from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.205(b) table is amended by adding and alphabetically inserting the raw agricultural commodity tyfon to read as follows:

§ 180.205 Paraquat; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Tyfon	0.05

3. Section 180.294 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues on the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities:

Commodities	Parts per million
Watercress	10.0

[FR Doc. 87-22786 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 466 and 476

[HSQ-145-FC]

Medicare and Medicaid Programs; Entities Performing Quality of Care Review of Services Provided by Risk-Basis Health Maintenance Organizations and Competitive Medical Plans

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

ACTION: Final rule with comment period.

SUMMARY: This final rule provides for review by Utilization and Quality Control Peer Review Organizations (PROs) of the quality of care furnished by risk-basis health maintenance organizations and competitive medical plans under 42 CFR Part 417, Subpart C. It also provides for this same review by non-PRO entities and identifies the requirements that these non-PRO entities must meet. This rule is necessary for the timely implementation of section 1154(a)(4) of the Social Security Act, as amended by section 9353(a)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509).

Additionally, this rule corrects a technical error in the PRO regulations governing disclosure of confidential information to State agencies.

DATES: *Effective date:* These regulations are effective on October 7, 1987. They are being issued in final for reasons explained in the Waiver of Proposed Rulemaking section under Supplementary Information below.

Comment period: We will consider any comments we receive at the appropriate address, as provided below, no later than 5:00 p.m. on December 7, 1987, and revise the regulations as necessary.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-145-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-145-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Kay Terry, (301) 594-7909.

SUPPLEMENTARY INFORMATION:

I. Background

A. Utilization and Quality Control Peer Review Organizations (PROs): General

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibilities that previously had been assigned to Professional Standard Review Organizations. Those responsibilities include the review of health care services funded under Medicare (Title XVIII of the Act) to determine whether those services are medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by providers to fiscal intermediaries regarding prospective payments to hospitals.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health institutions, practitioners and claims payment agencies. In addition, they generate information regarding the quality and appropriateness of health care services. PROs use this information to develop and review profiles (patterns of utilization and practice) and to assess the quality of care being furnished. PROs transmit their determinations to intermediaries responsible for making payments under the Act.

The PROs legislation contained several provisions affecting data collection and disclosure. Under section 1154(a)(7)(C) of the Act, PROs have the authority to examine pertinent records of any practitioner or provider of health care services for which the PROs has review responsibility. Section 1154(a)(9) of the Act requires that a PRO "collect

such information relevant to its functions and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1160 of the Act." Other relevant language in section 1154(a)(10) of the Act authorizes PROs to exchange information with claims payment agencies, other PROs, and other public or private review organizations as may be appropriate. Section 1160 of the Act contains the majority of a PRO's satutory responsibilities concerning the disclosure of information. This section recognizes both the need to protect the interests of patients, health care practitioners and providers of health care in the confidentiality of their medical records and the need to disclose certain information.

On April 17, 1985, we published in the Federal Register several final rules that implemented the PRO program (50 FR 15312–15374). The PRO regulations are located in various parts of title 42 of the CFR (that is, Part 405, 462, 466, 473, 476, 489, and 1004).

B. Quality of Care Review of Risk-Basis HMOs and CMPs

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Section 9353(a)(2)(B) of Pub. L. 99–509) added section 1154(a)(4)(B) to the Act to provide that inpatient services and outpatient services furnished to Medicare enrollees by eligible organizations (that is, risk-basis health maintenance organizations (HMOs) and competitive medical plans (CMPs)) in accordance with a contract under section 1876 of the Act be reviewed for the quality of care provided. Based on this review, a determination must be made as to whether the quality of those services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. Section 9353(a)(6)(B) of Pub. L. 99–509 specifies that section 9353(a)(2)(B) shall apply to contracts as of April 1, 1987.

