPTL. Submissions must be filed electronically or mailed and postmarked by the last day of the sixth month after the organization's accounting period ends. For example, a report for the fiscal year ended December 31, 2004 is due by June 30, 2005.

(3) Extension of Time to Submit an Annual Filing.

(i) Upon request, submitted prior to the filing deadline, the time to submit an annual filing pursuant to section 8-1.4 of the Estates, Powers and Trusts Law and/or Article 7-A of the Executive Law may be extended by the Attorney General for a period or periods in the aggregate not to exceed one hundred eighty days. Extension requests shall be sent by means and form, manual or electronic, as designated by the Attorney General. No other

filing, application or fees shall be submitted with a request for an extension of time to submit an annual filing.

(ii) Any charitable organization that has submitted a request to the Internal Revenue Service for an extension of time to file an annual filing and/or has received approval of such request shall keep such documents as part of its financial records for at least three years after the end of the period of registration for which they relate.

(iii) The Attorney General has the sole discretion to deny any extension request, regardless of whether a corresponding extension request has been approved by the IRS.

(g) Certification. Each annual filing shall be signed as follows, and each signature shall be accompanied by the signatory's printed name and title and the date signed:

(1) Article 7-A and Dual. Certifications must be signed by both the president or another authorized officer and the chief financial officer or treasurer.

(2) EPTL. Certifications must be signed by both the president or another authorized officer and the chief financial officer or treasurer, except that certification by a banking institution need only be signed by a vice president and certification on behalf of a trust need only be signed by at least one trustee.

§ 91.6 Annual Disclosure of Electioneering Activities by Non-501(c)(3) Registrants

(a) Definitions. For purposes of this section:

(1) “Annual Financial Report” means any report filed pursuant to section 91.5 or 91.7 of this part.

(2) “Covered organization” means any organization that is: (i) registered or required to be registered with the Attorney General pursuant to Article 7-A of the Executive Law and/or Article 8 of the Estates, Powers and Trusts Law; and (ii) not prohibited by Internal Revenue Code section 501(c) from participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office.

(3) “Election” means any general, special, or primary election for federal, state or local office, or at which any proposition, referendum or other question is submitted to the voters in any state or any locality in the United States.

(4) “New York Election” means only those general, special, or primary elections conducted by a New York state or local government entity for New York state or local office, or any election at which any New York state or local constitutional amendment, proposition, referendum or other question is submitted to the voters.

(5) “Election related expenditure” means

(i) any expenditure made, liability incurred, or contribution provided for express election advocacy or election targeted issue advocacy; or

(ii) any other transfer of funds, assets, services or any other thing of value to any individual, group, association, corporation whether organized for profit or not-for-profit, labor union, political committee, political action committee, or any other entity for the purpose of supporting or engaging in express election advocacy or election targeted issue advocacy by the recipient or a third party.

(6) “Express election advocacy” means any communication made at any time that:

(i) contains words such as “vote,” “oppose,” “support,” “elect,” “defeat,” or “reject,” which call for the nomination, election or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more constitutional amendments, propositions, referenda or other questions submitted to voters at any election; or

(ii) refers to or depicts one or more clearly identified candidates, political parties, constitutional amendments, propositions, referenda or other questions submitted to the voters in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat of such candidates in an election, the election or defeat of such political parties, or the passage or defeat of such constitutional amendments, propositions, referenda or other questions submitted to the voters in any election.

(7) “Election targeted issue advocacy”

(i) means any communication other than express election advocacy made within forty-five days before any primary election or ninety days before any general election that:

(A) refers to one or more clearly identified candidates in that election;

(B) depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or

(C) refers to any clearly identified political party, constitutional amendment, proposition, referendum or other question submitted to the voters in that election;

(ii) does not mean a communication that is:

(A) directed, sent or distributed by the covered organization to individuals who affirmatively consent to be members of the covered organization, contribute funds to the covered organization, or, pursuant to the covered organization's articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition of all or

substantially all of the covered organization's assets or the merger or dissolution of the covered organization; or

(B) for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another.

(8) "Communication" means:

(i) paid advertisements broadcast over radio, television, cable, or satellite;

(ii) paid placement of content on the Internet or other electronic communication networks;

(iii) paid advertisements published in a periodical or on a billboard;

(iv) paid telephone communications to one thousand or more households;

(v) mailings sent or distributed through the United States Postal Service or similar private mail carriers to five thousand or more recipients; or

(vi) printed materials exceeding five thousand copies.

(9) "Covered donation" means any contribution, gift, loan, advance, or deposit of money or any thing of value made to a covered organization unless such donation is deposited into an account the funds of which are not used for making New York election related expenditures.

(b) Disclosure of Election Related Expenditures.

(1) The annual financial report filed by any covered organization shall include the amount and the percentage of total expenses during the reporting period that are election related expenditures.

(2) The annual financial report filed by any covered organization that has made New York election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each New York election related expenditure exceeding fifty dollars in value, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include for each New York election related expenditure:

(i) the amount or fair market value of any funds, services or assets provided, and any liabilities incurred;

(ii) the date that such funds, services or assets were provided, and that any liabilities were incurred;

(iii) the name and address of the recipients of the expenditure; and

(iv) a clear description of the expenditure and its purpose, including but not limited to support for or opposition to a candidate, political party, referendum or other question put before the voters in an election.

(c) Disclosures of Donations Related to New York Elections.

(1) The annual financial report filed by a covered organization that has made New York election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each covered donation it has received during the reporting period, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include:

(i) the name and address of each donor who made covered donations in an aggregate amount of one thousand dollars or more during the reporting period;

(ii) the employer of each such individual donor, if known to the covered organization; and

(iii) the date and amount of each such covered donation.

(2) If a covered organization keeps one or more segregated bank accounts containing funds used solely for New York election related expenditures, and makes all of its New York election related expenditures from such accounts, then the annual financial report need only include information specified in the preceding subparagraph concerning donations deposited into such accounts.

(d) Exceptions for Disclosures to Multiple Agencies. The annual financial report filed by a covered organization is not required to include the information specified by subparagraph two of paragraph b of this section, or paragraph c of this section, if:

(i) any law or rule requires that such information be disclosed to any other government agency that makes such information available to the public, and

(ii) the covered organization is in compliance with the requirements of such law or rule at the time it files the annual financial report.

(e) Schedule to be Provided by the Attorney General. Upon adoption of this regulation, the Attorney General shall make available a schedule ("Electioneering Disclosure

Schedule”) to the Annual Filing for Charitable Organizations and if necessary amend existing forms to allow covered organizations to make the disclosures required by this section.

(f) Guidance to be Provided by the Attorney General. Upon adoption of this regulation, the Attorney General shall make available to the public guidance concerning compliance with this rule.

(g) Public Disclosure. The Attorney General shall make information contained in the completed Electioneering Disclosure Schedule available to the public on the Attorney General’s website, except for:

(1) information related to any covered donation received prior to the effective date of this rule; and

(2) information the Attorney General deems exempt from disclosure pursuant to paragraph (h) of this section.

(h) Exemption from Public Disclosure.

(1) Notwithstanding paragraph (g) of this section, the Attorney General may, upon application by a donor or covered organization to be made in a form and manner prescribed by the Attorney General, grant an exemption and refrain from disclosing any information to the public related to any covered donation if the applicant shows that the covered organization’s primary activities involve areas of public concern that create a reasonable probability that disclosure will cause undue harm, threats, harassment or reprisals to any person or organization.

(2) An application for such exemption shall be submitted no later than forty-five days prior to the due date for the applicable annual filing. The Attorney General will inform the applicant and may inform other persons or organizations to which the exemption would apply, in writing, whether the application for exemption has been granted or denied. Any denial issued by the Attorney General shall include a statement of findings and conclusions, and the reasons or basis for the denial.

