1. Technically feasible because technology exists to produce special packaging conforming to these standards. More than 10 different special packages have been tested in accordance with § 295.10 *Testing procedure for special packaging* (36 F.R. 22151; 37 F.R. 741) that meet or exceed the child-resistant effectiveness and adult-use effectiveness specifications of § 295.3(b). Orifices which restrict the flow of liquid from a container to 2 milliliters per single activation are available. One major manufacturer reports the market testing in October 1971 of a package which incorporated both a safety closure and a restricted orifice.

2. Practicable in that the special packaging is susceptible to modern methods of mass production and assembly line techniques. Reported production data indicates capability to adequately meet the needs of the affected industries within 6 months.

3. Appropriate since the required special packaging is not detrimental to the integrity of the substance and will not interfere with its storage or use.

E. *Effectiveness specifications.* 1. A furniture polish manufacturer states that the required child-resistant effectiveness of 85–80 percent appears unnecessarily high. The legislative history of the act, however, points out that the Commissioner need not establish standards that can be met by the lowest, or even the average, level of packaging technology extant in the industry. The Commissioner concludes that the effectiveness specifications established in § 295.3(b) are technically feasible and are necessary to accomplish the purposes of the act.

2. A response from the packaging industry recommends child-resistant effectiveness specifications of 98 to 100 percent and adult-use effectiveness approaching 100 percent. This comment further recommends that the standards require special packaging of a unit-dispensing type. To require 100 percent child-resistance is prohibited by section 2(4) of the act. If experience with special packaging demonstrates a need for changing the effectiveness specifications, such changes may be made if they are technically feasible, practicable, and appropriate. As to requiring that special packaging be of a unit-dispensing design, section 3(d) of the act expressly prohibits prescribing specific packaging designs in establishing standards.

F. *Designation of substances.* A trade association and a furniture polish manufacturer suggest that the first sentence of § 295.3 appears to indicate that all household substances must be packaged in accordance with the standards. Such is not the intent and in fact the second sentence directs that application of the standards to substances requiring special packaging is in accordance with § 295.2, which specifically names the substances subject to the standards.

G. *Exemptions.* The legislative history of the act indicates that exemptions from special packaging standards may be granted, and the preamble to the document promulgating § 295.10 (36 F.R. 22151) indicates that the Commissioner is prepared to grant individual exemptions. One manufacturer requests exemption from the restricted-flow requirement for a product designed and promoted primarily for the cleaning and preservation of large wood surface areas in the home. Since the Commissioner does not have sufficient information to determine if the request should be granted, and since the request has not been published for comment in the FEDERAL REGISTER as required by section 5(a) of the act, this request is hereby denied without prejudice. Any request for an exemption from a special packaging standard will be considered by the Commissioner. Such a request must be directed in writing to the Commissioner and must furnish reasonable grounds therefor, including, but not limited to, available human experience data, relevant experimental data, toxicity information, product and packaging specifications, labeling, marketing history, and the justification for the exemption. If such request furnishes reasonable grounds therefor, the Commissioner will publish a notice in the FEDERAL REGISTER proposing the amendment of the standard. Following such publication, the proceedings shall be the same as prescribed by section 5 of the act.

H. *Effective date.* A furniture polish manufacturer and a trade association request an effective date of 1 year from publication of this order in the FEDERAL REGISTER. The principal reasons given are that 5 months are needed for tooling plants to produce special packaging and additional time is needed to produce sufficient quantities to satisfy the demands of the affected industry. Having considered these comments and other relevant information, the Commissioner concludes that a period of 180 days is a necessary, reasonable, and sufficient time to allow affected persons to achieve full compliance with the standards established by this order. A sufficient amount of special packaging for liquid furniture polishes is not presently available to permit promulgating an effective date of less than 180 days.

Therefore, having evaluated the comments received and other relevant material, the Commissioner concludes that the proposal, with changes, should be adopted as set forth below. Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (secs. 2(4), 3, 5; 84 Stat. 1670–72; 15 U.S.C. 1471–74), and under authority delegated to the Commissioner (21 CFR 2.120), a new subparagraph is added to § 295.2(a) and a new paragraph is added to § 295.3 as follows (§§ 295.2 and 295.3 were promulgated in the FEDERAL REGISTER of February 16, 1972; 37 F.R. 3427):

**§ 295.2 Substances requiring "special packaging."**

(a) *Substances.* The Commissioner of Food and Drugs has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and that the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(2) *Furniture polish.* Nonemulsion type liquid furniture polishes containing 10 percent or more of mineral seal oil and/or other petroleum distillates and having a viscosity of less than 100 Saybolt Universal seconds at 100° F., other than those packaged in pressurized spray containers, shall be packaged in accordance with the provisions of § 295.3 (a), (b), and (d).