Section 9353(a)(2)(D) of Pub. L. 99–509 added section 1154(a)(4)(C) to the Act to require that the Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described above to be performed by either a Utilization and Quality Control Peer Review Organization (PRO) or an organization that is not a PRO but which meets the requirements for PROs set forth in sections 1152 and 1153(b) of the Act.

Section 9353(a)(6)(C) of Pub. L. 99–509 specifies that section 9353(a)(2)(D) shall apply to contracts awarded as of January 1, 1987. On January 5, 1987, we published a notice (52 FR 362) to solicit comments on a tentative list of 25 States in which we intend to provide for competitive contracting for the review of HMO and CMP services.

Section 1154(a)(4)(B) of the Act provides that if an entity other than the current PRO wins the contract to preform quality of care reviews of risk-basis HMOs and CMPs, as allowed under section 1154(a)(4)(C) of the Act, the requirement for such reviews will not apply to affected PROs for affected contract periods.

II. Provisions of the Regulations

Quality of Care Review of Risk-Basis HMOs and CMPs

This interim final rule is necessary to implement section 1154(a)(4) of the Act as established by section 9353(a)(2) of Pub. L. 99–509. The statutory requirements regarding the quality of care review of HMO and CMP services by PROs are sufficiently clear to be self-implementing. The statute is also explicit in its intent to permit entities other than PROs to perform quality of care reviews of services provided by risk-basis HMOs and CMPs. Furthermore, as discussed above, certain PRO statutory requirements are likewise applicable to these other non-PRO entities.

Accordingly, we are amending the introductory sections of Part 466, Subpart C of 42 CFR to incorporate the statutory additions to PRO review responsibilities, and to specify the extent to which the PRO regulations will apply to non-PRO entities that win contracts under section 1154(a)(4)(C) of the Act. In particular, we are adding a new § 466.72, which provides that, under section 1154(a)(4) of the Act, a PRO must determine whether the quality of services (including both inpatient and outpatient services) provided by an HMO or CMP (under a risk-basis contract under section 1876 of the Act) meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. Section 466.72 also provides that, for purposes of review under that section, non-PRO entities will be subject to the PRO rules regarding acquisition, protection, and disclosure of peer review information (42 CFR Part 476), and the rules regarding sanctions on health care practitioners and providers (42 CFR Part 1004 (formerly designated as Part 474)). Thus, any entity that enters into a contract to perform quality of care reviews of services furnished by risk-basis HMOs and CMPs under 42 CFR Part 417, Subpart C, will be considered to be a PRO for purposes of those reviews, and only for those reviews, and will have the same authorities, protections, and responsibilities as a PRO regarding that limited function. (While the PRO regulations do not address the provisions of section 1157 of the Act regarding limitations on liability of individuals involved in the peer review process, those provisions apply to all contracts made under title XI of the Act, including those with non-PRO entities.)

Without amendment, our regulations governing the review responsibilities of PROs will not apply to any other entities performing reviews. With the amendments, non-PROs that perform these reviews will be governed by requirements comparable to those that apply to PROs.

Technical Correction

Due to a technical oversight on our part, our current regulations at 42 CFR 476.133 and 476.137 require PROs to disclose confidential information only to State agencies responsible for the investigation of fraud and abuse of the Medicare program. Section 1160(b)(1)(A) of the Act provides for the release of confidential information "as may be necessary to assist Federal and State agencies . . . ." This section of the Act does not limit the release of this information to agencies investigating fraud and abuse of the Medicare program. The inclusion of language so limiting release in the current regulation has been confusing and has led to the impression among some parties that release of information to other agencies, such as those that investigate Medicaid fraud and abuse, is prohibited. Therefore, we are revising §§ 476.133 and 476.137 to refer to both the Medicare and Medicaid programs.

III. Regulatory Impact Statement

Executive Order 12291 (E.O.) requires us to prepare and publish a regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In additon, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all PROs and other potential review entities as small entities.