(3) The submission of an application does not relieve the covered organization of its obligation to timely file annual financial reports, including an Electioneering Disclosure Schedule disclosing all donors for which the covered organization has not sought exemption.

(4) To the extent permitted by federal and state law, the Attorney General will exempt from public disclosure all materials submitted in support of an application for an exemption; provided that the Attorney General may disclose such materials to a court in response to any judicial subpoena or court order. The Attorney General may publicly disclose that a covered organization has

submitted one or more applications for an exemption, or that one or more of a covered organization's requests for an exemption has been granted or denied.

(i) **Filing Deadlines and Extensions.** Covered organizations shall annually file the Electioneering Disclosure Schedule by the fifteenth day of the fifth month after the organization's accounting period ends. No covered organization may obtain any extension to file an Electioneering Disclosure Schedule, including any extension otherwise available under section 91.5(f)(3) of this chapter.

(j) **Severability.** If any provision in this section or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of the provisions and/or the applicability of such provisions to other persons or circumstances shall not be affected thereby.

§ 91.7 Combined annual financial report

(a) **Authorization to File a Combined Annual Financial Report.** Upon prior written authorization by the Attorney General, a parent charitable organization which has one or more affiliates may file a combined annual financial report for itself and its affiliates. Affiliates that do not have a parent-subsidary relationship cannot file a combined report. For this purpose affiliate shall include any chapter, branch, auxiliary or other subordinate unit of any registered charitable organization, however designated, whose policies, fund-raising activities and expenditures are supervised or controlled by the parent charitable organization. The Charities Bureau, in its discretion, may deny a request to file a combined report by the parent organization if any of the following facts are present:

(1) The parent organization does not file a group return IRS Form 990 for its subordinate organizations with the IRS.

(2) The parent organization and its affiliates do not consolidate their audited financial statements.

(3) The parent organization has one or more affiliates that are not included in the group return and/or consolidated financial statements.

(4) The parent organization has one or more affiliates that are registered and file separately with the Attorney General and, therefore, would not be included in the combined report.

(5) The parent organization and its affiliates have different fiscal years.

(b) **What Documents to Submit.** The following documents constitute a complete combined annual financial report for a charitable organization:

(1) CHAR500-C (Combined Annual Financial Report) or a successor form, which shall include identifying and contact information, annual report exemption claim information,

information regarding the submission of schedules required under Article 7-A and a list of affiliate organizations.

(2) Schedules.

(i) Schedule 4a (Professional Fund Raisers (PFR), Fund Raising Counsels (FRC), Commercial Co-Venturers (CCV)) or a successor form schedule is required for either the parent or any of its affiliate organizations that contracted with or used the services of a PFR, FRC or CCV for fund raising activity in New York State during the reporting period and shall indicate the type of fund raising professional, as defined in Article 7-A section 171-a, and include contact information and information regarding the services provided, terms of the contract and fees paid.

(ii) Schedule 4b (Government Contributions (Grants)) or a successor form schedule is required for the parent or any of its affiliate organizations that received a contribution or grant from a government agency during the reporting period and shall include the name of each agency from which contributions were received and the amount of each contribution.

(iii) Schedule 6a (Individual Affiliate Summary) or a successor form schedule is required for each affiliate organization that is part of the combined report and shall include annual report exemption information, a financial summary (if the affiliate is registered under Article 7-A and does not claim the Article 7-A annual report exemption) and fee information.

(iv) Schedule EDS (Electioneering Disclosure Schedule) or a successor form is required for covered organizations that must file such form pursuant to section 91.6 of this part.

(3) A consolidated financial statement, including an independent accountant's audit report with accompanying notes prepared in accordance with GAAP.

(4) A copy of the letter from the Attorney General authorizing use of CHAR500-C, its predecessor form or its successor form.

(5) A copy of the parent organization IRS Form 990 and schedules.

(6) A copy of the IRS Form 990 Group Return and schedules.

(c) What Fees to Submit.

(1) Parent Organization Article 7-A Filing Fee. The parent organization Article 7-A filing fee is twenty-five dollars.

(2) Affiliate Organizations Combined Article 7-A Filing Fee. The Article 7-A fee for each individual affiliate included in the combined annual financial report with a Registration Type of Article 7-A or Dual, as defined in section 91.2 of this Part, that does

not claim the affiliate Article 7-A annual report exemption is ten dollars, up to a maximum of four hundred seventy-five dollars in the aggregate for all individual affiliates included in the combined annual financial report.

(3) Parent Organization EPTL Filing Fee. Parent organizations with registration type Article 7-A, as defined in section 91.2 of this Part, and parent organizations with registration type dual that claim the parent organization EPTL annual report exemption do not owe any parent organization EPTL filing fee. Otherwise, the parent organization EPTL filing fee is based on the net worth of the parent organization at the end of the reporting period, as indicated in the following schedule:

- (i) Twenty-five dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is less than fifty thousand dollars;
- (ii) Fifty dollars, or any other fee mandated by EPTL as amended, if the organization's total fund balance at the end of the reporting period is fifty thousand dollars or more but less than two hundred fifty thousand dollars;
- (iii) One hundred dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is two hundred fifty thousand dollars or more but less than one million dollars;
- (iv) Two hundred fifty dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is one million dollars or more but less than ten million dollars;
- (v) Seven hundred fifty dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is ten million dollars or more but less than fifty million dollars; or
- (vi) One thousand five hundred dollars, or any other fee mandated by the EPTL as amended, if the organization's total fund balance at the end of the reporting period is fifty million dollars or more.

(4) Affiliate Organizations Combined EPTL Filing Fee. The EPTL fee for each individual affiliate included in the combined annual financial report with a registration type of EPTL or dual, as defined in section 91.2 of this Chapter, that does not claim the affiliate EPTL annual report exemption is based on the individual affiliate's net worth at the end of the reporting period, as indicated in subparagraph (c)(3) of this section.

(5) Total Filing Fee. The total filing fee is the sum of all of the filing fees in subparagraphs (c)(1) through (c)(4) of this section.

(d) When to File.

(1) All combined annual financial reports must be mailed, postmarked by the fifteenth day of the fifth month after the organization's accounting period ends. For example, a report for the fiscal year ended December 31, 2004 is due by May 15, 2005. If the regular due date falls on a Saturday, Sunday or legal holiday, file on the next business day. A business day is any day that is not a Saturday, Sunday or legal holiday.

(2) Extension of Time to Submit an Annual Filing. Organizations filing a combined annual financial report may request an extension of time to submit an annual filing according to the procedures described in subparagraph (f)(3) of section 91.5 of this Chapter.

(e) Certification. Each consolidated annual financial report shall be signed as follows, and each signature shall be accompanied by the signatory's printed name and title and the date signed. Certifications must be signed by both the president or another authorized officer and the chief financial officer or treasurer.

§ 91.8 Amended registration

Organizations already registered with the Attorney General that have amended their information (e.g., the organization's name, contact information or list of directors) or organizing documents (e.g., the certificate of incorporation or by-laws) since last submitting a registration, amended registration or re-registration statement must amend their registration.

(a) What Documents to Submit. The following documents constitute a complete initial registration for a charitable organization:

(1) CHAR410-A (Amended Registration Statement for Charitable Organizations) or a Successor Form. This form is for organizations already registered with the Charities Bureau that have amended their information or document attachments since the last registration form was filed and shall include identifying information. If the organization structure, activities and federal tax-exempt status information have changed since the last registration statement was filed and such changes were not already presented in the organization's previous annual filing with the Attorney General, as described in section 91.5 of this Chapter, the amended registration statement shall include such information as well.

