available in sufficient quantities, in accordance with § 9-50.601-2."

By adding a new § 9-50.601-2 as follows:

§ 9-50.601-2 Determinations of Nonavailability.

(a) Determinations of nonavailability under FPR 1-6.103-2 may be made by the Contracting Officer responsible for the administration of the contract.

(b) When a review has been made of the contractor's procurement system in accordance with Subpart 9-23.1 and the contractor's procurement system has been approved, the Head of the Procuring Activity may authorize the contractor to make determinations of nonavailability for individual items under individual procurement actions. Each authorization shall be in writing and shall specify a dollar value limit for the aggregate of domestically unavailable items in individual procurement actions. Each authorization shall also specify the effective date, the activity, the division or facility authorized to make the determinations, the period the authorization covers, the extent of applicability, and any special conditions or requirements. Authorizations shall be no broader than other authorizations made pursuant to § 9-23.108. Authorizations for dollar value limits in excess of $25,000 shall require the prior concurrence of the Senior Procurement Official, Headquarters."

§ 9-50.703-4 Examination of Records by the Comptroller General (Amended)

By amending § 9-50.703-4 by adding a Note C which will read:

Note C.—Substitute the words "unless the DOE authorizes their prior disposition" for the words "or such lesser time specified in either Appendix M of the Defense Acquisition Regulations or the Federal Procurement Regulations 1-20, as appropriate" in paragraphs (b) and (c).

§ 9-50.704 [Amended]

By amending § 9-50.704-2(b) by removing the last sentence from the text of the paragraph and inserting it as the second sentence in the "Radiation Protection and Nuclear Criticality" clause following paragraph (b).

§ 9-50.704-3 [Amended]

By amending § 9-50.704-3 by:

1. Removing the words "CPFF construction contracts use the following clause" and substituting therefor: "Cost-reimbursement operating and onsite service contracts which include construction work shall include the following clause"

2. Providing the following title for the clause: "BUY AMERICAN—OPERATING/ONSITE CONSTRUCTION"

3. Adding a new paragraph (b)(5) as follows: "(5) As to which the contractor, if specifically authorized to do so, has determined to be unavailable in accordance with FPR 1-18.602-1(b)."

§ 9-50.704-13 [Amended]

By amending § 9-50.704-13(d)(15) by adding the following immediately after word "guards,": "cashiers, and paymasters, if payments are made by check,".

§ 9-50.704-24 [Amended]

By amending § 9-50.704-24(a) by adding the following immediately after "$100,000" where it first appears "and in all modifications over $100,000".

§§ 9-50.704-36 and 9-50.704-48 [Reserved]

By removing and reserving §§ 9-50.704-36 and 9-50.704-48.

§ 9-50.1002 [Amended]

By amending § 9-50.1002 by adding the following immediately after the word "thereunder": ", including construction".

§ 9-50.1003 [Amended]

By amending § 9-50.1003 by adding the following immediately after the word "subcontracts": ", including construction".

§ 9-50.1213-6 [Amended]

By amending paragraph (b) of the certificate appearing in 9-50.1213-6 by adding the following immediately after the word "work": "shall be reported to the Department of Energy in accordance with this policy. I".

§ 9-50.1803 [Amended]

By amending § 9-50.1803 by adding the following: "Contractors may be authorized by the Head of the Procuring Activity to make determinations of nonavailability under FPR 1-18.602-1(b) for individual items under individual construction subcontracts awarded by them. Contractors may initiate the requests for determinations of impracticability in accordance with FPR 1-18.602-1(a), and requests for deviations from the FPR 1-18.603 procedures for determination of unreasonable cost. Such requests shall be forwarded to the Senior Procurement Official, Headquarters, after concurrence by the Head of the Procuring Activity."

[FR Doc. 81-31986 Filed 11-3-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

Indian Health; Preference in Employment; Osage Tribe of Oklahoma

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the definition of the term "Indian" for purposes of Indian preference in employment in the Indian Health Service (IHS) to continue the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry. The amendment extends the previous expiration date of January 17, 1981, for three years to permit the tribe to organize and to establish current membership standards.

EFFECTIVE DATE: November 4, 1981.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, (301) 443-1116.

SUPPLEMENTARY INFORMATION: As a result of the April 22, 1977, decision of the U.S. District Court for the District of Columbia in *Tyndall* v. *U.S.*, the Department of Health and Human Services is under continuing court order to apply the same definition of the term "Indian" for purposes of Indian preference in employment in the IHS as that adopted by the Department of the Interior (DOI) and to publish the definition as a regulation in the Federal Register within 30 days of the DOI's publication.

Rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 8553) generally involve publication of a notice of proposed rulemaking, affording interested persons the opportunity to comment, and publication of the final rule after consideration of the comments received. However, the statute allows the agency to dispense with notice and comment procedures:

(B) When the Agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The court's order in *Tyndall* provides good cause for dispersing with notice and comment procedures in this instance.

On July 11, 1978 (43 FR 29783), the HHS published a final rule which brought the definition of Indian for

purposes of Indian preference in employment in the IHS into conformance with the DOI definition. On July 17, 1981 (46 FR 37044, 45), the DOI amended its definition to continue the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry.

The membership rolls of the Osage Tribe of Oklahoma, like a number of other tribes, were closed by an act of Congress. The current regulation provided a 3-year period for such tribes to formally organize and establish membership standards. The DOI regulation extended the deadline for the Osage Tribe of Oklahoma to July 17, 1984. The Department of Health and Human Services rule will do the same and the wording is identical to the DOI wording. In addition, under terms of the Court's order the IHS has been obligated to apply the revised DOI definition of Indian for purposes of employment from July 17, 1981—the effective date of the DOI final rule.

Osage Tribal persons, who are employed by the IHS and who received preference in any previous appointment, will continue to be preference eligibles so long as they are continuously employed. The Department of Health and Human Services has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291.

The Department of Health and Human Services has determined that this document does not have a significant economic effect on a substantial number of small entities. This rule affects only persons of the Osage Tribe of Indians. No notice of proposed rulemaking (NPRM) is required because, as a result of the Court's order, the Department does not have discretion in this matter and, therefore, pursuant to 5 U.S.C. 553(b)(B) the Department is waiving the proposed rulemaking requirements.

Accordingly, the Department of Health and Human Services amends 42 CFR 36.41(e) to read as follows:

Dated: September 16, 1981.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: October 14, 1981.

Richard S. Schweiker,

Secretary.

PART 36—INDIAN HEALTH

Subpart E—Preference in Employment

Section 36.41(e) is revised as follows:

§ 36.41 Definitions.

* * * * *

(e) For three (3) years or until the Osage Tribe has formally organized, whichever comes first, effective July 17, 1981, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

* * * * *

(25 U.S.C. 472)

[FR Doc. 81-31952 Filed 11-3-81; 8:45 am]

BILLING CODE 4110-84-M

Health Care Financing Administration

42 CFR Parts 405, 431, 433, 435, 436, 440, 447, 456, 463, 466, and 478

Medicare and Medicaid Programs; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of interim final rules.

SUMMARY: This document corrects technical errors made in a number of regulations published in the **Federal Register** on September 30 and October 1, 1981. These regulations implemented, in part, Medicare and Medicaid provisions of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

FOR FURTHER INFORMATION CONTACT: Nola Petrovich, (301) 594-9711.

SUPPLEMENTARY INFORMATION: On September 30, and October 1, 1981 we published in the **Federal Register** a group of regulations to implement, in part, Medicare and Medicaid provisions of the Omnibus Budget Reconciliation Act of 1981. This document contains technical corrections that address inadvertent deletions and errors in wording, spelling, punctuation, tense, and consistency of language.

PART 447—PAYMENTS FOR SERVICES

A. FR Doc. 81-28323, "Medicaid Program; Payment for Long-Term Care Facility Services and Inpatient Hospital Services," appearing at 46 FR 47964, September 30, 1981, is corrected as follows:

1. On page 47971, column 3, § 444.251, a period is added after the section title, and "facilities" in the last line of the section is corrected to read "facility".

2. On page 47972, column 1, § 447.252, paragraph (f), in line 4, "specific" is corrected to read "specified".

3. On page 47972, column 1, § 447.253, paragraph (d), in line 3 "sumbit" is corrected to read "submit".

B. FR Doc. 81-28324, "Medicaid Program; Medicaid Eligibility and Coverage Criteria," appearing at 46 FR 47976, September 30, 1981 is corrected as follows:

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

1. On page 47985, column 2, § 435.222, paragraph (b), in line 3, "in" is removed; and paragraph (b)(2), in line 2, "in" is inserted after "or" and before "part".