The provisions on review of quality of care of risk-basis HMOs and CMPs merely will ensure that any non-PRO entity that contracts to review risk-basis HMO and CMP services must meet the same review responsibilities that a PRO must meet in performing the same reviews. We are not adding any review requirements beyond those explicit in the statute.

For these reasons, the Secretary has determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

IV. Waiver of Proposed Rulemaking and 30-Day Delay of Effective Date

A. Proposed Rulemaking Requirement

We generally publish notice of proposed rulemaking in the **Federal Register** and afford prior public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of finding and its reasons in the rules issued.

The final rule is necessary for the timely implementation of sections 9353(a)(2)(D) and 9353(d) of Pub. L. 99–509. The rule revises the relevant PRO regulations in order to largely reiterate the statutory requirements imposed by these amendments and clarifies which existing PRO statutory provisions and regulations apply to organizations other than PROs that will be conducting the review of HMO and CMP services. (While the PRO regulations do not address the provisions of section 1157 of the Act regarding limitations on liability of individuals involved in the peer review process, those provisions apply to all contracts made under title XI of the Act, including those with non-PRO entities). Peer review of the care provided to Medicare patients by HMOs and CMPs is an essential element in ensuring that the care given to these primarily elderly patients meets professionally recognized standards. Because Congress clearly intended, through the passage of these amendments, to authorize non-PRO organizations to conduct quality of care reviews in certain situations, it is in the public interest to ensure that current regulations are amended as quickly as possible to clarify that the authorities, protections, and responsibilities of those entities are comparable to those of PROs. Furthermore, section 9353(a)(2)(B) of Pub. L. 99–509 applies to contracts as of April 1, 1987, and section 9353(d)(1) is effective for requests for data and information made on or after April 21, 1987. As a result of these statutory deadlines, publising a proposed rule is impracticable. Therefore, we find good cause to waive proposed rulemaking for the implementation of these provisions.

Regarding the correction of our rule concerning disclosure to State Medicaid programs, we have determined that it is not in the public interest to delay publication of this clarification that PROs must disclose to State Medicaid agencies (or other State agencies with appropriate responsibilities concerning State Medicaid programs) peer review information germane to the investigation of fraud and abuse. We therefore find good cause to waive proposed rulemaking for the implementation of these provisions.

B. Requirement for 30-Day Delay of Effective Date

We usually publish our rules not less than 30 days before their effective dates unless we find good cause and publish that rationale with the rule. For the reasons discussed above with reference to waiving the proposed rulemaking requirement, we find that it is impracticable and not in the public interest to provide for a 30-day delay in the effective date of this final rule with comment period. Therefore, we find good cause to waive that delay.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments received timely and, if we decide to change the regulations, we will publish an additional **Federal Register** document and respond to the major issues raised by commenters in the preamble to the subsequent **Federal Register** document.

VI. Collection of Information Requirements

Section 466.71(a) of this final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under authority of the Paperwork Reduction Act of 1980. The information collection requirements contained in this section have been previously approved under OMB control number 0938–0445. However, because these requirements now apply to the review of additional organizations, namely risk-basis HMOs and CMPs, we are interested in receiving further public comments. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Allison Herron, Desk Officer for HCFA.

Also, it should be noted that in accordance with the Paperwork Reduction Act of 1980, we will be submitting for OMB review a new package of PRO reporting forms (HCFA Forms 567 through 575). These forms will be used for quality of care reviews of HMOs and CMPs. Notification of the submission of these revisions for OMB approval will be published in the **Federal Register**.

List of Subjects

42 CFR Part 466

Competitive medical plans (CMPs), Grant programs-health, Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Peer Review Organizations.

42 CFR Part 476

Health care, Health professions, Health records, Peer Review Organizations, Penalties, Privacy.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as follows:

A. Part 466, Subpart C is amended to read as follows:

1. The table of contents for Part 466, Subpart C, is amended to read as follows:

PART—466 UTILIZATION AND QUALITY CONTROL REVIEW

* * * * *

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

General Provisions

Sec.