(2) copies of all amendments to the following documents previously filed with a prior registration, amended registration or re-registration statement:

(i) the certificate of incorporation, trust agreement or other organizing document, and any amendments; and

(ii) the bylaws or other organizational rules, and any amendments; and

(iii) the IRS Form 1023 or 1024 Application for Recognition of Exemption, if applicable;

and (iv) the IRS tax exemption determination letter, if applicable.

(b) What Fees to Submit. Organizations with registration type EPTL, as defined in section 91.2 of this Chapter, that are amending their registration to solicit contributions and not requesting exemption from registration under Article 7-A must submit a fee of twenty-five dollars. Other current EPTL registrants and all current Article 7-A and dual registrants, as defined in section 91.2 of this Chapter, should not submit any fee with the amended registration.

(c) When to Amend Registration. Organizations are required to notify the Charities Bureau within thirty (30) days of the occurrence of the changes or amendments being reported. If such changes are indicated in the organization's most recently filed annual filing, the organization need not file an amended registration statement. All submissions must be mailed, postmarked by the deadline. If the regular due date falls on a Saturday, Sunday or legal holiday, the deadline is on the next business day. A business day is any day that is not a Saturday, Sunday or legal holiday.

(d) Certification. Each amended registration statement shall be signed as follows, and each signature shall be accompanied by the signatory's printed name and title and the date signed:

(1) Certification by a Banking Institution. Certifications must be signed by a vice president.

(2) Certification on Behalf of a Trust. Certification must be signed by at least one trustee.

(3) Certification by All Others. Certifications must be signed by both the president or another authorized officer and the chief financial officer or treasurer.

(e) Request for Registration Exemption. Registered organizations that wish to request exemption from registration under Article 7-A or the EPTL or both, as described in section 91.3 of this Chapter, shall claim such exemption by completing the CHAR410-A or a successor form, including the exemption request section of such form, and attaching Schedule E (Request for Exemption for Charitable Organizations) or a successor form along with all required attachments listed in both the CHAR410-A and Schedule E.

§ 91.9 Cancellation of Article 7-A registration & re-registration

(a) Cancellation of Article 7-A Registration. If an Article 7-A or dual registrant fails to file a complete annual filing on time, as described in section 91.5 of this Chapter, its Article 7-A registration to solicit contributions shall be deemed no longer in effect.

(b) The organization must then re-register pursuant to Article 7-A, regardless of its registration status pursuant to [section 8-1.4 of the EPTL](#).

(1) What Documents to Submit. The following documents constitute a complete re-

registration for a charitable organization:

(i) CHAR410-R (Re-Registration Statement for Charitable Organizations) or a Successor Form. This form is for organizations whose registration to solicit contributions is no longer in effect as the result of a violation of registration or reporting requirements and shall include identifying, organization structure, activities and federal tax-exempt status information.

(ii) a copy of the certificate of incorporation, trust agreement or other organizing document, and any amendments; and

(iii) a copy of the bylaws or other organizational rules, and any amendments; and

(iv) a copy of the IRS Form 1023 or 1024 Application for Recognition of Exemption, if applicable; and

(v) a copy of the IRS tax exemption determination letter, if applicable; and

(vi) all delinquent annual filings (annual reports or claims of annual report exemption), as described in section 91.5 of this Chapter, for all years for which the organization is delinquent, up to a maximum of six years. All delinquent filings must be sent in a single submission along with the re-registration. Any fees for delinquent filings shall be combined with the re-registration fee in a single payment.

(2) What Fees to Submit. The fee to accompany the re-registration is one hundred fifty dollars. Additional fees may be due with any delinquent annual filings that are being submitted, as described in section 91.5 of this Chapter.

(3) When to Re-Register. The re-registration must be submitted immediately after the failure of an Article 7-A or Dual registrant to file CHAR500 (Annual Filing for Charitable Organizations) or a successor form by the annual filing deadline, as described in section 91.5 of this Chapter, and in no event later than the deadline imposed in any delinquency notice sent to the organization by the Attorney General. All submissions must be mailed, postmarked by the deadline. If the regular due date falls on a Saturday, Sunday or legal holiday, the deadline is on the next business day. A business day is any day that is not a Saturday, Sunday or legal holiday.

(4) Certification. Each re-registration statement shall be signed by both the president or another authorized officer and the chief financial officer or treasurer, and each signature shall be accompanied by the signatory's printed name and title and the date signed.

(e) Request for Registration Exemption. Delinquent Article 7-A or dual registrants that wish to request exemption from registration under Article 7-A or the EPTL or both, as described in section 91.3 of this Chapter, shall claim such exemption by completing the CHAR410-R or a successor form, including the exemption request section of such form, and attaching Schedule E (Request for Exemption for Charitable Organizations) or a

successor form along with all required attachments listed in both the CHAR410-R and Schedule E.

§ 91.10 Closing registration and dissolutions

(a) Charitable organizations. The registration of a charitable organization will only be closed if the organization demonstrates that it has dissolved or otherwise formally ceased operations.

(1) Corporations.

(i) If the organization was incorporated, it must be dissolved before the Attorney General can close its registration. If the organization has a certificate of dissolution from the New York Department of State, or from a similar government agency in a different state, it must be submitted along with the CHAR500 or a successor form marked final filing, with all required attachments to that form.

(ii) If the organization was incorporated and does not have a certificate of dissolution but does have a court-approved plan of dissolution, the organization must complete the dissolution process and then submit to the Attorney General a copy of that certificate of dissolution. New York corporations obtain the certificate of dissolution from the New York State Department of State Division of Corporations.

(iii) If the organization was incorporated and has ceased operations but does not have a certificate of dissolution and does not have a court-approved dissolution plan, the organization must start and complete the dissolution process.

(2) Wholly Charitable Trusts. If the organization was formed as a wholly charitable trust, it may request that the Attorney General close its registration by submitting:

(i) a cover letter explaining the reasons for closure; and

(ii) a copy of the CHAR500 or a successor form marked final filing; and

(iii) a copy of IRS Form 990, 990-EZ or 990-PF marked final return, if applicable; and

(iv) if the assets were transferred to another organization, proof that the other organization received the assets (for example, a letter from the recipient organization, signed by an officer, stating that it received the transfer); and

(v) a judicial or informal final accounting containing sufficient information for the purposes of the Attorney General's review.

(3) Unincorporated organizations. If the organization was never incorporated, it may request that the Attorney General close the registration by submitting:

- (i) a cover letter explaining the reasons for closure; and
- (ii) a copy of the CHAR500 or a successor form marked final filing; and
- (iii) a copy of IRS Form 990, 990-EZ or 990-PF marked final return, if applicable; and
- (iv) if the assets were transferred to another organization, proof that the other organization received the assets (for example, a letter from the recipient organization, signed by an officer, stating that it received the transfer).

§ 91.11 Where to submit registrations, annual filings and other submissions

Charitable organizations must submit their annual filing to the New York City office of the Attorney General's Charities Bureau, Registration Section, 120 Broadway, Floor 3, New York, NY 10271, or such other place as the Attorney General may designate or electronically in the manner prescribed by statute or by the Attorney General.

§ 91.12 Incomplete material

The Attorney General will not accept any registration and/or filing unless all of the documents and fees required by law and these regulations have been submitted and paid. The organization shall not be in compliance with the law and these regulations until the registration and/or filing material has been accepted by the Attorney General and may be subject to appropriate sanctions pursuant to Article 7-A and/or the EPTL.

§ 91.13 Attorney General authority to require additional information or documentation

In addition to any documents the Attorney General requires of a charitable organization as part of its registration, exemption request, annual filing or request to close registration, the Attorney General may require a charitable organization to submit any information or documentation relevant to the Attorney General's review of such organization, including without limitation a judicial or informal periodic or final accounting for a wholly charitable trust.

