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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 214, 245, 248 and 299

[CIS No. 2080-00]

RIN 1615-AA10

Certificates for Certain Health Care Workers

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security (DHS) regulations to provide that organizations previously authorized to issue health care worker certifications will continue to be permitted to issue certifications for a temporary period of time, and to set up procedures for authorizing organizations to issue the certificates, including an appeals process in the event that requests for authorization are denied. In addition, this rule adds the requirement that all nonimmigrants coming to the United States for the primary purpose of performing labor as health care workers, including those seeking a change of nonimmigrant status, be required to submit a health care worker certification. Publication of this rule will ensure more uniformity in the adjudication of petitions and admissibility determinations for aliens seeking to enter the United States to engage in labor as health care workers. On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to the DHS, pursuant to the Homeland Security Act of 2002 (Public Law 107-296). Accordingly, the Service's adjudications functions transferred to the Bureau of Citizenship and Immigration Services (BCIS) of the DHS, and the Service's

inspections functions transferred to the Bureau of Customs and Border Protection (CBP). The DHS now has the authority to make revisions to what were previously Service regulations. For the sake of simplicity, this rule will no longer refer to the Service but rather DHS, even though meetings and publication of the previous interim rules, publication of the proposed rule, and receipt of comments took place under the Service prior to March 1, 2003.

DATES: This final rule is effective on September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Mari F. Johnson, Adjudications Officer, Office of Adjudications, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the *Federal Register* on October 11, 2002, at 67 FR 63313. The rule proposed to implement section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104-208, 110 Stat. 3009, 636-37 (1996), now codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. 1182(a)(5)(C), and section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106-95, codified at section 212(r) of the Act, 8 U.S.C. 1182(r).

What Are the Provisions of Sections 212(a)(5)(C) and (r) of the Immigration and Nationality Act (Act)?

Section 343 of IIRIRA created a new ground of inadmissibility. It provides that, subject to section 212(r) of the Act, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of the Department of Health and Human Services (HHS), verifying that:

(1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the

United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, unencumbered;

(2) The alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write English; and

(3) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 212(r) of the Act created an alternative certification process for aliens who seek to enter the United States for the purpose of performing labor as a nurse. In lieu of a certification under the standards of section 212(a)(5)(C) of the Act, an alien nurse can present to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from CGFNS (or an equivalent independent credentialing organization approved for the certification of nurses) that:

(1) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) The alien has passed the National Council Licensure Examination (NCLEX); and

(3) The alien is a graduate of a nursing program that meets the following requirements:

(i) The language of instruction was English; and

(ii) The nursing program was located in a country which:

(A) Was designated by CGFNS no later than 30 days after the enactment of the NRDAA, based on CGFNS' assessment that designation of such country is justified by the quality of nursing education in that country, and the English language proficiency of

those who complete such programs in that country; or

(B) Was designated on the basis of such an assessment by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses; and

(iii) The nursing program:

(A) Was in operation on or before November 12, 1999; or

(B) Has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses.

CGFNS designated the following countries for purposes of this alternate certification: Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom, and the United States.

How Were These Requirements Implemented?

Section 212(a)(5)(C) of the Act became effective upon enactment on September 30, 1996. Shortly thereafter, the DHS met with HHS, the Department of Labor (DOL), the Department of Education (DoED), the Department of Commerce (DOC), the Office of the United States Trade Representative (USTR), and the Department of State (DOS) to reach consensus on the best approach for implementation of the new provision. The DHS also met with interested private organizations including CGFNS, the American Occupational Therapists Association, the National Board for Certification in Occupational Therapy (NBCOT), the Federated State Board of Physical Therapy, and the American Physical Therapy Association.

Section 343 of IIRIRA and NRDA, was implemented via three interim rules published in the **Federal Register** as follows:

(1) Interim Procedures for Certain Health Care Workers, 63 FR 55007 (October 14, 1998) (codified at 8 CFR 212.15 and 245.14) (the first Interim Rule);

(2) Additional Authorization to Issue Certificates for Foreign Health Care Workers, 64 FR 23174 (April 30, 1999) (amending 8 CFR 212.15) (the second Interim Rule); and

(3) Additional Authorization to Issue Certificates for Foreign Health Care Workers; Speech Language Pathologists and Audiologists, Medical Technologists and Technicians, and Physician Assistants, 66 FR 3440 (January 16, 2001) (amending 8 CFR 212.15) (the third Interim Rule).

The supplementary information pertaining to the October 11, 2002, proposed rule describes these earlier rules in more detail.

The organizations that have already been granted authority to issue certifications under these interim rules, other than CGFNS, shall be required to seek authority to issue certifications under the provisions of this final rule. However, those organizations will retain interim authority to continue issuing certificates and certified statements provided that they submit a request for continued authorization on Form I-905, Application for Authorization to Issue Health Care Worker Certificates, on or before January 27, 2004, and during the period that the Form I-905 is pending adjudication with the DHS. The DHS will not require CGFNS to apply for authorization to issue certificates or certified statements for those seven health care occupations named in the legislative history to IIRIRA. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I-905 without fee with the Director, Nebraska Service Center, on or before January 27, 2004. The DHS will review CGFNS' Form I-905 for content of the certificates for the seven health care occupations, and content of certified statements for nurses, and to ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the DHS, and termination of credentialing status for noncompliance with this rule. Further, the DHS will terminate the authority of any organization currently authorized to issue certificates or certified statements if the organization does not submit an application or provide information on Form I-905 on or before January 27, 2004.