2. On page 47985, column 3, in the table of contents for Subpart D—Optional Coverage of the Medically Needy, the asterisks between §§ 435.301 and 435.308, and following § 435.340, are removed.

3. On page 47986, column 3, § 435.324, uncodified introductory paragraph, in line 4, "individual" is corrected to read "individuals".

4. On page 47988, column, 1 § 435.821, paragraph (b) which reads "(b) The agency must consider income and resources that are actually contributed by the spouse or parent as available to the individual.", is corrected to read "(b) The agency must consider the parent's or spouse's income and resources as available if they are actually contributed to the individual." The correction is made to make the language consistent with that in § 435.823(b)(1).

5. On page 47988, column 1, § 435.822, paragraph (b)(1), in line 2, "that" is corrected to read "as available if they". The correction is made to make the language consistent with that in § 435.823(b)(1).

6. On page 47988, column 3, § 435.840 "(See § 435.841)" is added at the end of paragraph (c) after the word "Reasonable".

7. On page 47988, column 3, and continued on page 47989, column 1, § 435.841, paragraph (b)(1), in lines 8-10, "(or an optional State supplement, if the agency provides Medicaid under § 430.230)" is removed; paragraph (b)(2) in lines 9-11, "or an optional State supplement, if the agency provides Medicaid under § 430.230" is removed and "highest" is inserted after "the" on line 6 and before "resource" on line 7; paragraph (d), in line 1, "Agency" is corrected to read "agency".

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

8. On page 47990, column 2, § 436.301(b)(1)(ii) on line 2, the word "or" is corrected to read "as".

9. On page 47991, columns 1 and 2, under § 436.811, "and" is inserted at the end of paragraph (b); "(see § 436.812)." is added after "Reasonable" in paragraph (c); and "; and" at the end of paragraph (c) and all of paragraph (d)

are removed. (Paragraph (d) was inadvertently duplicated from regulations for the States. The provision does not apply to the territories (section 248(d) of Pub. L. 90–248).) As corrected, § 436.811 reads as follows:

§ 436.811 Medically needy income standards: General requirements.

To determine eligibility of medically needy individuals, the agency must use an income standard under this subpart that is—

(a) Based on family size;

(b) Uniform for all individuals in a covered group; and

(c) Reasonable (see § 436.812).

10. On page 47991, column 2, § 436.812, paragraph (c), in line 4, the dash is removed; in line 4–10, the words "(1) The medically needy income standard in paragraph (b) of this section exceeds the maximum dollar amount or income allowed for purposes of FFP under § 435.1007; and (2)" are removed; and in line 10 "The" is corrected to read "the". (Paragraph (c)(1) was inadvertently duplicated from regulations for the States. The provision does not apply to the territories (section 248(d) of Pub. L. 90–248).) As corrected, § 436.812(c) reads as follows:

§ 436.812 Medically needy income standards: Reasonableness.

* * * * *

(c) The agency may use a medically needy income standard, that is lower than the standards specified in paragraph (b) of this section, if the lower income standard at least equals the maximum amount allowed for purposes of FFP.

* * * * *

11. On page 47992, column 1, § 436.840 "(see § 436.841)" is added at the end of paragraph (c) after "Reasonable" and before the period.

12. On page 47992, column 1, and continued in column 2, § 436.841, paragraph (b)(2), in line 5 "highest" is inserted after "the" and before "resource".

13. On page 47992, column 2, § 436.843, paragraph (b), in line 3 "§ 435.841" is corrected to read "§ 436.841."

PART 440—SERVICES: GENERAL PROVISIONS

14. On page 47993, column 1, § 440.220 (which begins on page 47992) paragraph (d), in line 3, "and" is corrected to read "or".

PART 433—STATE FISCAL ADMINISTRATION

C. FR Doc. 81–28325, "Medicaid Program; Reduction in Payments to the States", appearing at 46 FR 47996, September 30, 1981, is corrected as follows:

1. On page 48001, column 3, the last citation on the fifth line of the authority citation is corrected by removing the parentheses surrounding the letter "k" in "1396(k)".

2. On page 48002, column 1, § 433.203, in line 10 of the definition of "Recoveries", remove the comma following "by".

3. On page 48002, column 3, § 433.213, paragraph (b)(2)(ii), in line 9, "and" is corrected to read "or".

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

D. FR Doc. 81–28330, "Medicaid Program; Freedom of Choice; Waivers of and Exceptions to State Plan Requirements, " appearing at 46 FR 48524, October 1, 1981, is corrected as follows:

1. On page 48527, column 1, § 431.50(c), paragraph (c)(3), in line 2, "services" is corrected to read "devices".

2. On page 48527, columns 2 and 3, § 431.54 the designation of paragraph "(b)" is changed to "(d)", in line 8 "under" is added after "required" and before "§ 431.51(d)", and in line 9, add a comma after "finds" in the new paragraph (d).