TRUSTS AND ESTATES WITH A CHARITABLE INTEREST

§ 92.1 To whom this part applies

This part applies to trusts and estates with a charitable interest as defined in section 90.3 of this Chapter. The following sections of this Part contain the registration and reporting requirements applicable to trusts and estates with a charitable interest.

§ 92.2 Estates

(a) Registration. Estates with a charitable interest as defined in subparagraph (a)(1) of section 90.3 of this Chapter are required to register pursuant to EPTL section 8-1.4. Estates in which the only charitable interest is a specific gift (either a specific amount of money or specific property) to one or more named charities exempt from federal taxation pursuant to Internal Revenue Code section 501(c)(3) are not required to register pursuant to the EPTL.

(1) What Registration Documents to Submit. To register with the Attorney General, an estate with a charitable interest shall submit all of the following documents:

(i) a copy of the notice of probate; and

(ii) a copy of the last will and testament and any codicils.

(2) What Registration Fees to Submit. Estates with a charitable interest are not required to pay a registration fee pursuant to the EPTL. However, an EPTL filing fee is required when the estate submits a final report pursuant to paragraph (c) of this section 92.2.

(3) When to Register. Estates with a charitable interest shall register within six months after the earlier of the date letters testamentary or preliminary letters testamentary are issued. Nothing in this Chapter shall be interpreted to waive any requirement to submit any estate-related documents to the Attorney General in a timely manner pursuant to any other provision of the laws of the State of New York, such as the requirement to submit the notice of probate pursuant to section 1409 of the Surrogate's Court Procedure Act.

(4) Where to Register. Estates with a charitable interest shall submit their registration documents to the New York City office of the Attorney General's Charities Bureau, the Albany office of the Attorney General's Charities Bureau or the applicable Attorney General's Regional Office, in accordance with instructions issued by the Attorney General, or such other place as the Attorney General may designate.

(b) Periodic Reports. Estates with a charitable interest are not required to file periodic reports, but shall comply with any request made by the Attorney General for additional information or documentation pursuant to section 92.5 of this Part.

(c) Final Reports. Estates with a charitable interest are required to file a final report with the Attorney General.

(1) What Final Report Documents to Submit. A judicial or informal final accounting containing sufficient information for the purposes of the Attorney General's review shall constitute a complete final report for an estate with a charitable interest.

(2) What Final Report Fees to Submit. With the submission of a final report, estates with a charitable interest shall pay a filing fee based on the total value of all assets distributed or proposed to be distributed to charitable beneficiaries, including distributions resulting from specific and residuary gifts paid from principal or income, according to the

following schedule:

- (i) Twenty-five dollars, if the total value of all such charitable assets is less than fifty thousand dollars;
- (ii) Fifty dollars, if the total value of all such charitable assets is fifty thousand dollars or more but less than two hundred fifty thousand dollars;
- (iii) One hundred dollars, if the total value of such charitable assets is two hundred fifty thousand dollars or more but less than one million dollars;
- (iv) Two hundred fifty dollars, if the total value of such charitable assets is one million dollars or more but less than ten million dollars;
- (v) Seven hundred fifty dollars, if the total value of such charitable assets is ten million dollars or more but less than fifty million dollars; or
- (vi) One thousand five hundred dollars, if the total value of such charitable assets is fifty million dollars or more. The EPTL filing fee is due at the time the final report is submitted to the Attorney General and is required for all estates with a charitable interest that are required to register with the Attorney General.

(3) Where to File Final Report. An estate with a charitable interest shall submit its final report to the New York City office of the Attorney General's Charities Bureau, the Albany office of the Attorney General's Charities Bureau or the applicable Attorney General's Regional Office, in accordance with instructions issued by the Attorney General, or such other place as the Attorney General may designate.

§ 92.3 Charitable remainder trusts

(a) Registration with Notice of Termination. Charitable remainder trusts as defined in subparagraph (b)(1) of section 90.3 of this Part are required to register pursuant to EPTL section 8-1.4. Pursuant to EPTL section 8-1.4(f)(1), such registration shall contain a notice of the termination of the interest of any party in a trust that would cause all or part of the trust assets or income to be applied to charitable purposes. Charitable remainder trusts are not required to submit to the Attorney General a separate notice of termination.

(1) What Registration with Notice of Termination Documents to Submit. To register, a charitable remainder trust shall submit all of the following registration with notice of termination documents to the Attorney General and mail a copy to each identified current charitable beneficiary:

- (i) CHAR001-RT (Registration Statement for Charitable Remainder Trusts with Notice of Termination of Intervening Trust Interest) or a successor form issued by the Attorney General, which shall include:

(a) identifying information, including the identity of the terminating interest (and, if applicable, the date of death of the individual whose interest terminated) and the identity of each charitable beneficiary,

(b) contact information for each trustee and attorney for the trust, and

(c) a statement that the trust has complied with the requirement to mail a copy of the notice of termination to each identified current charitable beneficiary; and

(ii) a copy of the trust instrument and any amendments.

(2) What Registration and Notice of Termination Fees to Submit. Charitable remainder trusts are not required to pay a registration or notice of termination fee pursuant to the EPTL. However, an EPTL filing fee is required when the trust submits a final report pursuant to paragraph (c) of this section 92.3.

(3) When to Submit and Mail Registration with Notice of Termination. Charitable remainder trusts shall submit their registration with notice of termination to the Attorney General and mail a copy of such registration with notice of termination to each identified current charitable beneficiary within six months after the date when, pursuant to the terms of the applicable trust instrument, all or part of the trust assets or income is required to be applied to charitable purposes.

(4) Where to Submit and Mail Registration with Notice of Termination. Charitable remainder trusts shall submit their registration with notice of termination to the New York City office of the Attorney General's Charities Bureau, the Albany office of the Attorney General's Charities Bureau or the applicable Attorney General's Regional Office, in accordance with instructions issued by the Attorney General, or such other place as the Attorney General may designate. Charitable remainder trusts shall also mail a copy of such registration with notice of termination to each identified current charitable beneficiary at the last known address of such beneficiary or such other address for such beneficiary as may be determined from a diligent search.

(b) Periodic Reports. Charitable remainder trusts are not required to file periodic reports, but shall comply with any request made by the Attorney General for additional information or documentation pursuant to section 92.5 of this Part.

(c) Final Reports. Charitable remainder trusts are required to file a final report with the Attorney General.

(1) What Final Report Documents to Submit. A judicial or informal final accounting containing sufficient information for the purposes of the Attorney General's review shall constitute a complete final report for a charitable remainder trust.

(2) What Final Report Fees to Submit. With the submission of a final report, charitable remainder trusts shall pay a filing fee based on the total value of all assets distributed or

proposed to be distributed to charitable beneficiaries, including distributions resulting from specific and residuary gifts paid from principal or income, according to the following schedule:

- (i) Twenty-five dollars, if the total value of all such charitable assets is less than fifty thousand dollars;
- (ii) Fifty dollars, if the total value of all such charitable assets is fifty thousand dollars or more but less than two hundred fifty thousand dollars;
- (iii) One hundred dollars, if the total value of such charitable assets is two hundred fifty thousand dollars or more but less than one million dollars;
- (iv) Two hundred fifty dollars, if the total value of such charitable assets is one million dollars or more but less than ten million dollars;
- (v) Seven hundred fifty dollars, if the total value of such charitable assets is ten million dollars or more but less than fifty million dollars; or
- (vi) One thousand five hundred dollars, if the total value of such charitable assets is fifty million dollars or more. The EPTL filing fee is due at the time the final report is submitted to the Attorney General and is required for all charitable remainder trusts that are required to register with the Attorney General.

