The original documents are located in Box 9, folder "Johnson - O'Malley Program and Regulations" of the Norman Ross Files, 1974-75 at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE
WASHINGTON

September 3

LG:

New Johnson O-Malley Regs. Much more power to Indian representatives; note the bracketed part on the second page.

Brad

injury from over-exposure to a single dose, from frequent exposure to small doses, and infrequent exposure to small doses. The Commission has determined that the degree and nature of the hazard presented by the use of self-pressurized household products containing vinyl chloride monomer is such that the public health and safety can be adequately served only by keeping those products out of channels of interstate commerce, and takes this action to classify all such products as banned hazardous substances without regard to the date on which those products were introduced into interstate commerce. On the effective date of the regulation promulgated below, all self-pressurized household products containing vinyl chloride monomer will be subject to all of the provisions of the Federal Hazardous Substances Act applicable to banned hazardous substances, including repurchase under section 15 of the act and the regulations issued by the Commission (16 CFR 1500.202).

Therefore, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(A), (B), (g), (q)(1)(B), 3(a), 74 Stat. 372, 374, as amended 80 Stat. 1304–05; 15 U.S.C. 1261, 1262) and the Federal Food, Drug and Cosmetic Act (sec. 701(e), (f), (g), 52 Stat. 1055–56, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 371 (e), (f), (g)), and under authority vested in the Consumer Product Safety Commission by the Consumer Product Safety Act (sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), 16 CFR 1500.17 is amended by adding a new paragraph (a)(10), as follows (unchanged, the introductory text of paragraph (a) is included below for context):

§ 1500.17 Banned hazardous substances.

(a) Under the authority of section 2(q)(1)(B) of the act, the Commission declares as banned hazardous substances the following articles because they possess such a degree or nature of hazard that adequate cautionary labeling cannot be written and the public health and safety can be served only by keeping such articles out of interstate commerce:

* * * * *

(10) Self-pressurized products intended or suitable for household use that contain vinyl chloride monomer as an ingredient or in the propellant.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before September 20, 1974, file with the Secretary, Consumer Product Safety Commission, tenth floor, 1750 K Street NW., Washington, D.C. 20207, written objections thereto, preferably in five copies. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. The regulation promulgated above, 16 CFR 1500.17(a)(10), shall become effective October 7, 1974, except as to any provision that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 2(f)(1), (A), (B), (g), (q)(1)(B), 3(a), 74 Stat. 372, 374, as amended 80 Stat. 1304–05 (15 U.S.C. 1261, 1262); sec. 701 (e), (f), (g), 52 Stat. 1055–56, as amended 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 371 (e), (f), (g)); sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)))

Dated: August 19, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.74–19376 Filed 8–20–74;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

SUBCHAPTER C—DRUGS

RECODIFICATION EDITORIAL AMENDMENTS; CORRECTION

Correction

In FR Doc. 74–16867 appearing on page 26891 in the issue of Wednesday, July 24, 1974 make the following changes:

1. The third line of item (4) reading "mate line of paragraph 4a should read" should read " mate line of paragraph 4 a. should read".
2. The second line of item (5) reading " paragraph 11.4. after "§ 146b.113" should read " paragraph 11.d. after "§ 146b.113".

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER E—EDUCATION

PART 33—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF INDIAN CHILDREN

AUGUST 16, 1974.

This notice is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 FR 13938). The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Beginning on page 1776 of the January 14, 1974, FEDERAL REGISTER (39 FR 1776), there was published a notice of proposed rulemaking to revise Part 33 of Subchapter E, Chapter I, Title 25 of the Code of Federal Regulations. The revision was proposed pursuant to the authority contained in the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452–456).

The purpose of this revision is to clarify the rules governing disposition of financial assistance to meet the special needs of eligible Indian children and to define the role of Indian parental participation and control in the development of supplemental education programs for Indian children funded under the authority of the Johnson-O'Malley Act, cited above. In addition, this revision will require the participation and control by Indian parents, will delineate specific areas of accountability, and will provide audit and monitoring procedures so that contract funds negotiated under this part can most effectively be used for supplemental programs to ehhance the educational opportunities and achievements of the Indian children who are the intended beneficiaries of these funds.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed revision.

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

Part 33 of Subchapter E, Chapter I, Title 25 of the Code of Federal Regulations is revised to read as follows:

AUTHORITY: Sec. 3, 48 Stat. 596, as amended; (25 U.S.C. 452–456), unless otherwise noted.

§ 33.1 Definitions.

As used in this part, the term—

(a) "Johnson-O'Malley Act" means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452–456).