* * * * *

1a. The authority citation for Part 466 continues to read as follows.

Authority: Sec. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3, and 1395hh).

2. Section 466.70 is amended by revising the section heading, paragraphs (a) and (b), and redesignating paragraphs (c), (d) and (e) as paragraphs (a), (b) and (c), respectively, of new § 466.71, which is added to read as follows:

§ 466.70 Statutory bases and applicability.

(a) *Statutory basis.* Sections 1154, 1866(a)(1)(F) and 1886(f)(2) of the Act require that a PRO review those services furnished by physicians, other health care professionals, providers and suppliers as specified in its contract with the Secretary. Section 1154(a)(4) of the Act requires PROs, or, in certain circumstances, non-PRO entities, to perform quality of care reviews of services furnished under risk-basis contracts by health maintenance organizations (HMOs) and competitive medical plans (CMPs) that are covered under Subpart C of Part 417 of this chapter.

(b) *Applicability.* The regulations in this subpart apply to review conducted by a PRO and its subcontractors. Section 466.72 of this part also applies, for purposes of quality of care reviews under section 1154(a)(4) of the Act, to non-PRO entities that enter into contracts to perform reviews of services furnished under risk-basis contracts by HMOs and CMPs under Subpart C of Part 417 of this chapter.

§ 466.71 PRO review requirements.

(a) *Scope of PRO review.* In its review, the PRO must determine (in accordance with the terms of its contract)—

(1) Whether the services are or were reasonable and medically necessary for the diagnosis and treatment of illness or injury or to improve functioning of a malformed body member, or (with respect to pneumococcal vaccine) for prevention of illness or (in the case of hospice care) for the palliation and management of terminal illness;

(2) Whether the quality of the services meets professionally recognized standards of health care;

(3) Whether those services furnished or proposed to be furnished on an inpatient basis could, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient health care facility of a different type;

(4) Through DRG validation, the validity of diagnostic and procedural information supplied by the hospital;

(5) The completeness, adequacy and quality of hospital care provided;

(6) The medical necessity, reasonableness and appropriateness of hospital admissions and discharges;

(7) The medical necessity, reasonableness and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.82 and 412.84 of this chapter; and

(8) Whether a hospital has misrepresented admission or discharge information or has taken an action that results in—

(i) The unnecessary admission of an individual entitled to benefits under Part A;

(ii) Unnecessary multiple admissions of an individual; or

(iii) Other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(b) *Payment determinations.* On the basis of the review specified under paragraphs (c) (1), (3), (6), and (7), and (8) of this section, the PRO must determine whether payment may be made for these services. A PRO may grant a period of not more than two days (grace days) for the purpose of arranging post discharge care when the provider did not know or could not reasonably be expected to have known that payment for the service(s) would not be made under the Medicare program as specified in § 405.330(b).

(c) *Other duties and functions.* (1) The PRO must review at least a random sample of hospital discharges each quarter and submit new diagnostic and procedural information to the Medicare fiscal intermediary or carrier if it determines that the information submitted by the hospital was incorrect.

(2) The PRO must also perform other duties, functions, and responsibilities as required by HCFA.

§ 466.72 [Redesignated as § 466.73]

3. Section 466.72 is redesignated as § 466.73.

4. A new § 466.72 is added to read as follows:

§ 466.72 Review of the quality of care of risk-basis health maintenance organizations and competitive medical plans.

(a) (1) For purposes of a review under section 1154(a)(4) of the Act, a PRO must determine whether the quality of services (including both inpatient and outpatient services) provided by an HMO or CMP meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.

(2) Paragraph (a)(1) of this section will not apply with respect to a contract year if another entity has been awarded a contract to perform those reviews under section 1154(a)(4)(C) of the Act.