3. On page 48528, column 2, § 431.55, paragraph (f), in line 9, "That" is corrected to read "that".

E. FR Doc. 81–28331, "Medicaid Program; Home and Community Based Services," appearing at 46 FR 48532, October 1, 1981, is corrected as follows:

1. On page 48539, column 2, § 431.50, paragraph (c)(1) in line 1, "Service" is corrected to read "Services" and in line 3, the parenthesis is removed after the reference "§ 440.250(g)", and a parenthesis is inserted after "subchapter" and before the semicolon.

2. On page 48539, column 2, § 431.50, paragraph (c)(3) in line 2, "services" is corrected to read "devices".

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

3. On page 48539, column 3, § 435.3, in line 5, add a hyphen after "community" and before "based".

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

F. In FR Doc. 81–28332, "Medicare Program; Inpatient Routine Nursing Salary Cost Differential," appearing at 46 FR 48544, October 1, 1981, on page 48546, column 3, § 405.430, paragraph (e)(1), in line 14, change the division sign in the formula to a minus sign within the parenthesis.

G. In FR Doc. 81–28333, "Medicare and Medicaid Programs; Less Than Effective Drugs and Inpatient Hospital Tests," appearing at 46 FR 48550, October 1, 1981, on page 48554, column 1, § 405.232, paragraph (c)(2)(iii), on line 1, "was" is corrected to read "is".

H. FR Doc. 81–28334, "Medicaid Program; Miscellaneous Medicaid Provisions—Increased State Flexibility," appearing at 46 FR 48556, October 1, 1981, is corrected to read as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. On page 48559, column 3, in the authority citation, line 4 is corrected by removing "(a)(4)" in the citation "1302(a)(4)" and by inserting the citation "1396a(a)(4)" after the corrected "1302", and line 5 is corrected by removing the parentheses following the letter "k" in the citation "1396k)".

PART 447—PAYMENTS FOR SERVICES

2. On page 48560, column 2, the table of contents for Subpart D is corrected by inserting the words "Payment Methods" at the beginning of the subpart title and adding a semicolon in the title of § 447.304 after "limits" and before "FFP".

PART 456—UTILIZATION CONTROL

3. On page 48561, column 1, the table of contents is corrected by inserting 5 asterisks below each section title.

4. On page 48561, column 2, § 456.260, paragraph (a)(1), in lines 1 and 2, remove the words "and recertify".

I. FR Doc. 81–28335, "Professional Standards Review Organizations," appearing at 46 FR 48564, October 1, 1981, is corrected as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. On page 48565, column 3, § 431.630, the uncodified introductory paragraph was erroneously reprinted and is removed.

PART 433—STATE FISCAL ADMINISTRATION

2. On page 48566, column 1, § 433.15, paragraph (b)(6)(i), in line 6 the semicolon following "Act" is changed to a colon and the colon following "75" is removed.

PART 463—REVIEW RESPONSIBILITY AND AUTHORITY OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS (PSROs)

3. On page 48569, column 1, § 463.18, the uncodified paragraph, in line 2, the comma after "Secretary" is removed and the words "or a" are inserted after "Secretary" and before "Medicare".

PART 466—PSRO HOSPITAL REVIEW

4. On page 48569, column 1, § 466.1, the second line of the amendatory language is corrected by changing "paragraph (a)" to "paragraphs (a)(1) and (2)" following the word "revising" and before the word "as".

5. On page 48569, column 2, § 466.1, the asterisks following paragraph (a)(1)(iii) are removed.

6. On page 48570, column 1, § 466.62, five asterisks are added following paragraph (d)(2).

PART 478—STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCILS

7. On page 48570, column 3, § 478.6, paragraph (c)(2), in line 6, "programs" is corrected to read "program".

8. On page 48570, column 3, § 478.102 paragraph (a)(3), in line 4, insert a parenthesis following the word "physicians" and before the word "of".

(Catalog of Federal Domestic Assistance, Program No. 13.714, Medical Assistance Program; Program No. 13.773, Medicare—Hospital Insurance; and Program No. 13.774, Medicare—Supplementary Medical Insurance).