(3) **Where to File Final Report.** A charitable remainder trust shall submit its final report to the New York City office of the Attorney General's Charities Bureau, the Albany office of the Attorney General's Charities Bureau or the applicable Attorney General's Regional Office, in accordance with instructions issued by the Attorney General, or such other place as the Attorney General may designate.

§ 92.4 Charitable lead trusts

(a) **Registration.** Charitable lead trusts as defined in subparagraph (b)(2) of section 90.3 of this Chapter are required to register pursuant to EPTL section 8-1.4.

(1) **What Registration Documents to Submit.** To register with the Attorney General, a charitable lead trust shall submit all of the following documents:

(i) CHAR001-LT (Registration Statement for Charitable Lead Trusts) or a successor form issued by the Attorney General, which shall include:

(a) identifying information, including the identity of each charitable beneficiary, and

(b) contact information for each trustee and attorney for the trust; and

(ii) a copy of the trust instrument and any amendments.

(2) What Registration Fees to Submit. Charitable lead trusts are not required to pay a registration fee pursuant to the EPTL. However, an EPTL filing fee is required when the charitable lead trust submits each periodic report and its final report pursuant to paragraphs (b) and (c) of this section 92.4.

(3) When to Register. Charitable lead trusts shall register within six months after the trust is funded.

(4) Where to Register. Charitable lead trusts shall submit their registration documents to the New York City office of the Attorney General's Charities Bureau or such other place as the Attorney General may designate.

(b) Periodic Reports. Charitable lead trusts are required to file annual reports with the Attorney General.

(1) What Annual Report Documents to Submit. The following documents constitute a complete annual filing for a charitable lead trust:

(i) CHAR004 (Annual Filing for Charitable Lead Trust) or a successor form issued by the Attorney General, which shall include:

(a) identifying information, including the identity of each charitable beneficiary and the fiscal year end of the annual report,

(b) contact information for each trustee and attorney for the trust and each financial institution where trust assets are held, and

(c) principal, income and total financial information for the trust, including charges; administration expenses, distributions to beneficiaries and other credits; liabilities; and fund balances; and

(ii) a copy of the trust's IRS Form 5227 (Split-Interest Trust Information Return) or a successor form.

(2) What Annual Report Fees to Submit. Charitable lead trusts shall pay an annual EPTL filing fee according to the following schedule:

(i) Twenty-five dollars, if the total amount distributed to charity by the trust during the fiscal year is less than fifty thousand dollars;

(ii) Fifty dollars, if the total amount distributed to charity by the trust during the fiscal year is fifty thousand dollars or more but less than two hundred fifty thousand dollars;

(iii) One hundred dollars, if the total amount distributed to charity by the trust during the fiscal year is two hundred fifty thousand dollars or more but less than one million dollars;

(iv) Two hundred fifty dollars, if the total amount distributed to charity by the trust during the fiscal year is one million dollars or more but less than ten million dollars;

(v) Seven hundred fifty dollars, if the total amount distributed to charity by the trust during the fiscal year is ten million dollars or more but less than fifty million dollars; or

(vi) One thousand five hundred dollars, if the total amount distributed to charity by the trust during the fiscal year is fifty million dollars or more.

(3) When to File Annual Reports. A charitable lead trust shall file an annual report within six months after the end of its fiscal year. The extension request provisions for charitable organizations contained in subparagraph (f)(3) of section 91.5 of this Chapter apply to annual reports of charitable lead trusts.

(4) Where to File Annual Reports. A charitable lead trust shall submit its annual reports to the New York City office of the Attorney General's Charities Bureau or such other place as the Attorney General may designate.

(c) Final Reports. Charitable lead trusts are required to file a final report with the Attorney General.

(1) What Final Report Documents to Submit. The following documents shall constitute a complete final annual report for a charitable lead trust:

(i) CHAR004 (Annual Filing for Charitable Lead Trust) or a successor form issued by the Attorney General, which shall include:

(a) identifying information, including the identity of each charitable beneficiary and the end date of the annual report,

(b) contact information for each trustee and attorney for the trust and each financial institution where trust assets are held, and

(c) principal, income and total financial information for the trust, including charges; administration expenses, distributions to beneficiaries and other credits; liabilities; and fund balances; and

(ii) a copy of the trust's IRS Form 5227 (Split-Interest Trust Information Return) or a successor form for the year during which the charitable lead interest terminates.

(2) What Final Report Fees to Submit. Charitable lead trusts shall pay a final EPTL annual filing fee of twenty-five dollars, if the total amount distributed to charity by the trust during the fiscal year is twenty-five thousand dollars or more.

(3) When to File Final Report. A charitable lead trust shall file its final report within six

months after the end of its fiscal year during which the lead charitable interest terminated. The extension request provisions for charitable organizations contained in subparagraph (f)(3) of section 91.5 of this Chapter apply to final reports of charitable lead trusts.

(4) **Where to File Final Report.** A charitable lead trust shall submit its final report to the New York City office of the Attorney General's Charities Bureau or such other place as the Attorney General may designate.

§ 92.5 Attorney General authority to require additional information or documentation

In addition to any documents the Attorney General requires of a trust or estate with a charitable interest as part of its registration, periodic report, final report or notice of termination, the Attorney General may require a trust or estate with a charitable interest to submit any information or documentation relevant to the Attorney General's review of such entity, including without limitation a periodic accounting, a detailed securities schedule, IRS Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return), IRS Form 1041 (U.S. Income Tax Return for Estates and Trusts) and New York State Department of Taxation and Finance ET-90 (New York State Estate Tax Return) or successor forms.

§ 92.6 Certification requirement

For each registration, periodic report, final report or notice of termination required to be submitted by a trust or estate with a charitable interest pursuant to this Part, a trustee, executor or other authorized individual shall certify under penalties for perjury that, to the best of his or her knowledge and belief, such submission is true, correct and complete in accordance with the laws of the State of New York applicable to such submission.

Fundraising Professionals

§ 93.1 To whom this part applies

This Part applies to professional fund raisers, fund raising counsel, professional solicitors and commercial co-venturers as defined in Article 7-A section 171-a; provided, however, that this Part shall not apply to any individual or entity that prints, prepares for mailing and/or mails solicitation material but does not otherwise provide advice to or solicit on behalf of a charitable organization.

§ 93.2 Registration

(a) **When to register.** Professional fund raisers, fund raising counsel and professional solicitors shall register with the Attorney General prior to engaging in any fundraising activities in the State of New York and/or solicitation of persons in New York State.

(b) **Registration forms.**

(1) Professional fund raisers. Professional fund raisers shall file with the Attorney General a professional fund raiser's registration form signed under penalties for perjury and all documents required to be annexed thereto. Such form shall include the following information:

(i) The full legal name of the professional fund raiser and all other legally authorized names under which it operates in any capacity;

(ii) Organizational type (corporation, partnership, unincorporated association, proprietorship, etc.);

(iii) The date, state and county in which organized;

(iv) The principal New York State address of the professional fund raiser and all addresses from which it solicits contributions from New York State residents and the telephone number at each address;

(v) the names, primary residence or business address where each can be regularly located, and title or relationship to the professional fund raiser of:

(a) individual owners of unincorporated associations and proprietorships,

(b) partners,

(c) corporate officers and directors, and

(d) comparable managers of the legal entities, and

(vi) The names and primary residence or business address where each can be regularly located of any individual or entity that owns ten percent or more of the professional fund raiser.

