than 1,900 feet (600 meters) from the center of the target area at 37°39′ N, 123°29′ W.

* * * * *

(*7*) Disposal vessels shall use an appropriate navigation system capable of indicating the position of the vessel carrying dredged material (for example, a hopper dredged vessel or towed barge) with a minimum accuracy and precision of 100 feet during all disposal operations. The system must also indicate the opening and closing of the doors of the vessel carrying the dredged material. If the positioning system fails, all disposal operations must cease until the navigational capabilities are restored. The back-up navigation system, with all the capabilities listed in this condition, must be in place on the vessel carrying the dredged material.

* * * * *

(*11*) The permittee shall report any anticipated or actual permit violations to the District Engineer and the Regional Administrator within 24 hours of discovering such violation. If any anticipated or actual permit violations occur within the Gulf of the Farallones or the Monterey Bay National Marine Sanctuaries, the permittee must also report any such violation to the respective Sanctuary Manager within 24 hours. In addition, the permittee shall prepare and submit reports, certified accurate by the independent quality control inspector, on a frequency that shall be specified in permits, to the District Engineer and the Regional Administrator setting forth the information required by Mandatory Conditions in paragraphs (l)(3)(viii)(A)(*8*) and (*9*) of this section.

(*12*) Permittees, and the Corps in its Civil Works projects, must make arrangements for independent observers to be present on disposal vessels for the purpose of conducting shipboard surveys of seabirds and marine mammals. Observers shall employ standardized monitoring protocols, as referenced in the most current SMMP Implementation Manual. At a minimum, permittees shall ensure that independent observers are present on at least one disposal trip during each calendar month that disposal occurs, AND on average at least once every 25 vessel trips to the SF–DODS.

(*13*) At the completion of short-term dredging projects, at least annually for ongoing projects, and at any other time or interval requested by the District Engineer or Regional Administrator, permittees shall prepare and submit to the District Engineer and Regional Administrator a report that includes complete records of all dredging, transport and disposal activities, such as navigation logs, disposal coordinates, scow certification checklists, and other information required by permit conditions. Electronic data submittals may be required to conform to a format specified by the agencies. Permittees shall include a report indicating whether any dredged material was dredged outside the areas authorized for dredging or was dredged deeper than authorized for dredging by their permits.

* * * * *

[FR Doc. 99–18606 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 498

[HCFA–2054–IFC]

RIN 0938–AJ59

Medicare and Medicaid Program; Appeal of the Loss of Nurse Aide Training Programs

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule revises current Medicare and Medicaid regulations to provide participating nursing facilities, skilled nursing facilities, and dually participating nursing facilities an opportunity for an evidentiary hearing before an administrative law judge to challenge a facility's loss of its approved nurse aide training program. This rule also amends Medicaid regulations to permit States to provide evidentiary hearings for facilities that participate only in the Medicaid program and that face a loss of their nurse aide training programs. Previous regulations have provided only for an informal hearing when facilities lose training programs and do not otherwise face enforcement remedies under the Medicare and Medicaid programs.

DATES: Effective date: These regulations are effective July 23, 1999.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 21, 1999.

ADDRESSES: Mail an original and 3 copies of written comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2054–IFC, P.O. Box 9010, Baltimore, MD 21244–9010

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may be submitted electronically to the following e-mail address: (filecode 2054ifc)@hcfa.gov. For e-mail procedures and information on ordering copies of the **Federal Register** containing this document and electronic access, see the beginning of **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jeffrey Golland, (202) 619–3377.

SUPPLEMENTARY INFORMATION:

E-Mail, Comments, Procedures, Availability of Copies, and Electronic Access

E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2054–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

I. Background

To participate in the Medicare and Medicaid programs, facilities furnishing nursing services must satisfy certain requirements as a prerequisite to their receiving a provider agreement. Specifically, they must comply with the requirements set forth at section 1819(b), (c), and (d) of the Social Security Act (the Act) for the Medicare program, and section 1919(b), (c), and (d) of the Act for the Medicaid program. Implementing regulations further clarifying these statutory requirements are set forth at 42 CFR Part 483 (Requirements for States and Long Term Care Facilities). Facilities wishing to

participate in these programs may do so only after they have been surveyed, or inspected, by a survey team and found to be in substantial compliance with program requirements. While we administer these programs at the Federal level, typically these surveys are performed by State agencies acting under an agreement with us pursuant to section 1864 of the Act. States conduct routine surveys on the average of once annually for each facility. When States perform these surveys, they make recommendations to us if Medicare determinations are involved, whereas determinations for facilities wishing to participate only in the Medicaid program are made predominately by the States. Facilities found to be furnishing services in substantial compliance with Federal requirements are issued a provider agreement and are thereby entitled to furnish reimbursable nursing services to Medicare beneficiaries and Medicaid recipients.