(b) For purposes of reviews under this section, non-PRO entities selected to perform these reviews under section 1154(a)(4)(C) of the Act are subject to the requirements of paragraph (a)(1) of this section and—

(1) Part 476 of this chapter regarding acquisition, protection, and disclosure of peer review information; and

(2) Part 1004 of Chapter V regarding a PRO's responsibilities, and sanctions on health care practitioners and providers.

B. Part 476, Subpart B is amended as follows:

1. The table of contents of Part 476 is amended by revising the title of § 476.137 to read as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

* * * * *

Subpart B—Utilization and Quality Control Peer Review Organizations (PROs)

* * * * *

§ 476.137 Disclosure to Federal and State enforcement agencies responsible for the investigation or identification of fraud or abuse of the Medicare or Medicaid programs.

* * * * *

1a. The authority citation for Part 476 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302). Subpart A is also issued under sec. 150 of Pub. L. 97–248 (42 U.S.C. 1320c note). Subpart B is also issued under secs. 1154(a), 1156(a), and 1160 of the Social Security Act (42 U.S.C. 1320c–3(a), 1320c–5(a), and 1320c–9).

2. In § 476.133, the introductory text of paragraph (a) is republished and paragraph (a)(2)(ii) is revised to read as follows:

§ 476.133 Disclosure of information about practitioners, reviewers and institutions.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

* * * * *

(2) * * *

(ii) *Disclosure to others.*

In accordance with section 1160 of the Act, a PRO must disclose information that displays practice or performance patterns of a practitioner or institution in accordance with the procedures for disclosures specified in §§ 476.137 and 476.138 to—

(A) Federal and State agencies that are responsible for the investigation of fraud and abuse of the Medicare and or Medicaid programs, and

(B) Federal and State agencies that are responsible for licensing and certification of practitioners and providers.

* * * * *

§ 476.137 [Amended]

3. In § 476.137, including the section heading, remove the phrase "Medicare program" and add, in its place, "Medicare or Medicaid programs."

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

Dated: September 21, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 30, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–23092 Filed 10–6–87; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 86–225; FCC 87–303]

Ex Parte Communications and Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: FCC adopts a Memorandum Opinion and Order to reconsider and revise certain aspects of Subpart H, Part 1 of the Commission's Rules and Regulations relating to ex parte communications and presentations governing Commission proceedings in order to serve the public interest better.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Steve Bailey, Administrative Law Division, Office of General Counsel, Washington, DC 20554, (202) 254–6530.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Subpart H, Part 1 of the Commission's rules and regulations concerning ex parte communications and presentations in Commission proceedings.

This is a summary of the Commission's Memorandum Opinion and Order in Gen. Docket No. 86–225, adopted September 17, 1987, and released October 7, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On May 22, 1987, the Commission released a Report and Order adopting new ex parte rules to simplify and clarify its policies in this area. FCC 87–94, 2 FCC Rcd 3011, 52 FR 21051 (June 4, 1987). On July 2, 1987, it received a letter from Honorable Edward J. Markey, Chairman of the Subcommittee on Telecommunications and Finance, Committee on Commerce and Energy, House of Representatives, stating that the Commission-imposed Sunshine prohibition should not be applied to members of Congress. Attached to the letter was a memorandum from the General Counsel to the Clerk of the House of Representatives in support of the views expressed by Chairman Markey.

2. The Commission subsequently decided to treat this letter as a petition for reconsideration of the new ex parte rules and stated that it might possibly reconsider other aspects of the rules. Order, FCC 87–228, 2 FCC Rcd 4264 (July 14, 1987). "Comments on Petition for Reconsideration" were received from BellSouth Corporation, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company (BellSouth).