(vii) As required by section 5 of the New York State Tax Law, the federal tax identification number or individual Social Security number for each entity or individual listed pursuant to subparagraph (v). Tax identification numbers and Social Security numbers are exempt from disclosure to the public except as may be required by compulsory or other legal process, but must be provided to the Attorney General pursuant to the Tax Law;

(viii) The names and addresses of each charitable organization with which the professional fund raiser has contracts or has contracted within the prior twelve months to act as a professional fund raiser or fund raising counsel in New York and the dates and a description of activities to be or that have been conducted pursuant to such contracts;

(ix) A statement as to whether any individual listed pursuant to subparagraph (v) is or has

been an officer, director or employee of any other professional fund raiser or fund raising counsel that has engaged in fund raising activities in New York and/or is or has been an officer, director or employee of any charitable organization that has engaged in fund raising activities in New York and, if so, the names and primary residence or business addresses of such individuals where they can be regularly located and the entities with which they are or have been associated and the titles of all such individuals;

(x) A statement as to whether the professional fund raiser is registered with any other state or local governmental agency and, if so, the names of such governmental agencies;

(xi) A statement as to whether the professional fund raiser has ever had any license, registration or permit to engage in fund raising activities denied, canceled, suspended or revoked and, if so, a detailed description of such circumstances;

(xii) A statement as to whether any disciplinary or legal action in connection with fund raising activities has been taken or is pending against the professional fund raiser and, if so, a detailed description of such action; and

(xiii) A statement as to whether the professional fund raiser employs any professional solicitors.

(2) Fund raising counsel. Fund raising counsel shall file with the Attorney General a fund raising counsel registration form, signed under penalties for perjury, and all documents required to be annexed thereto. Such form shall include the following information:

(i) the full legal name of the fund raising counsel and all other legally authorized names under which it operates in any capacity;

(ii) organizational type (corporation, partnership, unincorporated association, proprietorship, etc.);

(iii) the date, state and county in which organized;

(iv) the principal address of the fund raising counsel, the principal New York State address and the telephone number at each address;

(v) the names, primary residence or business address where each can be regularly located, and title or relationship to the fund raising counsel of:

(a) individual owners of unincorporated associations and proprietorships;

(b) partners;

(c) corporate officers and directors; and

(d) comparable managers of the legal entities,

(vi) the names and primary residence or business address where each can be regularly located of any individual or entity that owns ten percent or more of the fund raising counsel;

(vii) as required by [section 5 of the New York State Tax Law](#), the Federal tax identification number or individual social security number for each entity or individual listed pursuant to subparagraph (v) of this paragraph. Tax identification numbers and social security numbers are exempt from disclosure to the public except as may be required by compulsory or other legal process, but must be provided to the Attorney General pursuant to the Tax Law;

(viii) the names and addresses of charitable or other organizations with which the fund raising counsel has contracts or has contracted within the prior 12 months to act as a fund raising counsel for organizations soliciting contributions in New York and the dates and a description of activities to be or that have been conducted pursuant to such contracts;

(ix) a statement as to whether any individual listed pursuant to subparagraph (v) of this paragraph has been or is associated with any professional fund raiser, fund raising counsel and/or charitable organization and, if so, the names and primary residence or business address where each can be regularly located and the entities and the titles of all such individuals;

(x) a statement as to whether the fund raising counsel is registered with any other state or local governmental agency and, if so, the names of such governmental agencies;

(xi) a statement as to whether the fund raising counsel has ever had a license, registration or permit denied, canceled, suspended or revoked and, if so, a detailed description of such circumstances;

(xii) a statement as to whether any disciplinary or legal action has been taken or is pending against the fund raising counsel and, if so, a detailed description of such action;

(xiii) a statement as to whether the fund raising counsel or any of its representatives is authorized to solicit contributions;

(xiv) a statement as to whether the fund raising counsel or any of its representatives is authorized to pay expenses associated with a solicitation;

(xv) a statement as to whether the fund raising counsel or any representatives has access to contributions or other receipts from a solicitation. For purposes of this Chapter, access to contributions shall mean the physical control, handling or possession of any cash or legal instrument, regardless of to whom payable, if such cash or legal instrument constitutes a contribution or donation. Access to contributions occurs when there is any signature authority over an escrow account or bank account in which contributions or donations have been or will be deposited and/or authorization to approve or pay

expenses; and

(xvi) a statement as to whether the fund raising counsel employs any professional solicitors.

(3) Professional solicitors. Professional solicitors shall file with the Attorney General a professional solicitor registration form, signed under penalties for perjury, and all documents required to be annexed thereto. Such form shall include the following information:

(i) the full legal name of the professional solicitor by which he or she shall solicit contributions and any other names by which the solicitor is known;

(ii) the primary residence or business address where the solicitor can be regularly located and the solicitor's telephone numbers;

(iii) with regard to all past and present employment as a professional fund raiser, fund raising counsel and/or professional solicitor, the names and addresses of all such employers, the dates of employment and the terms of remuneration;

(iv) the social security number of the solicitor. Social security numbers are exempt from disclosure to the public, except as may be required by compulsory or other legal process, but must be provided to the Attorney General pursuant to the Tax Law;

(v) a statement as to whether the solicitor is registered with any other state or local governmental agency and, if so, the names of such governmental agencies;

(vi) a statement as to whether the solicitor has ever had any license, registration or permit to solicit contributions denied, canceled, suspended or revoked and, if so, a detailed description of such circumstances; and

(vii) a statement as to whether any disciplinary or legal action has been taken or is pending against the solicitor and, if so, a detailed description of such action.

(c) Incomplete Registration Material.

The Attorney General will not accept any registration of any professional fund raiser, fund raising counsel or professional solicitor unless all of the documents and fees required by law and this chapter have been submitted and paid, respectively. Incomplete registration material shall be returned by the Attorney General and the professional fund raiser, fund raising counsel or professional solicitor may be subject to sanctions pursuant to Article 7-A. The professional fund raiser, fund raising counsel or professional solicitor shall not be in compliance with the law and this Chapter until the registration material has been accepted by the Attorney General.

§ 93.3 Registration fees and bonds required of professional fund raisers, fund raising counsel and professional solicitors

(a) Each professional fund raiser registration form, fund raising counsel registration form and professional solicitor registration form must be accompanied by the fees mandated by article 7-A, sections 173.1 and 173-b.

(b) Each professional fund raiser registration form must be accompanied by a bond as mandated by Article 7-A section 173.1.

§ 93.4 Contracts with professional fund raisers, fund raising counsel and commercial co-venturers

(a) Content of Contracts.

(1) In addition to any information required by Article 7-A, including section 174-a, all contracts filed with the Attorney General must include the following:

(i) the names, addresses, and New York State registration numbers of both parties to the contract;

(ii) the signatures and dates of signature of the parties to the contract;

(iii) the beginning and expiration dates of the contract;

(iv) the terms of the contract, including a clear description of the services to be performed by the professional fund raiser or fund raising counsel; and

(v) a clear statement of the financial arrangement between the parties which shall include, if applicable, a statement of:

(a) the percentage or dollar amount of the total funds collected on behalf of the charitable organization which shall be retained by or paid to the professional fund raiser for purposes other than the exclusive benefit of the charitable organization's charitable purposes,

(b) the fixed fee if any to be received by the professional fund raiser or fund raising counsel,

(c) all contractual expenses to be incurred by the professional fund raiser or fund raising counsel but charged to the charitable organization or subsequently deducted from the gross receipts. Such list shall contain specific dollar amounts or projected estimates of these costs; and

(d) the costs per unit for the services to be provided and the projected number of units to be provided; and

(vi) a renewal or extension of a contract must comply with the provisions of this section.

(b) Contract Approval, Filing and Cancellation.