Among the requirements that nursing facilities must meet is an obligation to employ only those nurse aides who are qualified to fill those positions. Sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act specifically prohibit nursing facilities from employing individuals as nurse aides for more than 4 months unless these individuals have completed a training and competency evaluation program and are competent to furnish nursing or nursing related services. These requirements are reflected in the regulations at § 483.75(g) (Staff qualifications). According to sections 1819(f)(2)(B) and 1919(f)(2)(B) of the Act, States approve these training programs and have discretion to approve nurse aide training programs that are offered by or in facilities.

Under sections 1819(g)(2)(B) and 1919(g)(2)(B) of the Act, if a facility is found to have furnished substandard quality of care during a standard survey, it is subject to an extended survey that is designed to probe in more depth the facility's policies and procedures that produced substandard quality of care. If a facility is subjected to an extended survey and has been operating an approved nurse aide training program, it loses its ability to provide the program for 2 years as required by sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act.

When we published the nursing home survey and enforcement regulations in the November 10, 1994 final rule (59 FR 56116), we addressed issues raised by a facility's loss of its nurse aide training program. In that final rule (59 FR 56228), we concluded that facilities facing this loss should have access to the informal dispute resolution process offered under § 488.331, but that they should not have an opportunity for an administrative law judge (ALJ) hearing since we perceived a facility's loss in this context as not rising to the level of deprivation marked by sanctions described elsewhere in the statute such as facility agreement terminations or civil money penalties. It is only if a facility suffers an adverse and direct legal consequence under the Medicare program that it is entitled to administrative and judicial review. Accordingly, the regulations at § 498.3(d)(10)(iii) (Scope and applicability), precluded the opportunity for an ALJ hearing when a facility loses its approval to train nurse aides. Similarly, Medicaid regulations, at § 431.153(f)(2) (Evidentiary hearing), also precluded the opportunity for Medicaid-only certified facilities to receive a full evidentiary hearing for losses of their approved nurse aide training programs. Facilities have had the ability to challenge the loss of their nurse aide training programs only if they also were challenging the imposition of a remedy that was appealable.

II. Provisions of the Interim Final Rule

We are amending the Medicare and Medicaid regulations to permit a facility an opportunity for an evidentiary hearing if it loses its approved nurse aide training program. In the context of the appeals system available to long term care facilities that are either Medicare or Medicaid certified or dually certified for both the Medicare and Medicaid programs, this means the opportunity for a hearing before an ALJ of the Departmental Appeals Board and to request review by the Board of an ALJ decision. As has always been the case, the nurse aide training program ceases to operate pending an appeal. While we are deleting the Medicaid regulation that foreclosed the possibility of an evidentiary hearing in these cases, we are leaving to States the details of whether or how they may provide hearings to those facilities participating only in the Medicaid program. However, nurse aid training programs provided by Medicaid-only facilities in States that elect to provide these hearings must cease to operate pending an appeal just has been the case for Medicare certified facilities.

When we published the survey and enforcement final rule in November 1994, we did not have the benefit of the experience we have had since that time. We could continue to advance the same arguments we made in the preamble to the November 1994 final rule as to the relative merits of losing a nurse aide training program compared with the impact of one or more of the remedies set out in the statute. We believe, however, that we should acknowledge the arguments that have been advanced by individual facilities on the magnitude of the loss to them when they are unable to train nurse aides themselves. Facilities have alerted us to the difficulty they sometimes have in finding qualified nurse aides once they are unable to train their own. Those employed as nurse aides are not highly paid and are not always available in abundance to facilities whenever they need to hire additional staff or replace those who leave. Turnover in these positions is high, thereby placing increased pressures on facilities to maintain the staff they need to furnish essential services to facility residents. Thus, the loss of an ability to train nurse aides can have significant consequences for a facility.