3. In its Report and Order, the Commission retained and clarified the regulatory prohibition against presentations during the "Sunshine Agenda period," which, as revised herein, is now defined as the period from the time that a matter is listed on a Commission meeting agenda until release of the text of a decision or order relating to the matter or release of a notice that the matter has been deleted from the agenda or returned to the staff. In reconsidering the applicability of the prohibition to Congress, the Commission noted that Congress has a special responsibility to ensure that the powers it has entrusted to it are exercised wisely in accordance with its statutory mandate and, therefore, the Commission has an obligation to craft its rules to avoid imposing handicaps that may needlessly interfere with or impede that congressional function. In light of this and other factors, it found that the benefits of the "period of repose" intended by this prohibition are outweighed by the greater overall public interest of flexibility in exchanging information among policy-makers. Hence, the Commission concluded that the Sunshine prohibition should be revised to exempt contacts from members of Congress in non-restricted proceedings and certain otherwise proceedings during the Sunshine period.

4. Similarly, it recognized that other agencies and branches of the Federal Government, even if they do not formally share jurisdiction with this agency, may have relevant information

concerning non-restricted or certain other proceedings otherwise exempt. Because they may not be aware of the pendency of a particular non-restricted or exempt proceeding prior to publication of the Sunshine Notice, they would be precluded from communicating such information to the Commission absent exemption from the Sunshine prohibition. As with Congressional contacts, it found that the need for flexibility conducive to the wide exchange of information at the federal level among policy-makers outweighs the benefits of the Sunshine prohibition. Similarly, it concluded that other federal governmental contacts should be exempted from the Sunshine prohibition in non-restricted and certain other proceedings that are otherwise exempt under the rules.

5. In permitting these exceptions from the Sunshine prohibition, the Commission stated that those presentations that are of substantial significance and clearly intended to affect the ultimate decision would be subject to disclosure by Commission staff or in accordance with the "permit but disclose" procedures set forth in § 1.1206(a). However, it stated that no responses to such statements will ordinarily be accepted during the Sunshine period.

6. In addition, the rules were amended to provide an exemption for information obtained on an ex parte basis in the course of an investigation in order to ensure that the Commission's ability to obtain such information during an investigation is not impaired. The Commission also clarified the rules to provide that waiver or special permission requests that are formally opposed would generally be treated as restricted proceedings unless the Commission specified otherwise. However, waiver requests raised in the context of an individual tariff filing that are part and parcel of the tariff review and screening process would continue to be exempt unless they implicated issues of broader significance and impact.

7. In addition, the rules were clarified to indicate that order to show cause proceedings would be treated as restricted adjudications and that non-restricted ex parte rules will generally be followed in Joint Board proceedings under section 410(c) of the Communications Act unless otherwise stated. The Commission also amended the rules to provide that where a very significant adjudicative decision is perceived by the public as a major statement of Commission policy, the Managing Director is not required to follow the procedures under § 1.1212 (a) through (g) of the Rules with respect to general correspondence received in the proceeding; instead, a public file of such correspondence will be maintained.

8. The Commission also amended the rules to clarify that Bureau staff involved in the routine handling of complaints should not be considered decision-making personnel in a restricted proceeding merely because the person against whom a complaint is filed is also a party to a restricted proceeding. It also declined to eliminate the Sunshine period prohibition as suggested by BellSouth. Other changes, essentially minor in nature, were also made. These changes to the rules are reflected in the Appendix.

9. The Commission adopts these changes to clarify points left ambiguous in its recent rulemaking, and to modify the new rules where warranted, upon further reflection, to best serve the public interest. Because they concern Commission practice and procedure and establish standards of fairness governing Commission proceedings, the Commission finds that good cause exists and, accordingly, the changes herein shall become immediately effective upon publication in the **Federal Register.** See 5 U.S.C. 553 (b) and (d)(3).

10. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burdens on the public and, accordingly, their implementation is not subject to approval by the Office of Management and Budget under that Act.

11. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated below.

12. It is further ordered that the amendments to the Commission's Rules shall become immediately effective upon publication in the **Federal Register.**

13. It is further ordered that this proceeding is terminated.

14. Authority for this action is contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 154(j), and 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 1 (Practice and Procedure) of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read:

Authority: Sections 4, 303, 409, 48 Stat. 1066, 1082, 1096, as amended; 47 U.S.C. 66, 154, 303, 309.