* * * * *

**§ 295.3 Poison prevention packaging standards.**

To protect children from serious personal injury or serious illness resulting from handling, using, or ingesting household substances, the Commissioner has determined that packaging designed and constructed to meet the following standards shall be regarded as "special packaging" within the meaning of section 2(4) of the act. Specific application of these standards to substances requiring special packaging is in accordance with § 295.2.

* * * * *

(d) *Restricted flow.* Special packaging from which the flow of liquid is so restricted that not more than 2 milliliters of the contents can be obtained when the inverted opened container is shaken or squeezed once or when the container is otherwise activated once.

*Effective date.* This order shall become effective 180 days after its date of publication in the FEDERAL REGISTER.

(Secs. 2(4), 3, 5; 84 Stat. 1670–72; 15 U.S.C. 1471–74)

Dated: March 14, 1972.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.72-4109 Filed 3-16-72;8:49 am]

# Title 24—HOUSING AND URBAN DEVELOPMENT

## Chapter II—Office of Assistant Secretary for Housing Production and Mortgage Credit-Federal Housing Commissioner (Federal Housing Administration), Department of Housing and Urban Development

[Docket No. R-72-146]

## PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

### Withdrawal of Approval of Mortgagees

On page 19703 of the FEDERAL REGISTER of October 9, 1971, there was published

a notice of proposed rule making to amend § 203.7 of the Department's regulations by adding a new cause for withdrawal of approval of mortgagees who have been approved for holding and servicing mortgages insured by this Department under the National Housing Act. The proposed new cause for withdrawal would be the payment of any fee by a mortgagee in connection with an insured mortgage transaction to any person, if such person had received any payment from any other person for services related to the transaction. Interested persons were given until November 8, 1971, to submit written comments or suggestions with respect to the proposal.

A large number of written comments were received and considered. Many comments stated that one person can perform legitimate nonconflicting services for both the mortgagee and for another party to the transaction and that the proposed amendment would have prevented a person who performs such services from being compensated for them. Accordingly, the amendment, as finally adopted, provides that compensation may be paid for the actual performance of such services as may be approved by the Assistant Secretary-Federal Housing Commissioner. A list describing the types of services approved and considered to be nonconflicting when performed for a mortgagee in connection with a mortgage transaction in which the party performing the service is also to be paid for other services by another party to the transaction is being developed and will be mailed to all approved mortgagees prior to the effective date of the amendment hereby adopted. This list will also be available for the information of interested members of the public in all offices of this Department during usual office hours. In addition, the Assistant Secretary-Federal Housing Commissioner will review specific situations not covered by the published list on a case by case basis. To obtain a review by the Assistant Secretary-Federal Housing Commissioner interested persons should address a written request to the Director of the HUD Area or Insuring Office having jurisdiction of the mortgage insurance transaction for which review or approval is requested. The written request should set forth all information the person submitting the request considers necessary for an informed ruling.

The regulation, as adopted, adds "attorney" to the description of persons to whom the mortgagee may not pay fees if such persons receive fees from other parties to an insured mortgage transaction. Attorneys were covered in the regulation, as proposed, by the term "any person" and are added to those specifically named to dispel any doubt in this matter.

Many comments received pointed out that it was possible to evade the proposed amendment by the establishment of "straw" or "dummy" third party companies or other entities, the sole purpose of which would be to receive fees from mortgagees for the benefit of persons also receiving compensation from other parties to the mortgage transaction. The Department considers that such an arrangement is prohibited by the language that prohibits the payment of such a fee "indirectly."

Most of the other comments presented specific factual situations and asked whether they would be covered by the proposed amendment. These and other fact situations are being considered by the Assistant Secretary-Federal Housing Commissioner in connection with publication of the list discussed above. Such factual situations as are considered to be of general interest and application will be dealt with in the list. For those considered to be of limited interest, no specific ruling will be issued unless the question is resubmitted through the HUD Area or Insuring Office as discussed above.

The full text of the amendment to § 203.7, as finally adopted, which adds a new paragraph (a)(6) and renumbers present paragraph (a)(6) as (a)(7), is as follows:

**§ 203.7 Withdrawal of approval.**

(a) Approval of a mortgagee may be withdrawn at any time by notice from the Commissioner, by reason of:

* * * * *

(6) The payment by the mortgagee of any fee, kickback, or other consideration, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other payment or other consideration from the mortgagor, the seller, the builder, or any other person for services related to such transaction or transactions or from or related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner.