(1) No contract will be accepted for filing by the Attorney General, unless the contract complies with this subsection and Article 7-A, and no services shall be performed pursuant to such contract if the Attorney General notifies the professional fund raiser or fund raising counsel and the charitable organization of any deficiencies in the contract and/or compliance with the registration and filing requirements of Article 7-A or EPTL section 8-1.4 and this Chapter.

(2) Whenever a charitable organization contracts with a professional fund raiser, fund raising counsel or commercial co-venturer, the charitable organization shall have the right to cancel the contract without cost, penalty or liability for a period of fifteen days following the date on which said contract was executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable.

§ 93.5 *Interim statements and closing statements of professional fund raisers*

Professional fund raisers shall file interim and closing statements as required by Article 7-A section 173-a. Such statements shall be signed under penalties for perjury by the professional fund raiser, any subcontractor and the charity on forms prescribed by the Attorney General. Closing statements shall be filed within ninety days after the termination of a fund raising contract, provided that in the case of a fund raising contract that covers a period of more than one year, a professional fund raiser shall file with the Attorney General, within fifteen months of the execution of the contract and annually thereafter, an interim statement signed under penalties for perjury by the professional fund raiser, any subcontractor and the charity on forms prescribed by the Attorney General. Closing and interim statements must be prepared for all activities conducted pursuant to each contract and shall include the following:

- (a) the names of the professional fund raiser(s) and charity(s) that are party to the contract;
- (b) the effective and termination dates of the contract as stated in the contract;
- (c) if the contract covers more than one year, the period covered by the closing or interim statement;
- (d) the beginning and ending dates of the campaign within the specified contract period or contract year covered by the statement;
- (e) if services were provided at any other time during the contract period, a statement of the period during which such services were provided;

(f) a description of the type of fund raising campaign conducted, including without limitation telemarketing, direct mail, door-to-door, electronic media (television, radio, internet, etc.), special event, publication, ticket or product sale or donation of used or new goods;

(g) a statement as to whether the campaign was directed at persons in New York State only or persons in New York State and other states;

(h) a statement as to whether all contributions received from fund raising activity under the contract were deposited within five days of receipt in a bank account under exclusive control of the charity;

(i) the names, addresses and account numbers of the banking or other financial institution(s) in which contributions received from solicitation activity pursuant to the contract were deposited;

(j) a statement as to whether during the specified contract period or contract year the professional fund raiser contracted with any sub-contractor to perform any services covered by the contract and, if so, the name, address and telephone number of any such sub-contractor;

(k) a statement as to whether contractual services have been provided and whether the charitable organization has received all contractual monetary guarantees (if any). If all services have not been completed, an explanation of what remains to be completed;

(l) a break-down of all revenue received during the reporting period;

(m) a breakdown of all expenses incurred by the professional fund raiser and charitable organization in connection with the campaign, including without limitation:

(1) the professional fund raisers' remuneration or other fees;

(2) salaries and benefits for professional solicitors, office managers, and other professional fund raiser employees;

(3) permit, license and registration fees;

(4) sub-contractors' remuneration or other fees;

(5) postage and shipping;

(6) telephone;

(7) office rent, office utilities and office insurance;

(8) office supplies and other office expenses;

- (9) list rentals;
- (10) printing;
- (11) advertising;
- (12) show and other event fees;
- (13) show and other event facilities rental fees and insurance;
- (14) computer and data-processing fees;
- (15) cost of merchandise for re-sale;
- (16) total expenses;
- (17) net amount retained by or paid to the charitable organization;
- (18) additional amounts paid to the charitable organization as a contractual guarantee;
- (19) professional fund raiser's profit or loss;
- (20) uncollected pledges;
- (21) in-kind donations; and
- (22) the dated signature of the parties to the contract under the penalties for perjury.

§ 93.6 Where to file

All registrations, interim and closing statements, contracts, fees and any other documents or instruments required to be filed by fund raising professionals and all correspondence relating thereto shall be directed to the New York State Attorney General, Charities Bureau, The Capitol, Albany, New York 12224 or to any other address that the Attorney General may designate.

Availability of Forms and Instructions

§ 94.1 Availability of forms and instructions

Forms and instructions for registration and filing may be downloaded from the Attorney General's website at www.charitiesnys.com or by writing to New York State Attorney General, Charities Bureau, 120 Broadway, 3rd floor, New York, NY 10271 or at any other website or address designated by the Attorney General.

Identification of Filings

§ 95.1 Identification of filings

Identifying information, including the organization or entity name and, if applicable, the registration number must be placed on all correspondence and other documents, including payments, submitted to the Charities Bureau.

Documents Filed with the Attorney General Are Subject to Public Inspection

§ 96.1 Public documents

Unless otherwise exempt from disclosure pursuant to state or federal law, registrations, filings and other documents required to be filed pursuant to EPTL section 8-1.4 and/or Article 7-A become public records of the Attorney General.

§ 96.2 Inspection of public documents

Copies of all registrations, filings and other documents filed with the Attorney General and not exempt from disclosure pursuant to state or federal law shall be open to public inspection subject to the following requirements:

- (a) A request for inspection shall indicate the name and address of the person seeking the inspection and shall be submitted in writing on form CHAR007 (Freedom of Information Law (FOIL) Request Form) to the New York State Attorney General, Charities Bureau, Attn: FOIL Officer, 120 Broadway, 3rd floor, New York, NY 10271 or by email to Charities.FOIL@oag.state.ny.us or such other address or email address as the Attorney General may designate;
- (b) Such inspection shall be subject to the applicable provisions of Article 6 of the Public Officers Law;
- (c) Such inspection shall at all times be subject to the supervision and control of the Attorney General or the Attorney General's assistants;
- (d) The Attorney General is authorized to charge a reasonable fee for copying and postage; and
- (e) Filings may be inspected, by prior appointment, at the offices of the Charities Bureau during regular business hours or will be mailed or emailed to the requestor upon payment of all copying and postage fees.

Administrative Enforcement by the Attorney General

§ 97.1 Procedures applicable to administrative proceedings commenced by the Attorney General pursuant to section 177 of Article 7-A

(a) Violations under the Attorney General's administrative jurisdiction. Upon a finding by the Attorney General that any person has committed or is committing a violation of Article 7-A, by engaging in activities prohibited under Section 172-d that are subject to the administrative remedies of Section 177, or by failing to comply with the reporting requirements set forth in Section 172-b, the Attorney General may impose the administrative remedies listed in section 97.2 of this Part.

§ 97.2 Remedies in Attorney General's administrative proceeding

(a) Upon a finding of a violation of Article 7-A, the Attorney General may:

(1) revoke, suspend or deny a registration of a charitable organization, professional fund raiser, professional solicitor or fundraising counsel or issue an order directing a charitable organization, professional fund raiser, professional solicitor or fundraising counsel to cease and desist specified fundraising activities; and

(2) assess a civil penalty in an amount authorized by Article 7-A Section 177.

§ 97.3 Notice of violation

(a) The Attorney General shall, before revoking, suspending or denying any registration or exemption, or issuing a cease and desist order, or assessing a civil penalty, notify the respondent in writing and provide an opportunity for a hearing in accordance with Article 7-A Section 177 and this Chapter.

(b) The notice shall consist of a statement of the charges and shall be served by personal delivery or by registered or certified mail to the last known business address of the respondent.

(c) If, within thirty days of the date of mailing of the notice of violation, the violation is cured, the respondent may be entitled to waiver of any civil penalty, as provided under Article 7-A Section 177 .2(b).

§ 97.4 Requests for hearings

(a) Hearings shall be conducted in accordance with articles three and five of the New York State Administrative Procedure Act (SAPA) and in accordance with 19 NYCRR Part 400.

(b) A hearing must be requested within twenty days after receipt of notice from the Attorney General.

(c) A hearing shall take place within thirty days of the receipt of the request by the Attorney General.