Approved: October 29, 1981.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 81-31951 Filed 11-3-81; 8:45 am]

BILLING CODE 4110-35-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 311 (Sub-No. 4)]

Modification of the Motor Carrier Fuel Surcharge Program; Clarification

AGENCY: Interstate Commerce Commission.

ACTION: Clarification of final modification.

SUMMARY: On October 9, 1981, at 46 FR 50070, the Commission published final modifications of the fuel surcharge program for motor carriers and freight forwarders to replace the revenue-based fuel surcharge with a program which will reimburse owner-operators now and in the future for fuel costs above 63.5 cents a gallon. This notice clarifies the prior decision; it is to be published as appendix D to the decision appearing in the bound volume.

EFFECTIVE DATE: November 8, 1981.

FOR FURTHER INFORMATION CONTACT:
Lee Alexander (202) 275–7597
Richard Shullaw (202) 275–7639
Ted Kalick (202) 275–6446
David Manning (202) 275–7395
Robert G. Rothstein (202) 275–7912
Joseph A. Heberle (202) 275–7371

SUPPLEMENTARY INFORMATION:

Empty Mileage

In the prior decision, it was indicated that the Commission's compensation method will reimburse owner-operators for all miles traveled at the direction of the carriers except those for the owner-operator's personal or non-carrier related business. Questions have arisen about this requirement.

Empty miles traveled to pick up exempt loads or intra-state loads not subject to I.C.C. regulation are not subject to the fuel compensation method. The prior decision stated that carriers will reimburse owner-operators for all miles traveled at the direction of the carriers, whether loaded or empty. There has been some confusion with the phrase "at the direction" of the carrier. What we mean by this phrase is empty miles for carrier-related business. For example, an owner-operator moves between points A and B and then is directed by the permanent lease carrier to point C to pick up another regulated load. The empty miles from B to C are to be paid under the Commission's decision. However, as noted in the prior decision, all empty miles traveled by owner-operators or personal or non-carrier related business will not be subject to payment.

Trip lease carriers are responsible for empty and loaded miles traveled after the trip lease is executed. Miles traveled to execute the trip lease, which are unrelated to the permanent-lease carrier will not be reimbursed.

Because all miles traveled on carrier-related business, whether loaded or empty, will be subject to the mileage compensation factor, several carriers have requested, in a petition filed October 20, 1981, that we reduce their accounting burden by permitting them to adjust the Commission's compensation factor upward by a carrier's average empty mileage factor and apply this aggregate figure to loaded miles only. We are not convinced that the averaging approach will be substantially more economical, particularly since carriers must already account for mileage for state fuel tax purposes, and as a result of this decision must use the load mileage data to compute owner-operator compensation. Rather, we are persuaded that the averaging approach, because of its more subjective nature, may fall significantly short of our goal of reimbursing owner-operators for fuel costs above 63.5 cents a gallon.

Aside from arguments of economy, we recognize that a fair and objective standard for averaging empty mileage could reduce friction over which dead head miles require fuel reimbursement. Accordingly, we are considering a related proceeding to seek comments on this issue. For now carriers will be required to follow the compensation formula.

Revenue Short-Fall Recovery

The mileage compensation figure constitutes the minimum fuel reimbursement consistent with this decision. Our decision was not intended, nor does it contain language, to preclude a carrier from reimbursing the owner-operator at a higher level. The conversion from the revenue-based fuel surcharge to the mileage compensation formula will more accurately reimburse the owner-operator for increased fuel costs but may yield less revenue than before. To the extent owner-operators were over-compensated for fuel, their non-fuel cost increases generally were not reflected in the rate structure. Carriers may file for rate increases to cover the owner-operator's higher non-fuel costs. Our decision specifically provides that short notice rate relief is available to make up for any revenue shortfall. Revenue shortfalls experienced by owner-operators are recoverable by separate tariff publications which may be filed to become effective on the same effective date of the fold-in publication. Thus, in addition to the minimum mileage compensation payment, which shall include an empty mileage payment, the revenue raised to compensate for higher non-fuel costs may be paid entirely to the owner-operator. However, we reemphasize that the fold-in mechanism itself must not be used to recover non-fuel related costs.

The Fold-In

In the "Miscellaneous Matters" section of the prior decision, we indicated that tariff publishers must receive verified statements from carriers, and then file a verified statement that the publishers have