(7) Such other reason as the Commissioner determines to be justified.

* * * * *

*Effective date.* These regulations shall be effective as of May 1, 1972.

(Sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); Secretary's delegation to Assistant Secretary-Federal Housing Commissioner published at 36 F.R. 5006)

EUGENE A. GULLEDGE,
*Assistant Secretary for Housing Production and Mortgage Credit-Federal Housing Commissioner.*

[FR Doc.72-4110 Filed 3-16-72;8:50 am]

# Title 25—INDIANS

## Chapter I—Bureau of Indian Affairs, Department of the Interior

### SUBCHAPTER F—ENROLLMENT

### PART 43h—PREPARATION OF A ROLL OF ALASKA NATIVES

The general authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. section 301, and sections 463 and 465 of the Revised Statutes (25 U.S.C. sections 2 and 9).

Beginning on page 2679 of the FEDERAL REGISTER of February 4, 1972 (37 F.R. 2679), there was published a notice of proposed rule making to add a new Part 43h to Title 25 of the Code of Federal Regulations relating to the enrollment of Alaska Natives. The regulations were proposed pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (Public Law 92-203, 85 Stat. 688-715).

Interested persons were given 30 days in which to submit written comments, views, or arguments regarding the proposed regulations.

During this period, comments, suggestions, and objections were submitted by interested persons. Careful consideration was given to all the views and arguments received, and certain revisions were made as a result of them. Among the revisions are the following:

1. Deletion of the words "whose Alaska Native ancestry predates the Treaty of March 30, 1867, and who are", as they referred to Tsimshian Indians in the definition of "Native" in § 43h.1(g).

2. Addition of clarifying language in the definition of "Permanent residence" in § 43h.1(k).

3. Addition of a new paragraph (n) in § 43h.1 defining "Enumerator."

4. Addition of the word "permanent" in the heading of § 43h.4(a) and the insertion of "and village or other place" following "region" to indicate where permanent residents of Alaska shall be enrolled. The word "permanent," as a modifier of "resident" or "residence" has been inserted where appropriate throughout the new Part 43h.

5. Insertion of a new paragraph (b) in § 43h.6 to provide for a sponsor to file an application on behalf of classes of persons who require assistance in applying for enrollment. Subsequent paragraphs are redesignated accordingly.

6. A clarification of § 43h.6(e) to provide that enumerators shall be sent to all villages in Alaska, rather than to the principal villages.

7. Addition of a new paragraph (g) in § 43h.6 to provide for notice to regions of the name, date, and place of birth, and claimed residence of all applicants for enrollment, including dependents, and to each village of the name, date, and place of birth, and claimed residence of applicants for enrollment, including dependents, within its region. This revision also provides for protests within 30 days after receipt of notice by regions and/or villages against the allowance of any application for enrollment.

8. A complete revision of § 43h.7 to provide for notice to individual applicants or sponsors, and to the appropriate region and village, of decisions as to enrollment or as to the region or village in which an applicant is enrolled. Rights of appeal are specifically given to the regions and villages, as well as to applicants.

9. A revision of § 43h.8 to provide for appeals from adverse decision of the Coordinator to be filed by individual applicants or sponsors, regions, or villages.

The revision retains a 45-day appeal period, but also requires that a copy of each appeal petition shall be served by the appellant upon the individual, region, and/or village, as the case may be, and that proof of such service be filed with the Regional Solicitor within 15 days of the filing of the appeal petition.

10. The phrase "or other basis for determining eligibility" has been inserted following "degree of Native blood" in § 43h.9 as it relates to the information to be shown on the completed roll.

11. For administrative purposes enrollment applications will be accepted from all eligible Native Alaska members of the Metlakatla Indian Community. Later determinations will be made concerning individual eligibility for inclusion on the roll and entitlement to benefits under the Act. The word "non-Tsimshian" has been deleted from the title and first line of § 43h.11.

The Alaska Native Claims Settlement Act, supra, requires that the roll be prepared within 2 years from its date of enactment. In order to provide for appeals and final preparation within the time allowed, it is necessary that deadline of March 30, 1973, be fixed for the filing of enrollment applications. An additional delay in the effective date of these regulations would unnecessarily and inequitably shorten the period during which applications may be filed and might result in some Natives not being enrolled to receive benefits. The revisions made in the proposed regulations, and reflected in these final regulations, are in consonance with the comments received and within the limits of the underlying laws, and no benefits would be gained by deferring their effective date. Therefore, good cause exists and is so found that the 30-day deferred effective date or any other deferred effective date otherwise required by 5 U.S.C. section 553(d) should be dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. section 533. Accordingly, the new Part 43h will become effective upon the date of publication in the FEDERAL REGISTER (3-17-72).