(b) "Secretary" means the Secretary of the Interior.

(c) "Commissioner" means the Commissioner, Bureau of Indian Affairs.

(d) "Area Director" means the administrative officer in charge of a Bureau of Indian Affairs Area Office.

(e) "State" means a State of the United States of America or any political subdivision thereof.

(f) "School District" means the local unit of school administration as defined by the laws of the State in which it is located.

(g) "Indian" means an individual of ¼ or more degree of Indian blood and a member of a tribe, band, or other organized group of Indians, including Alaska Natives, which is recognized by the Secretary of the Interior as being eligible for Bureau of Indian Affairs services.

(h) "Indian corporation" means an Indian controlled corporation chartered under State law, Federal law, or under Tribal authority.

(i) "Indian Education Committee" means a group selected by Indian parents pursuant to the provisions of this part.

(j) "Educational plan" means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students under this Part.

(k) "Supplemental programs" means those programs which are designed to meet the special needs of Indian students that may result from the socio-economic conditions of the parents, or from cultural and language differences, or other factors. Funds for such programs shall supplement, and not supplant, funds received from any other source.

(l) "Operational expenditures" means those expenditures made in support of basic school operational costs in order to meet educational standards established by the State.

§ 33.2 **Contract eligibility.**

(a) Contracts may be entered into under the provisions of the Johnson-O'Malley Act with a State, school district, or Indian corporation for the education of Indian children from early childhood through grade 12.

(b) Monies shall be expended under contract only for the benefit of Indian students who are recognized by the Secretary as being eligible for Bureau of Indian Affairs services because of their status as Indians. Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

(c) The contracts may authorize payments for educational programs and services in two major categories:

(1) For supplemental programs. All funds for supplemental programs under this part shall be distributed annually among the States and among contractors within each State on an equitable basis.

(i) All funds for supplemental programs shall be apportioned among the States on a substantially equal basis, based upon the number of eligible students for whom funds are sought, with allowance being made for the actual cost of delivering educational services in each State. For the purpose of determining the actual cost of delivering educational services in each State, the Commissioner shall refer to the average State-wide per pupil expenditure.

(ii) Funds for supplemental programs shall be distributed among the contractors within each State so that each contractor will receive approximately the same amount for each eligible Indian student to be served under the contract. The Commissioner may make exceptions based upon the special cultural, linguistic, social and educational needs of the communities involved.

(2) For operational expenditures. All funds for operational expenditures shall be used to meet educational standards established by the State and only if provided for in the educational plan required by § 33.4(a) and only under extraordinary or exceptional circumstances. The contract may authorize operational expenditures only when the school district establishes all of the following:

(i) That it cannot satisfy the applicable minimum State standards in the absence of such funds;

(ii) That it has made a reasonable tax effort, with a mill levy in support of educational programs at least equal to the State average;

(iii) That it has fully utilized all other sources of financial aid, including all forms of State aid, Pub. L. 874 payments, etc. The State aid contribution per pupil must be at least equal to the State average; and

(iv) That there exists at least 70 percent eligible Indian enrollment within the school district or within any particular school served.

Funds authorized under this part shall supplement, and not supplant, State and local funds. Each contract shall require that the use of these funds will not result in a decrease in State, local or Federal funds which, in the absence of funds under this Part, would be made available for Indian children. In no instance shall these funds be used as payment for capital outlay or debt retirement expenses.

(d) Equal educational opportunities. (1) Contracts shall specify that State school districts receiving funds under the provisions of this Part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students. School districts receiving funds under this Part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians. (2) When informed by a complaint or through its own discovery that possible violations of Title VI of the Civil Rights Act of 1964 exists within a State school district receiving Johnson-O'Malley aid, the Department of the Interior shall, in accordance with Federal requirements, notify the Department of Health, Education, and Welfare, of the possible violation of Title VI and, pursuant to Memoranda of Understanding between the Secretary of the Interior and the Secretary of the Department of Health, Education, and Welfare, conduct an investigation into the matters alleged. If the report of investigation conducted by the Department of Health, Education, and Welfare discloses a failure or threatened failure to comply with this Part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR 17.1, 17.8 and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hearing before the head of the Bureau or office administering the Federal financial assistance, or at his discretion, before an administrative law judge designated in accordance with section 11 of the Administrative Procedure Act. The Secretary, may, by agreement with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFR 17.8(e).

§ 33.3 **Parental participation and control.**

(a) The Commissioner shall require maximum participation and control by the Indian parents in the community affected in the approval and implementation of programs under this Part. Contracts shall provide that this participation and control shall include, but shall not be limited to, the provisions of this section. In the case of contracts with Indian corporations, all provisions of this Part relating to Indian Education Committees shall be required.