2. The table of contents for Subpart H which was published at 52 FR 21052, June 4, 1987, is corrected by adding "Section 1.1214 Disclosure of Information Concerning Violations of this Subpart." and by changing the section number immediately following the undesignated center heading "SANCTIONS" to read "Section 1.1216".

3. Section 1.1202 is amended by adding a note to paragraph (c), removing the words "as between" in paragraph (d) and replacing them with the word "of"correctly designating paragraphs (f)(i), (ii), and (iii), as paragraphs (f)(1), (2), and (3), and revising paragraph (f)(1) to read as follows:

§ 1.1202 Definitions.

* * * * *

(c) * * *

Note to paragraph(c): The application of this definition under this subpart is not intended to preclude the routine handling by Commission staff of complaints that would otherwise be technically considered ex parte because the person against whom the complaint is directed is also a party in a restricted proceeding.

* * * * *

(f) * * *

(1) Releases the text of a decision or order relating to the matter, or

* * * * *

4. Section 1.1203 is amended by adding a new paragraph (c) with a note to read as follows:

§ 1.1203 Sunshine period prohibition.

* * * * *

(c) The prohibition in § 1.1203(a) above shall not apply to presentations (not otherwise exempted under § 1.1204(b)) made by members of Congress or their staff or by other agencies or branches of the Federal Government or their staff in non-restricted proceedings under § 1.1206(b), exempt proceedings under § 1.1204(a)(2) (not involving the allotment of a channel in the radio broadcast or television broadcast services, or exempt proceedings under § 1.1204(a) (4)–(6).

Note: to paragraph (c): Unless otherwise exempted under § 1.1204, presentations under § 1.1203(c) that are of substantial significance and clearly intended to affect the ultimate decision, shall be placed (if oral, a written summary of the presentation) in the record of the proceeding by Commission staff or in accordance with the procedures set forth in § 1.1206(a)(1)–(3).

5. Section 1.1204 is amended by removing in the note following paragraph (a)(3) the language "§ 1.1204 (a)(1)–(3)" and replacing it with the language § 1.1204(a)(1), (a)(2)(i), or (a)(3)".

6. Section 1.1204 is further amended by adding a new sentence in paragraph (a)(6) after the sentence ending with "unless it has been set for investigation, (*See* § 1.1206(b)(6))" to read as follows:

§ 1.1204 General exemptions.

* * * * *

(a) * * *

(6) * * * This exemption from the ex parte requirements shall also extend to requests for waiver or for special permission directly associated with a particular tariff filing made pursuant to these Sections of the the Act, unless the Commission states otherwise.

* * * * *

7. Section 1.1204 is further amended by adding in the note after paragraph (b)(7), a new sentence after the sentence ending with "record of the proceeding" and before the sentence beginning with "In a non-restricted proceeding," to read "Where the Commission determines that such service of public notice, prior to designation of a matter for hearing, would interfere with the effective conduct of an investigation, it may dispense with such service or public notice" and by adding the language "Except as otherwise provided above," before the word "Any" in the last sentence and changing the capital "A" in "Any" to a small "a".

8. Section 1.1206 is amended by adding a note after paragraph (a)(3) and by adding paragraphs (a)(5), and (b)(10), with a note to read as follows:

§ 1.1206 Non-restricted proceedings; ex parte presentations generally permissible but subject to disclosure.

(a) * * *

(3) * * *

Note: Unless otherwise exempted under § 1.1204, presentations from members of Congress or their staff or from other agencies or branches of the Federal Government or their staff that are of substantial significance and clearly intended to affect the ultimate decision, shall be placed (if oral, a written summary of the presentation) in the record of the proceeding by Commission staff or in accordance with the procedures set forth in § 1.1206(a)(1)–(3).

* * * * *

(5) The procedures outlined above continue in effect (except as otherwise provided under § 1.1204) until the proceeding has been decided by the Commission and is no longer subject to reconsideration by the Commission or review by any court.