HARRISON LOESCH,
*Assistant Secretary of the Interior.*

MARCH 15, 1972.


Sec.
43h.1 Definitions.
43h.2 Purpose.
43h.3 Requirements for enrollment.
43h.4 Enrollment in regions.
43h.5 Enrollment in a 13th region.
43h.6 Applications for enrollment.
43h.7 Determination of eligibility.
43h.8 Appeals.
43h.9 Preparation, certification, and approval of the roll.
43h.10 Establishment of a 13th region.
43h.11 Metlakatla Community members.
43h.12 Special instructions.


AUTHORITY: The provisions of this Part 43h issued under 5 U.S.C. section 301; R.S. sections 463 and 465, 25 U.S.C. sections 2 and 9; and sec. 25, 85 Stat. 688, 715.

**§ 43h.1 Definitions.**

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, Public Law 92-203.

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Area Director" means the Area Director, Bureau of Indian Affairs, Juneau, Alaska, or his authorized representative.

(e) "Coordinator" means the head of the Enrollment Coordinating Office, Pouch 7-1971, Anchorage, Alaska 99501, having the responsibility for coordinating all activities regarding preparation of the roll.

(f) "Roll" means the roll of Alaska Natives prepared pursuant to the Act.

(g) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native as any village or group.

(h) "Village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Act, or which meets the requirements of the Act, and which the Secretary determines was, on the 1970 census enumeration date (April 1, 1970), composed of 25 or more Natives.

(i) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than 25 Natives, who comprise a majority of the residents of the locality.

(j) "Region" means the geographic area covered by the operation of one of the 12 existing Native associations recognized in section 7(a) of the Act, or its successor regional corporation, and may include the 13th region if established as provided by section 7(c) of the Act.

(k) "Permanent residence" means the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of an applicant on April 1, 1970, even though he was not actually living there on that date, if he has continued to intend that place to be his home.

(l) "Regional Solicitor" means the officer in charge of the Anchorage Region of the Office of the Solicitor, Department of the Interior.

(m) "Sponsor" means a parent, recognized guardian, next friend, next of kin, spouse, executor, or administrator of estate, the Area Director or other person who files an application for enrollment on behalf of another person. It does not include an enumerator.

(n) "Enumerator" means a person officially engaged in gathering for the Secretary data and information concerning eligibility of individual applicants for enrollment.

**§ 43h.2 Purpose.**

The regulations in this part are to govern exclusively the preparation of a roll of Alaska Natives pursuant to section 5 of the Act. The provisions of Parts 2 and 42 of this chapter shall not be applicable to enrollment procedures and appeals provided for in this Part 43h.

**§ 43h.3 Requirements for enrollment.**

The roll shall consist of the names of all persons who meet the definition of Native and who were born on or before and were living on December 18, 1971.

**§ 43h.4 Enrollment in regions.**

(a) Permanent residents of Alaska: A Native permanently residing in Alaska at the time of filing his application for enrollment shall be enrolled in the region and village or other place in which he was a permanent resident on April 1, 1970.

(b) Nonresidents of Alaska: A Native who at the time of filing his application for enrollment is not a permanent resident of one of the regions in Alaska shall be enrolled according to the following order of priority:

(1) In the 13th region, if it is formed and he so elects, or

(2) In the region where he resided on April 1, 1970, if he had resided there without substantial interruption for 2 or more years, or

(3) In the region where he previously resided for an aggregate of 10 years or more, or

(4) In the region where he was born, or

(5) In the region from which an ancestor came.

(c) A Native may be enrolled in a different region when necessary to avoid enrolling members of the same family (i.e., parents and children) in different regions or otherwise avoid hardship.

(d) Eligible children born on or after April 2, 1970, and on or before December 18, 1971, shall be enrolled in the region in which one of their parents is enrolled.

**§ 43h.5 Enrollment in a 13th region.**

A Native eligible for enrollment who is 18 years of age or older and is not a permanent resident of one of the 12 regions may, on the date he files an application for enrollment, elect to be enrolled in a 13th region for Natives who are nonresidents of Alaska, if such region is established pursuant to subsection 7(c) of the Act. If such region is not established, he shall be enrolled as

provided in subsection 4(b) of these regulations. His election shall apply to all dependent members of his household who are less than 18 years of age, but shall not affect the enrollment of anyone else.