(b) Each contractor having a contract under this Part shall work with the Indian Education Committee established for each school community involved pursuant to paragraph (c) of this section. Each contractor may, subject to the terms prescribed in its contract, make available part of its contract funds for conducting elections of Indian Education Committees; for attendance of members of Indian Education Committees at State-wide meetings, workshops, and training; and for other reasonable expenses incurred by an Indian Education Committee in relation to its primary duties, including the planning, development, evaluation and monitoring of programs and services funded under the Johnson-O'Malley Act.

(c) All Indian Education Committees shall be nominated, selected, and serve by procedures determined by the Indian community affected. Each Committee shall file a copy of its organizational papers and by-laws with the Area Director together with a list of its officers and members. Selection of members shall not limit the continuing participation of the Indian community in the operation and evaluation of the program.

(d) Each Indian Education Committee shall have full veto power over all supplemental programs and over all expenditures of funds for supplemental programs. In addition, each Indian Education Committee may at its option:

(1) Make an initial, annual assessment of the learning needs of Indian children in the community affected;

(2) Participate in negotiations concerning all contracts under this part;

(3) Participate in the planning, development, evaluation, and monitoring of all programs funded under this part;

(4) Hear complaints by Indian students and their parents;

(5) Meet regularly with the professional staff serving Indian children and with the local educational agency;

(6) Hold Committee meetings on a regular basis which are open to the public;

(7) Have full access to all records maintained by the school concerning all students served by the program;

(8) Establish rules for conducting its meetings; and

(9) Have such additional powers as are consistent with these regulations.

§ 33.4 General requirements for contracts.

(a) *Educational plan.* To become eligible for negotiating a contract, a prospective contractor and its Indian Education Committee(s) must formulate an educational plan annually and submit it to the appropriate Area Director as part of the proposal to contract. Such plan shall become a part of any contract awarded.

(b) *Budget estimates and financial information.* Each contractor must submit to the Area Director such budget information as is necessary to determine program costs to contract for services. If contracts are to be negotiated for operational expenditures, a school district shall prove financial need based on the standards set out in § 33.2(c)(2). This information shall include records of receipt of local, State and Federal funds. If a contractor requests supplemental expense funds for special need programs, it shall specify by line item in each school district's program for which funds from this program are to be expended. When supplemental funds are sought, full information on such programs funded from other supplemental sources shall be furnished as evidence that there is no duplication of funding or supplanting. In every case where a contract is awarded for operational expenditure, formal written determination and findings supporting the need for such funds shall be made by the Area Director and incorporated into the contract.

(c) *Reporting.* Information shall be furnished in the educational plan by the contractor as to the type of expenditure for which reimbursement may be sought under the terms of the contract. Each school district or Indian corporation having a sub-contract shall report expenditures by line item. An adequate fiscal accounting system shall be required and maintained that enables identification and annual audit of expenditures of funds for services contracted under this section.

(d) *Educational standards.* The educational plan shall provide that the established State standards must be maintained for operation of programs and services approved under this part.

(e) *Staff.* In educational plans where supplemental programs are requested, a provision shall be included that preference for the selection of personnel shall be given to Indians.

(f) *Inspection of programs.* Records of contractors and subcontractors receiving funds shall be open to inspection for purposes of program and fiscal audit by duly-accredited representatives of the Federal government and the Indian Education Committee. The contractor receiving funds from the Area Director shall be primarily responsible for contract compliance, and in any instance deemed necessary, the Area Director shall assist the contractor in securing necessary documentation of expenditures from the subcontractor. The contractor shall furnish the Area Director with a detailed annual report for the previous school year, due before September 15 each year, which shall contain an evaluation of the effectiveness of the contract program. The Area Director shall also audit program effectiveness and the financial expenditures for each year such contract during the contract year. The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditures by the Commissioner, who shall have the authority to determine the propriety of such expenditures. All schools affected by any contract pursuant to this Part shall provide members of the Indian Education Committee with full access to all records concerning all students served by the program.

(g) *Parental participation.* Each educational plan shall include provisions that the contractor shall comply in full with the requirements concerning parental participation and control as set forth in § 33.3.

(h) *Visits and consultations.* The educational plan shall provide that educational facilities receiving such funds as subcontractors shall be open to visits and consultations by duly-accredited representatives of the Federal government, by Indian parents in the community, by members of the Indian Education Committee, and by tribal representatives.