Although the waiver provision in the statute, at sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Act, provides relief to some facilities in these situations, it is not universal in scope and, therefore, may not reach all facilities that have difficulty employing qualified individuals as nurse aides. The waiver provision authorizes a State to permit a facility that has lost its approval to train its nurse aides to continue that training in the facility (although not under the direction of the facility) if it determines that there is no other training program within a reasonable distance of the facility and the State can assure that there is an adequate environment to operate the program in the facility.

Because the reason for the loss of nurse aide training is a fact-driven conclusion that the facility has provided substandard quality of care, we recognize the desirability of furnishing a facility the opportunity to challenge these factual findings in a forum that is designed to hear identical disputes that arise when remedies are imposed on noncompliant facilities. Thus, there is sufficient reason to have a regulation that furnishes the same appeal process that has been available for the imposition of remedies on a facility.

We view the provision of administrative hearings in cases involving the loss of nurse aide training, along with those that have been furnished up to now for most of the remedies imposed under § 488.406 (Available remedies), as being derived from sections 1866(b)(2) and 1866(h) of the Act. These sections provide for the review of certain determinations we have made such as those in which we conclude that a facility is not complying substantially with the requirements of

the Act. We believe these sections of the statute are triggered when affected facilities sustain genuinely adverse legal consequences under the Medicare program as a result of action we have taken. As a matter governed by sections 1866(b)(2) and 1866(h) of the Act, these hearings are funneled through the administrative process described in section 205(b) of the Act and to judicial review of our final decision according to section 205(g) of the Act. Both sections 205(b) and 205(h) are incorporated in the Medicare statute at section 1866(h) of the Act.

Therefore, we are revising the Medicare and the Medicaid sections of the regulations. We are revising the Medicaid hearing regulations by deleting the reference at § 431.153(b)(3) (Limit on grounds for appeal) that preclude States from granting evidentiary hearings to Medicaid facilities losing their nurse aide training programs. We are not affirmatively requiring States to provide a hearing in these cases because that is a decision we believe States should determine in light of circumstances that are apt to differ among the States.

We are revising the Medicare hearing regulations that have precluded facilities from challenging the level of noncompliance we have found since findings of substandard quality of care are uniquely sensitive to specific findings of noncompliance. Specifically, a finding of substandard quality of care is premised upon a determination that there are discrete levels of noncompliance found under three regulations (§§ 483.13 (Resident behavior and facility practices), 483.15 (Quality of life), and 483.25 (Quality of care)). Thus, to adequately challenge a finding of substandard quality of care, a facility may need to be in a position to challenge the specific levels of noncompliance that gave rise to the finding. Accordingly, we are revising § 498.3(b)(13) to permit this kind of challenge.

We are also revising § 498.3(b) (Initial determinations by HCFA) by adding a new paragraph (15) that will make a finding of substandard quality of care that results in the loss of the approval of a facility's nurse aide training program an initial determination for purposes of receiving an evidentiary hearing.

Additionally, we are revising the regulations at § 498.3(d)(10)(iii) (Administrative actions that are not initial determinations) by deleting the reference to the loss of nurse aide training as an administrative action that is not an initial determination. These revisions will affect the hearing rights of facilities that are participating in the Medicare or Medicaid program or are dually participating in the Medicare and Medicaid programs.

We intend that these changes to the regulations be effective upon publication. Thus, we will apply the new rules to determinations made after the effective date of this interim final rule in which we or the States find substandard quality of care (communicated to the facility in a statement of deficiencies on HCFA Form 2567) that leads to the facility's loss of its ability to train nurse aides.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that engaging in proposed rulemaking in the context of this rule is unnecessary. We are not making substantive changes in the standards that nursing facilities must meet to participate in the Medicare and Medicaid programs. Facilities will continue to be obligated to meet the requirements of 42 C.F.R. Part 483 to retain program certification including the requirement that only trained nurse aides be employed by the facility. Nor are we changing in any way the basis for the imposition of remedies on long term care facilities when they are found to be out of compliance with Federal certification requirements. Facilities will still face the imposition of remedies, as they have before, when they fail to comply. They will continue to be subject to the consequences of a finding of substandard quality of care including the loss of nurse aide training programs and the required notifications to attending physicians and a State's Administrator Licensing Board. Thus, these rule changes will not affect the well being of residents by releasing facilities from any obligation they already owe under these programs. Indeed, under this rule, facilities that have lost their ability to train nurse aides will face that consequence unless our determination that the facility has provided substandard quality of care is reversed by an ALJ or by the Departmental Appeals Board upon its review of the hearing decision. This final rule only affects the type of review that nursing facilities may receive when they face the loss of their training programs.