**§ 43h.6 Applications for enrollment.**

(a) All applications for enrollment shall be in writing on forms provided by the Bureau of Indian Affairs and shall be signed by or for the head of each household, spouse, and/or the dependent members of his household under 18 years of age. A separate application shall be completed and signed by or for other members of a household 18 years of age or older.

(b) Applications for adopted children or other minors not living with their parents, mentally incompetent persons, members of the armed services and/or any eligible members of their immediate families, stationed outside the continental United States, or persons who have died since December 18, 1971, may be filed by a sponsor on or before the deadline specified in this section.

(c) The application shall contain, among other information, the applicant's social security number, name, address, sex, date, and place of birth, degree of Native blood, permanent residence as of April 1, 1970, the village from which his ancestors came, and for a nonresident of Alaska, his election regarding establishment and enrollment in a 13th region. Social security numbers and cards will be issued to those persons who do not have them.

(d) Completed applications must be filed with the Coordinating Office (Kaloa Building, 16th and C Streets), Pouch 7-1971, Anchorage, AK 99501, not later than March 30, 1973. For purposes of the regulations in this part, "filed" means received by the Coordinating Office.

(e) Residents of Alaska: Enumerators shall be sent to all villages to assist in the completion and filing of applications and centers will be established in urban areas to furnish assistance in the completion and filing of applications. Persons who are missed by the enumerators may apply to the Coordinating Office by mail or in person.

(f) Nonresidents of Alaska: Natives not residing in Alaska shall be furnished application forms, together with instructions for completing the forms, upon request made to the Commissioner, the Area Director, or the Coordinator.

(g) Notice to regions and villages: Each region shall be notified of the name, date, and place of birth, and claimed residence of every applicant for enrollment, including dependents. Each village shall be notified of the name, date, and place of birth, and claimed residence of every applicant for enrollment, including dependents, within its region. Any protest of any region or village against the allowance of any application for enrollment shall be filed with the Coordinator, accompanied by such evidence as it may care to submit, within 30 days after receipt of notice of such application.

**§ 43h.7 Determination of eligibility.**

(a) Determinations of eligibility shall be made by the Coordinator on the basis of information set forth in the application, records of the Bureau of Indian Affairs, village and tribal rolls and such other evidence as is available, including the submissions, if any, of the villages and regions: *Provided*, That no such determination shall be made less than 30 days after the notice required under § 43h.6(g).

(b) Each applicant shall be notified in writing of the decision. If such determination is favorable, the name of the applicant shall be placed on the roll. If the decision is adverse as to enrollment or as to the region or village in which enrolled, the applicant or sponsor shall be notified by certified mail, return receipt requested, of the decision together with the reasons for the decision and of his right of appeal.

(c) Each region shall be notified by certified mail, return receipt requested, of the Coordinator's decisions with respect to all enrollments and denials of enrollment, and each village shall be notified by certified mail, return receipt requested, of the Coordinator's decisions with respect to all enrollments and denials of enrollment in its regions; the regions and villages shall be further notified of their rights to appeal such decisions and the reasons for acceptance or rejection of the enrollment applications.

**§ 43h.8 Appeals.**

(a) Appeals by individuals from adverse decisions must be in writing and filed with the Coordinating Office not later than 45 days after the date of receipt of the notice thereof. Appeals by villages and regions from the Coordinator's decisions must be in writing and filed with the Coordinating Office not later than 45 days after receipt of the notice required under § 43h.7(c). No appeal of a village or region will be allowed unless a protest has been filed within the 30-day period provided by § 43h.6(g).

(b) Each appeal from a decision on an application for enrollment shall be by petition, which shall state the bases and reasons for the appeal, and which shall include or be accompanied by all arguments, briefs, records, or other evidence which the appellant urges as grounds for reversal. No additional presentation will be allowed except upon a showing satisfactory to the Regional Solicitor.

(c) A copy of each appeal petition and its supporting documents filed by an applicant shall be served upon the region and village whose names appear on the decision appealed from. A copy of each appeal petition and its supporting documents filed by a region shall be served upon the applicant for enrollment and upon the village whose name appears on the decision appealed from. A copy of each appeal petition and the supporting documents filed by a village shall be served upon the applicant for enrollment and upon the region whose name appears on the decision appealed from. Service shall be made at the time of filing in the manner provided in § 2.33 of this chapter, and proof of such service must be filed with the Regional Solicitor within 15 days of the filing of the appeal petition. Failure to serve copies of the appeal petition and its supporting documents or to file proof of service within the time allowed will subject the appeal to summary dismissal.