(i) *Inspection of documents.* Copies of all contracts, records, reports, budgets, budget estimates, plans, and other documents pertaining to preceding and current year administration of the contract program shall be made available by the contractor to each member of the Indian Education Committee. Such documents shall be made available, upon request, to members of the public by contractors and local school officials for inspection. The contractor or local school officials shall provide, free of charge, single copies of such documents upon request.

§ 33.5 State school laws.

State employees, in those States where Pub. L. 280, 28 U.S.C. 1360 and 25 U.S.C. 1311 do not confer civil jurisdiction, may be permitted to enter upon Indian tribal lands, reservations, or allotments if the duly-constituted governing body of the tribe adopts a resolution of consent, for the purposes of: (a) Inspecting school conditions in the public schools located thereon; and (b) enforcing State compulsory school attendance laws against Indian children, parents, or surrogate parents.

§ 33.6 Use and transfer of Federal property.

The use of Federally-owned facilities for public school purposes may be authorized when not needed for Federal activities. Transfer of title to such facilities may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41).

(a) When nonexpendable Government property is turned over to public school authorities under a use permit, the permittee shall insure such property against damage by fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of such property by fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of property. Otherwise, insurance proceeds shall be remitted to the Bureau of Indian Affairs.

(b) If the public school authority is self-insured and can present evidence of such fact to the Area Director, insurance for lost or damaged property will not be required, provided however that the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for remitting funds to the Government sufficient for replacement of the property.

(c) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

Effective date. This revision of Part 33 shall become effective September 20, 1974.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.74-19313 Filed 8-20-74;8:45 am]

Title 39—Postal Service
CHAPTER I—U.S. POSTAL SERVICE
PART 232—POSTAL LOSSES AND OFFENSES
Explosives and Bomb Threats in Mail

The purpose of these amendments is to revise the instructions to postal employees when explosives are found in post offices, and to add instructions when a bomb threat is received or when mail matter is suspected of containing explosives.

Accordingly, the following amendments are effective immediately:

§ 232.2 [Amended]

Section 232.2 *Postal emergencies* is amended as follows:

1. In paragraph (a)(12) revise the last sentence to read as follows: Should an explosion occur, cease all operations, exclude unauthorized persons.

2. Paragraph (a)(13) is redesignated (a)(15).

DEPARTMENT of the INTERIOR

news release

BUREAU OF INDIAN AFFAIRS
For Release August 26, 1974 Lovett 202-343-7445

REGULATIONS TO GOVERN JOHNSON-O'MALLEY PROGRAM OF THE BUREAU OF INDIAN AFFAIRS PUBLISHED IN THE FEDERAL REGISTER

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New regulations for a program affecting 100,000 Indian childern in 435 public school districts and 23 states were published in the Federal Register August 21, 1974. "These regulations reflect the vast changes and development in the Indian community of the past several years," said Commissioner Morris Thompson of the Bureau of Indian Affairs.

The new regulations govern the Bureau's program of financial assistance to meet special educational needs of Indian children not in Federal schools. It is commonly referred to as the Johnson-O'Malley program, after the Congressmen who introduced the authorizing legislation in 1934.

The revised regulations give the local Indian community the major role in determining how the funds should be used. In the past this was primarily the responsibility of school officials. This change accords with the Administration's policy of Indian self-determination.

Funding for the program in fiscal year 1975 is expected to be almost $28 million. These funds may be used for needed supplemental programs, not part of the ordinary school program, or in exceptional circumstances for operational expenditures of the school district. Some school districts need this operational assistance because the tax base, including state and other Federal aid, is not adequate for meeting minimum state educational standards. School costs are also frequently greater in isolated rural areas.

It is expected that at least 80 percent of the funds will be used in 1975 to supplement the regular school program to meet the special needs of Indian students. Hiring Indian teacher aides for the primary grades to help young Indian students adjust to the school situation would be an example of such use. Provision of a tutorial program, a course in Indian culture or a program of teaching English as a second language are other examples. Local Indian education committees determine the needs and the programs.

"There was maximum involvement of Indian people in the development of these regulations," Commissioner Thompson said. "They are responsive to the Indian people we serve and we are confident that the end result will be better programs for Indian children."

Other changes from the old regulations, last revised in 1957, include:

Eligibility for assistance is broadened somewhat, but is still limited to Indians living on or near reservations; Funds may be used for pre-school children and other educational programs conducted outside the normal school setting; Eligibility requirements for school districts seeking funds for operational expenditures have been tightened; Provision is made for more equitable funding between states and within states, and Program and fiscal accountability requirements have been greatly strenghtened.

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DEPARTMENT of the INTERIOR

news release

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