In addition, we do not believe that this rule will adversely impact States. While those States that choose to provide hearings in nurse aide training cases may experience some added burdens, we believe they will be minimal. Specifically, we expect that there will be very few cases involving the loss of nurse aide training in facilities certified only in the Medicaid program.

Moreover, we are providing facilities with appeal rights that were not previously granted. In doing so, we are recognizing the industries' interest in having additional appeal rights.

For the same reasons, we believe that we have good cause to dispense with the usual 30 day delay in the effective date of a rule, and believe that this rule should become effective immediately upon publication. Because we are not revising either a substantive standard that governs nursing home conduct or the consequences facilities may face because of their failure to comply with these requirements, we are, therefore, not affecting any provision that governs the manner in which nursing facilities must furnish safe and healthful conditions for the delivery of nursing services they furnish to their residents. Nursing home residents will continue to have all the protections they have always had under the nursing home requirements of participation and the survey and enforcement rules. Accordingly, we believe that we have good cause to make this procedural change effective immediately.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day comment period for public comment.

V. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with Chapter 35 of Title 44 of the United State Code. However, sections 4204(b) and 4214(d) of the Omnibus Budget Reconciliation Act of 1987 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

VI. Regulatory Impact Statement

We have examined the impacts of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. For purposes of the RFA, all participating nursing facilities, skilled nursing facilities, and dually participating nursing facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Social Security Act, (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million. We believe that this interim final rule is not an economically significant rule as described in the Executive order, nor a significant action as defined in the Unfunded Mandates Reform Act. Aggregate impacts of the rule, and aggregate expenditures caused by the rule, would not approach $100 million for either the public or the private sector. Also, we believe that nursing facilities will not object to any additional costs they might incur in pursuing challenges to a loss of their nurse aide training programs because they have been advocating this type of hearing since we published our nursing facility enforcement final rule in November 1994.

In addition, national provider organizations, as well as individual providers, have requested that we permit an appeal through our administrative process. Furthermore, this interim final rule would not affect a facility's decision to continue to serve beneficiaries.

According to our survey estimates, approximately 400 of the 17,000 long term care facilities participating in Medicare and Medicaid programs would be affected by this interim final rule. The facilities affected are those that have had an extended survey conducted as a result of an inspection finding substandard quality of care, with no remedies imposed. Whenever substandard quality of care is found, the facility may not conduct nurse aide training in its facility.

Although there would be no economic impact on Medicare contractors or beneficiaries, some providers would incur the cost of preparing an appeal when an inspection triggers an extended survey (and subsequent loss of the ability to provide nurse aide training). This would be in addition to appealing the finding through the already available informal dispute resolution process. Also, States may incur additional costs if their surveyors need to testify in cases that previously would not have been permitted to be heard by an ALJ and would incur additional costs if they choose to provide hearings themselves for Medicaid-only facilities. These costs, however, would be minimal since we anticipate very few of these cases to arise in any State.

As stated earlier, we believe that this interim final rule will not have a significant economic impact on providers, Medicare contractors, or beneficiaries. In addition, long term care facilities that lose the ability to conduct nurse aide training with no other remedies involved, will be supportive of their ability to appeal the findings that gave rise to the loss of their training programs since they have been seeking just this solution since the publication of the final nursing home enforcement rule in 1994.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

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

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 431.153 [Amdended]

2. In § 431.153, paragraph (b)(3) is removed and reserved.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

B. Part 498 is amended as set forth below:

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social security Act (42 U.S.C. 1302 and 1395hh).

2. In § 498.3, paragraph (b)(13) is revised, a new paragraph (b)(15) is added, and paragraph (d)(10)(iii) is revised to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.*

* * *

(13) The level of noncompliance found by HCFA in a SNF or NF but only

if a successful challenge on this issue would affect—

(i) The range of civil money penalty amounts that HCFA could collect (The scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter); or

(ii) A finding of substandard quality of care that results in the loss of approval for a SNF or NF of its nurse aide training program.