(d) Upon the receipt of an appeal petition, the Coordinator will forward the petition, with all records pertaining thereto, to the Regional Solicitor. Determination on appeals will be made by the Regional Solicitor on behalf of the Secretary and shall be final. The applicant and the appropriate village and region shall be notified in writing of the determination of the Regional Solicitor.

**§ 43h.9 Preparation, certification, and approval of the roll.**

The Coordinating Office shall prepare a roll listing enrollees by village or appropriate region. The roll shall contain for each person, his Social Security number, name, last known address, sex, date of birth, degree of Native blood or other basis for determining eligibility, permanent residence as of April 1, 1970, and the village and/or region in which he is enrolled. Upon completion the Coordinator shall affix to the roll a certificate indicating that to the best of his knowledge and belief the roll contains only the names of persons who were determined to meet the requirements for enrollment as Alaska Natives. The roll shall be submitted to the Secretary for approval.

**§ 43h.10 Establishment of a 13th region.**

If a majority of all eligible Natives 18 years of age or older who are not permanent residents of Alaska elect, pursuant to subsection 5(c) of the Act, to be enrolled in a 13th region for Natives who are nonresidents of Alaska, a region for the benefit of the Natives who elected to be enrolled therein shall be established and they may establish a regional corporation pursuant to the Act.

**§ 43h.11 Metlakatla Community members.**

Applications from Native Alaska members of the Metlakatla Indian Community will be conditionally accepted subject to a determination of their eligibility for inclusion on the Alaska Native roll and entitlement to benefits under the Act.

**§ 43h.12 Special instructions.**

To facilitate the work of the Area Director, the Commissioner may issue special instructions not inconsistent with the regulations in this part.

[FR Doc.72-4141 Filed 3-16-72;8:50 am]

# Title 26—INTERNAL REVENUE

## Chapter I—Internal Revenue Service, Department of the Treasury

### SUBCHAPTER A—INCOME TAX

[T.D. 7172]

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

### Certain Tax-Exempt Membership Organizations

On August 28, 1971, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under sections 501(c) (10) and (18), 801, and 810 of the Internal Revenue Code of 1954 to conform the regulations to changes made by sections 121(b) (5) and (6) of the Tax Reform Act of 1969 (83 Stat. 541) was published in the FEDERAL REGISTER (36 F.R. 17348). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
*Commissioner of Internal Revenue.*

Approved: March 10, 1972.

FREDERIC W. HICKMAN,
*Acting Assistant Secretary of the Treasury.*

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 501(c) (10) and (18), 801, and 810 of the Internal Revenue Code of 1954 to sections 121(b) (5) and (6) of the Tax Reform Act of 1969 (83 Stat. 541), such regulations are amended as follows:

PARAGRAPH 1. Section 1.501(c)(10) is amended to read as follows:

**§ 1.501(c)(10) Statutory provisions; exemption from tax on corporations, certain trusts, etc.; certain fraternal beneficiary societies.**

Sec. 501. *Exemption from tax on corporations, certain trusts, etc.*

* * * * *

(c) *List of exempt organizations.* The following organizations are referred to in subsection (a):

* * * * *

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) The net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) Which do not provide for the payment of life, sick, accident, or other benefits.

[Sec. 501(c) (10) as amended by section 121, Tax Reform Act, 1969 (83 Stat. 541)]

PAR. 2. There is added immediately after § 1.501(c)(10) the following new section:

**§ 1.501(c)(10)–1 Certain fraternal beneficiary societies.**

(a) For taxable years beginning after December 31, 1969, an organization will qualify for exemption under section 501(c)(10) if it—

(1) Is a domestic fraternal beneficiary society order, or association, described in section 501(c)(8) and the regulations thereunder except that it does not provide for the payment of life, sick, accident, or other benefits to its members, and

(2) Devotes its net earnings exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes.

Any organization described in section 501(c)(7), such as, for example, a national college fraternity, is not described in section 501(c)(10) and this section.