(b) * * *

(10) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board unless the proceeding is specifically classified as an adjudicative proceeding.

Note: Unless otherwise ordered by the Commission, Joint Boards shall have the authority to modify the *ex parte* rules as necessary in a particular proceeding to promote fair and efficient decisionmaking.

9. Section 1.1208 is amended by:

(a) Redesignating paragraphs (c)(1)(i), (ii) and (iii), as (c)(1)(ii) (A), (B), and (C);

(b) Redesignating paragraphs (c)(1)(iv) (A), (B), and (C), as (c)(1)(i) (A), (B), and (C);

(c) Revising paragraph (c)(1)(i) introductory text;

(d) Adding paragraph (c)(1)(ii) introductory text;

(e) Amending paragraph (c)(1)(ii)(A) by removing the language "special relief or waiver proceedings under the above sections; or cable television special relief or waiver proceedings";

(f) Redesignating paragraph (c)(4) as (c)(5); and

(g) Adding a new paragraph (c)(4).

9a. The revised and added portions of § 1.1208 read as follows:

§ 1.1208 Restricted proceedings.

* * * * *

(c) * * *

(1)(i) Any proceeding specified in paragraph (c)(1)(ii) of this section is restricted from the day on which any of the following has occurred:

* * * * *

(ii) A proceeding is restricted as provided in paragraph (c)(1)(i) of this section if it is:

* * * * *

(D) Any request for an order to show cause, any special relief or waiver proceeding conducted pursuant to or under any of the provisions listed in paragraphs (c)(1)(ii) (A), (B), or (C) of this section or any cable television special relief or waiver proceeding.

Note: See § 1.1204(a)(6) regarding the ex parte treatment of requests for waiver or for special permission made in the context of a particular tariff filing as part of the tariff review process.

* * * * *

(4) A proceeding in which an order to show cause has been released.

* * * * *

10. The undesignated center hearing before § 1.1210 is amended by removing "EX PARTE".

§ 1.1210 [Amended]

11. Section 1.1210 is amended by removing in the caption and in the sentence of that section the words "ex parte".

12. Section 1.1212 is amended by adding a new paragraph (h) as follows:

§ 1.1212 Procedures for handling of prohibited ex parte presentations.

* * * * *

(h) Where a restricted proceeding is perceived by the public as involving a major statement of Commission policy and precipitates a substantial amount of correspondence from the general public, the above procedures with respect to such correspondence will not be following; however, such correspondence and materials related thereto shall be placed in a public file and made available for inspection.

13. The note to § 1.415(d) of the Commission's Rules is revised by removing "1.1201 *et seq.*" and replacing it with "1.1200 *et seq.*".

[FR Doc. 87–23050 Filed 10–6–87; 8:45 am]

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47 CFR Part 73

[MM Docket No. 87–23; RMs–5289; 5458; 5863]

Radio Broadcasting Services; Cazenovia, Manlius, Rome, Schoharie, Voorheesville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates: (1) Channel 247A to Schoharie, NY, as the commuunity' first local FM service, at the request of Harvest Broadcasting Services; (2) Channel 242A to Voorheesville, New York, as the community's first local FM service, at the request of Peter Morton; and (3) substitutes Channel 239B1 for Channel 237A at Manlius, New York, and substitutes Channel 241B1 for Channel 240A at Rome, New York, at the joint request of AGK Communications and WENY, Inc. This document also modifies the license of AGK Communications, Inc. for Station WAQX–FM at Manlius to specify operation on Channel 239B1 and modifies the license of WENY, Inc. for Station WKAL–FM at Rome to specify operation on Channel 241B1. In addition, the Table of Allotments is amended by deleting Channel 237A from Cazenovia to reflect its use at Manlius. Channel 247A can be allocated to Schoharie in compliance with the Commission's minimum distance separation requirements without a site restriction. Channel 242A at Voorheesville requires