* * * * *

(15) The finding of substandard quality of care that leads to the loss by a SNF or NF of the approval of its nurse aide training program.

* * * * *

(d) *Administrative actions that are not initial determinations.* * * *

(10) * * *

(iii) The imposition of State monitoring.

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(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 14, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Approved: July 16, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–18802 Filed 7–20–99; 12:04 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 63

[CC Docket No. 97–11; FCC 99–104]

Section 214 Deregulated Entry Requirements and Streamlined Exit Requirements for Domestic Telecommunications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules that de-regulate market entry and streamline market exit filing requirements, under section 214 of the Communications Act of 1934. The rules confer ''blanket'' section 214 certification for new lines of all domestic carriers, exempt line extensions and video programming services from section 214 requirements, and provide that all section 214 applications to discontinue domestic service will be automatically granted unless the Commission notifies the applicants otherwise. The Commission's action also grants the substance of the section 214 regulatory relief requested by the Independent Telephone and Telecommunications Alliance in its forbearance petition and extends that relief to all domestic carriers.

DATES: Effective August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer, 202–418–2334.

SUPPLEMENTARY INFORMATION:

1. Section 214 of the Communications Act of 1934 requires common carriers to obtain Commission approval for the construction, acquisition, or operation of lines of communication (entry certification) and for the discontinuance of service to a community (exit certification). The FCC implements the section 214 requirements with its rules at 47 CFR part 63 and related rules of practice at 47 CFR part 1. The Telecommunications Act of 1996 exempted from section 214 line extensions and video programming systems, under section 402(b)(2)(A) (codified as a Note to section 214) and under Section 302(a) (codified as section 651), respectively. The 1996 Act also enabled the Commission to forbear from enforcing provisions of the Act, codified as Section 10 of the Act.

2. In 1997, the Commission released an NPRM proposing to modify its rules at 47 CFR part 63 to implement these changes, entitled Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking,* CC Docket No. 97–11, 12 FCC Rcd 1111 (1997), 62 FR 4965 (February 3, 1997). The Commission proposed to (1) codify the statutory exemptions, (2) forbear from enforcing the section 214 entry certification requirements for some carriers; and (3) streamline its exit certification rules. The Commission also sought comment on alternatives, including whether to streamline the section 214 entry certification procedures, which would include granting blanket authority rather than forbearing from enforcing section 214. On February 17, 1998, the Independent Telephone and Telecommunications Alliance (ITTA) filed a petition seeking forbearance from section 214 entry certification requirements for its members.

3. The Commission has revised 47 CFR parts 1 and 63, in a Report and Order released June 30, 1999, in Docket No. 97–11. In the same document, it has also granted the substance of the section 214 relief sought by ITTA, in a Memorandum Opinion and Order in AAD File No. 98–43. The revised rules confer section 214 authorization for new lines of all domestic carriers, so that no applications need be filed, codify the statutory exemptions from section 214 authorization for line extensions and video programming systems, and provide that all applications for section 214 authorization to discontinue service will be approved automatically, in 31 days for non-dominant carriers and 60 days for dominant carriers, unless the Commission notifies the carriers otherwise.

4. The Commission's purpose in conferring blanket section 214 authority for new lines of all carriers, rather than forbearing from exercising its section 214 jurisdiction for only some carriers, is to deregulate and promote competition in domestic market entry. At the same time, with blanket authority, unlike forbearance, the Commission retains the ability to stop extremely abusive practices against consumers by withdrawing the section 214 authorization that allows the abusive carrier to operate.

5. The Commission's purpose in automatically granting all domestic discontinuance applications of dominant carriers as well as non-dominant carriers is, similarly, to reduce regulatory exit burdens and advance Congress' pro-competitive and de-regulatory policies. The Commission recognizes that carriers assume a certain amount of risk in entering a new market and that, if there are significant barriers to exit, a carrier may be reluctant to assume these risks and may choose not to enter the market. At the same time, the Commission also recognizes that even customers with competitive alternatives need fair notice and information to choose a substitute service, and that by requiring applications to be filed and notice to be given to all customers, unlike de-regulating exit procedures by eliminating filing and notice requirements altogether, subscribers will have adequate opportunity to comment on whether substitute service is available.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.