PAR. 3. There is added immediately after § 1.501(c)(17)–3 the following new sections:

**§ 1.501(c)(18) Statutory provisions; exemption from tax on corporations, certain trusts, etc.; certain funded pension trusts.**

Sec. 501. *Exemption from tax on corporations, certain trusts, etc.*

* * * * *

(c) *List of exempt organizations.* The following organizations are referred to in subsection (a):

* * * * *

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) Under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) Such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(C) Such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

[Sec. 501(c)(18) as added by section 121, Tax Reform Act, 1969 (83 Stat. 541)]

**§ 1.501(c)(18)–1 Certain funded pension trusts.**

(a) *In general.* Organizations described in section 501(c)(18) are trusts created before June 25, 1959, forming part of a plan for the payment of benefits under a pension plan funded only by contributions of employees. In order to be exempt, such trusts must also meet the requirements set forth in section 501 (c)(18) (A), (B), and (C), and in paragraph (b) of this section.

(b) *Requirements for qualification.* A trust described in section 501(c)(18) must meet the following requirements—

(1) *Local law.* The trust must be a valid, existing trust under local law, and must be evidenced by an executed written document.

(2) *Funding.* The trust must be funded solely from contributions of employees who are members of the plan. For purposes of this section, the term "contributions of employees" shall include earnings on, and gains derived from, the assets of the trust which were contributed by employees.

(3) *Creation before June 25, 1959*—(i) *In general.* The trust must have been created before June 25, 1959. A trust created before June 25, 1959 is described in section 501(c)(18) and this section even though changes in the makeup of the trust have occurred since that time so long as these are not fundamental changes in the character of the trust or in the character of the beneficiaries of the trust. Increases in the beneficiaries of the trust by the addition of employees in the same or related industries, whether such additions are of individuals or of units (such as local units of a union) will generally not be considered a fundamental change in the character of the trust. A merger of a trust created after June 25, 1959 into a trust created before such date is not in itself a fundamental change in the character of the latter trust if the two trusts are for the benefit of employees of the same or related industries.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

*Example (1).* Assume that trust C, for the benefit of members of participating locals of National Union X, was established in 1950 and adopted by 29 locals before June 25, 1959. The subsequent adoption of trust C by additional locals of National Union X in 1962 will not constitute a fundamental change in the character of trust C, since such subsequent adoption is by employees in a related industry.

*Example (2).* Assume the facts as stated in example (1), except that in 1965 National Union X merged with National Union Y, whose members are engaged in trades related to those engaged in by X's members. Assume further that trust D, the employee funded pension plan and fund for employees of Y, was subsequently merged into trust C. The merger of trust D into trust C would not in itself constitute a fundamental change in the character of trust C, since both C and D are for the benefit of employees of related industries.

(4) *Payment of benefits.* The trust must provide solely for the payment of pension or retirement benefits to its beneficiaries. For purposes of this section, the term "retirement benefits" is intended to include customary and incidental benefits, such as death benefits within the limits permissible under section 401.

(5) *Diversion.* The trust must be part of a plan which provides that, before the satisfaction of all liabilities to employees covered by the plan, the corpus and income of the trust cannot (within the taxable year and at any time thereafter) be used for, or diverted to, any purpose other than the providing of pension or retirement benefits. Payment of expenses in connection with the administration of a plan providing pension or retirement benefits shall be considered a

payment to provide such benefits and shall not affect the qualification of the trust.

(6) *Discrimination.* The trust must be part of a plan whose eligibility conditions and benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. See sections 401(a)(3)(B) and 401(a)(4) and §§ 1.401-3 and 1.401-4. However, a plan is not discriminatory within the meaning of section 501(c)(18) merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan. Accordingly, the benefits provided for highly paid employees may be greater than the benefits provided for lower paid employees if the benefits are determined by reference to their compensation; but, in such a case, the plan will not qualify if the benefits paid to the higher paid employees are a larger portion of compensation than the benefits paid to lower paid employees.

(7) *Objective standards.* The trust must be part of a plan which requires that benefits be determined according to objective standards. Thus, while a plan may provide similarly situated employees with benefits which differ in kind and amount, these benefits may not be determined solely in the discretion of the trustees.

(c) *Effective date.* The provisions of section 501(c)(18) and this section shall apply with respect to taxable years beginning after December 31, 1969.