(d) Should the respondent not request a hearing, the Attorney General may impose the administrative remedies described in section 97.2 of this Part.

§ 97.5 *Notice of hearing*

(a) A hearing shall be held at a time and place designated by the Attorney General.

(b) The Attorney General shall notify the respondent in writing of the time and place of the hearing. The notice may be served by personal delivery or by registered or certified mail to its last known business address.

(c) Every notice of hearing shall be served with a copy of Articles three and five of SAPA, 1 NYCRR Part 400 and these rules.

(d) The notice shall include:

(1) a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction for the hearing;

(3) the sections of the statutes or rules and regulations involved;

(4) a statement of the facts asserted; and

(5) a statement that free interpreter services will be made available.

§ 97.6 *Administrative hearing officers*

All hearings shall be conducted by administrative law judges (hearing officers) appointed by the Attorney General or the Attorney General designee. The hearing officer shall be an attorney who has not worked on or otherwise become familiar with the facts of the matter in issue, and shall exercise his or her judgment independently and impartially.

§ 97.7 *Adjournments*

(a) Adjournments must be requested by written affidavit sent to the hearing officer no later than three business days before the scheduled date of the hearing. The affidavit should contain sufficient details to explain the reason for the request.

(b) Adjournments will be granted only for good cause.

(c) No more than two adjournments will be granted.

§ 97.8 Subpoenas

(a) Subpoenas may be issued by the hearing officer, the Attorney General or any attorney for a party who is a member of the New York Bar.

(b) Subpoenas shall be served in accordance with the Civil Practice Law and Rules.

§ 97.9 Conduct of the hearing

(a) A hearing officer designated by the Attorney General shall conduct the hearing.

(b) The hearing officer may regulate the conduct of the hearing, require witnesses to attend the hearings, take proof and make relevant factual determinations.

(c) The respondent may appear at the hearing, cross examine witnesses and produce evidence on his or her own behalf. Should the applicant fail to appear at the hearing, the hearing officer shall hear the evidence given by the Attorney General and make his or her findings and recommendations on the basis of that evidence.

(d) The proceeding may be resolved by stipulation, consent order or default of any respondent.

§ 97.10 Representation

Any respondent who requests a hearing or is compelled to appear before the Attorney General has the right to be represented by counsel or a non-lawyer representative.

§ 97.11 Evidence

(a) Strict rules of evidence do not apply.

(b) In order to expedite the hearing, the hearing officer may permit all or part of the evidence to be submitted in written form.

(c) The Attorney General shall have the burden of proving the violation by a preponderance of the evidence.

(d) A party has the right to cross-examine witnesses.

(e) Objections to evidence may be made and shall be noted in the record.

§ 97.12 Record

(a) The hearing officer shall make a complete record of the proceeding by whatever means he or she deems appropriate, including but not limited to, stenographic transcription or recording devices.

(b) The record shall include:

(1) records and documents in the Attorney General's possession relevant to the initial findings under Article 7-A;

(2) notices, pleadings, motions and all rulings by the hearing officer;

(3) evidence presented;

(4) questions, offers of proof and objections;

(5) findings of fact and conclusions of law; and

(6) the decision or determination.

(c) If requested, the Attorney General shall prepare the record and any transcript of the proceedings within a reasonable time after the decision, but before the commencement of time for judicial review, and provide a copy to any party.

§ 97.13 Costs

The Attorney General may charge for the costs incurred in preparing and providing copies of the record.

§ 97.14 Motions

(a) A motion to dismiss the statement of charges for failure of proof may be made at the conclusion of the Attorney General's case.

(b) The hearing officer may:

(1) grant the motion;

(2) deny the motion and continue the hearing; or

(3) reserve making a decision on the motion and continue the hearing.

(c) Denial of the motion by the hearing officer is not appealable because it is not a final decision on the merits.

§ 97.15 Findings of fact

(a) Any party may submit written proposed findings of fact to the hearing officer within the time frames set by the hearing officer. The hearing officer will rule on each finding of fact.

(b) Findings of fact must be based on the evidence.

§ 97.16 *Time periods*

(a) Every adjudicatory proceeding must be completed within one hundred fifty days of the date of the hearing stated in the notice of hearing. A request for an adjournment extends the time period by the length of time the adjournment is granted.

(b) Prior to the expiration date, the Attorney General or the hearing officer may extend the time period for no longer than an additional 120 days by a written determination mailed to all parties that the proceeding cannot be completed within one hundred fifty days and the reasons for the extension.

§ 97.17 *Final determinations and orders*

(a) The hearing officer shall make a final determination within ten days of the conclusion of the hearing.

(b) The hearing officer shall make his or her determination or order in writing after consideration of the entire record and as supported by substantial evidence. Substantial evidence means such proof as a reasonable person may accept as adequate to support a decision and constitutes a rational basis for the decision.

(c) The determination shall contain findings of fact and conclusions of law or reasons for the decision.

(d) The Attorney General shall serve a copy of such determination or order upon the respondent personally or by registered or certified mail to the last known business address, or to the attorney of record.

(e) The Attorney General shall maintain an index of all final written decisions by name and subject area.

§ 97.18 *Stay of the decision or order*

(a) After the decision and before filing an appeal from the decision, any party may immediately apply to the Attorney General for a stay pending a decision on an appeal.

(b) The application must be in writing, based on evidence in the record and served on opposing parties, who can rebut the application in writing within two business days of receipt.

(c) The Attorney General's designee shall promptly decide the application.

§ 97.19 *Administrative appeal from the decision or order*

(a) Within thirty calendar days of receipt, any of the parties may appeal from the decision or order revoking, suspending or denying any registration or exemption, or issuing a cease and desist order or assessing a civil penalty, by filing with the individual designated by the Attorney General to hear administrative appeals, and serving on the other party or parties, a written memorandum stating the appellant's arguments.

(b) The memorandum should identify the part or parts of the decision to which the appellant is objecting, state the grounds for the objection and identify the portions of the record supporting the objection.

(c) The party served with the appeal may file and serve a memorandum in opposition and a cross-appeal within thirty days after service of the appeal. A response to a cross-appeal may be filed and served within fifteen days after service of the cross-appeal.

(d) The record on appeal shall consist of the transcript of the hearing, the evidence admitted at the hearing and the memoranda.

(e) The individual designated by the Attorney General to hear and decide administrative appeals may make a final written determination:

(1) confirming the decision;

(2) vacating the decision with an explanation of the basis for vacating the decision; or

(3) sending the matter back to the hearing officer for further proceedings.

§ 97.20 *Judicial appeal from the final administrative determination*

Within one hundred twenty days after the final determination, a party may appeal from the final determination by commencing a proceeding for judicial review under Article 78 of the New York State Civil Practice Law and Rules.

Civil Enforcement by the Attorney General

§ 98.1 *Civil enforcement by the Attorney General*

This Chapter shall not prohibit the Attorney General from initiating any civil action or proceeding authorized by law for failure to register and/or file reports pursuant to, and/or comply with, any provision of EPTL Article 8 or Article 7-A, any other law or the common law.

Criminal Enforcement by the Attorney General

§ 99.1 Criminal enforcement by the Attorney General

(a) This Chapter shall not prohibit the Attorney General from initiating any criminal action authorized by law for failure to register and/or file financial reports pursuant to, and/or comply with, any provision of EPTL; article 8 or article 7-A, any other law or the common law.

(b) Any person who swears falsely to any document required by this Chapter to be signed under penalties for perjury may be guilty of a crime under the New York Penal Code.

(c) Any provision of article 7-A, a violation of which is designated a misdemeanor without specification of classification, is a class A misdemeanor. See Penal Law section 55.10.2(b).