PAR. 4. Section 1.801 is amended by amending section 801(b)(2) and by revising the historical note. These amended and revised provisions read as follows:

**§ 1.801 Statutory provisions; life insurance companies; definition of life insurance company.**

Sec. 801. *Definition of life insurance company.*

* * * * *

(b) *Life insurance reserves defined.*

* * * * *

(2) *Reserves must be required by law.* Except—

(A) In the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) As provided in paragraph (3), in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

[Sec. 801 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 36); sec. 2, Life Insurance Company Tax Act 1959 (73 Stat. 112); sec. 3, Act of October 23, 1962 (P.L. 87-858, 76 Stat. 1134); sec. 121, Tax Reform Act, 1969 (83 Stat. 541)]

PAR. 5. Paragraph (a)(2) of § 1.801-3 is amended to read as follows:

**§ 1.801-3 Definitions.**

* * * * *

(a) *Insurance company.* * * *

(2) Insurance companies include both stock and mutual companies, as well as mutual benefit insurance companies. For taxable years beginning before January 1, 1970, a voluntary unincorporated association of employees, including an association fulfilling the requirements of section 801(b)(2)(B) (as in effect for such years), formed for the purpose of relieving sick and aged members and the dependents of deceased members, is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer. A corporation which merely sets aside a fund for the insurance of its employees is not an insurance company, and the income from such fund shall be included in the return of the corporation.

* * * * *

PAR. 6. Paragraph (b)(2) of § 1.801-4 is amended to read as follows:

**§ 1.801-4 Life insurance reserves.**

* * * * *

(b) *Certain reserves which need not be required by law.* * * *

(2) For taxable years beginning before January 1, 1970, in the case of policies issued by an organization which met the requirements of section 501(c)(9) (as it existed prior to amendment by the Tax Reform Act of 1969) other than the requirement of subparagraph (B) thereof.

* * * * *

PAR. 7. Section 1.810 is amended by repealing subsection (e) and by revising the historical note. Such provisions read as follows:

**§ 1.810 Statutory provisions; life insurance companies; rules for certain reserves.**

Sec. 810. *Rules for certain reserves.*

* * * * *

(e) [repealed]

[Sec. 810 as added by sec. 2, Life Insurance Company Tax Act 1959 (73 Stat. 125); amended by sec. 121, Tax Reform Act 1969 (83 Stat. 541)]

PAR. 8. Paragraph (c)(4) of § 1.810-2 is amended to read as follows:

**§ 1.810-2 Rules for certain reserves.**

* * * * *

(c) *Special rules.* * * *

(4) *Cross references.* For taxable years beginning before January 1, 1970, see section 810(e) (as in effect for such years) and § 1.810-4 for special rules for determining the net increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section in the case of certain voluntary employees' beneficiary associations. For similar special rules in the case of life insurance companies issuing variable annuity contracts, see section 801(g)(4) and the regulations thereunder.

* * * * *

PAR. 9. Section 1.810-4 is amended by adding thereto a new paragraph (e). Such added paragraph reads as follows:

**§ 1.810-4 Certain decreases in reserves of voluntary employees' beneficiary associations.**

* * * * *

(e) *Effective date; cross reference.* The provisions of section 810(e) (as in effect for such years) and this section apply only with respect to taxable years beginning before January 1, 1970. For provisions relating to certain funded pension trusts applicable to taxable years beginning after December 31, 1969, see section 501(c)(18) and the regulations thereunder.

[FR Doc.72-4135 Filed 3-16-72;8:50 am]

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[T.D. 7171]

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

## PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

### Sales and Exchanges of Bonds and Other Evidences of Indebtedness by Financial Institutions

On June 29, 1971, notice of proposed rule making to conform the Income Tax Regulations (26 CFR Part 1) under sections 582 and 1243 of the Internal Revenue Code of 1954 to section 433 of the Tax Reform Act of 1969 (Public Law 91-172, 83 Stat. 623), relating respectively to bad debts, losses, and gains with respect to securities held by financial institutions, and loss of small business investment company, was published in the FEDERAL REGISTER (36 F.R. 12229).

Section 1.582-1 of the regulations hereby adopted supersedes those provisions of § 13.0 of this chapter relating to section 433(d)(2) of such Act which were prescribed by T.D. 7032, approved March 9, 1970 (35 F.R. 4330). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the change set forth below:

Paragraph (e) of § 1.582-1, as set forth in paragraph 2 of the notice of proposed rule making, is changed by revising subparagraphs (1) and (3).

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917, 26 U.S.C. 7805; sec. 433(d)(2), Tax Reform Act of 1969, Public Law 91-172, 83 Stat. 624)

[SEAL] JOHNNIE M. WALTERS,
*Commissioner of Internal Revenue.*

Approved: March 10, 1972.

FREDERIC W. HICKMAN,
*Acting Assistant Secretary of the Treasury.*

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 582 and 1243 of the Internal Revenue Code of 1954 to section 433 of the Tax Reform Act of 1969 (Public Law 91-172, 83 Stat. 623), such regulations are amended as set forth hereinafter. Section 1.582-1 of the regulations hereby