What Were the Provisions of the First Interim Rule?

The DHS in consultation with HHS initially identified, on the basis of the legislative history, seven categories of health care workers subject to the provisions of section 212(a)(5)(C) of the Act. See H.R. CONF. REP. NO. 104-828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. See 63 FR at 55008.

In the first Interim Rule, CGFNS and the NBCOT were authorized to issue certificates to immigrant nurses and occupational therapists respectively, established the appropriate English language competency levels for foreign

nurses and occupational therapists, and specified exemptions from English language proficiency testing.

The first Interim Rule applied only to immigrants. The DHS and DOS exercised their discretion under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), to waive the foreign health care worker certification requirement for nonimmigrant health care workers until promulgation of final implementing regulations. The DHS and DOS exercised their waiver discretion after carefully considering the complexity of the implementation issues, including how the health care certificate requirements affect United States obligations under international agreements and the need for health care facilities across the country to remain fully staffed and provide a high quality of service to the public. The waiver of inadmissibility applied to nonimmigrant health care workers already in possession of nonimmigrant visas and visa exempt aliens, including Canadians applying for classification under section 214(e) of the Act, 8 U.S.C. 1184(e) Trade NAFTA (TN) classification.

What Were the Provisions of the Second Interim Rule?

In the second Interim Rule, CGFNS was temporarily authorized to issue certificates to immigrant occupational therapists and physical therapists, it also temporarily authorized the Foreign Credentialing Commission on Physical Therapy (FCCPT) to issue certificates to immigrant physical therapists, and established the appropriate English language competency levels for physical therapists. The DHS, in consultation with HHS, found that both CGFNS and FCCPT met the "established track record" criterion, and concluded that there was a sustained level of demand for occupational therapists and physical therapists.

What Were the Provisions of the Third Interim Rule?

In the third Interim Rule, CGFNS was temporarily authorized to issue certificates to immigrant speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), physician assistants, and medical technicians (also known as clinical laboratory technicians), listed the passing scores for the English language tests for those health care occupations, and amended the regulations concerning which organizations may administer the English language tests. The DHS also modified the criteria it had used in the first and second Interim Rules to

temporarily authorize organizations to issue certificates to immigrant health care workers. CGFNS was found to have an established track record in issuing certificates for the additional occupations.

What Were the Provisions of the H-1C Interim Rule Published on June 11, 2001?

A related interim rule was published in response to the passage of the NRDA, Petitioning Requirements for the H-1C Nonimmigrant Classification under Public Law 106-95, 66 FR 31107 (June 11, 2001) (amending 8 CFR 214.2(h)). Among other things, the NRDA created an alternative certification process for foreign nurses only, as provided in section 212(r) of the Act. In the H-1C rule, the DHS announced that it would continue to waive the certification requirements for nonimmigrant nurses, pending the promulgation of new regulations implementing both certification processes.

What Provisions Were Contained in the Proposed Rule Published on October 11, 2002?

In the October 11, 2002, rule, the DHS proposed to implement a comprehensive process for the certification of foreign health care workers under sections 212(a)(5)(C) and (r) of the Act. It addresses foreign health care workers coming to the United States on a temporary basis (nonimmigrant aliens) as well as on a permanent basis (immigrants).

This rule proposed to amend 8 CFR 212.15 by:

- (1) Specifying which organizations are authorized to issue certificates (8 CFR 212.15(e));
- (2) Describing the required content of the certificate itself (8 CFR 212.15(f));
- (3) Specifying the English language requirements for certification (8 CFR 212.15(g));
- (4) Implementing the alternative certification process for foreign nurses and the required content of the certified statement (8 CFR 212.15(h));
- (5) Establishing a streamlined certification process for certain nurses, occupational therapists, physical therapists, and speech language pathologists and audiologists (8 CFR 212.15(i));
- (6) Describing the procedure to qualify as a certifying organization (8 CFR 212.15(j));
- (7) Listing the standards that an organization must meet in order to obtain and retain authorization to issue foreign health care worker certifications (8 CFR 212.15(k)); and

(8) Providing for periodic review of the performance of certifying organizations (8 CFR 212.15(l)) and the termination of their authority (8 CFR 212.15(m)).

The rule also proposed to amend 8 CFR 103.1 by specifying at new paragraphs (f)(3)(iii)(QQ) and (RR) that the Associate Commissioner for Examinations exercises appellate jurisdiction over applications for authorization to issue foreign health care worker certifications, and the termination of authorization to issue foreign health care worker certifications.

The rule proposed to amend 8 CFR 103.7(b)(1) by adding a fee for filing Form I-905, Application for Authorization to Issue Certification for Health Care Workers. This form was previously approved for use in order to ensure that organizations formally seeking authorization to issue health care worker certificates or certified statements will be able to submit complete and uniform applications. However, because the authorization process was never implemented through a final regulation, the Form I-905 has not yet been distributed for public use.

The rule also proposed to amend 8 CFR 214.1(h) by adding a requirement that an alien who seeks to enter the United States for the purpose of performing labor in a health care occupation must present a foreign health care worker certification to the DHS in accordance with 8 CFR 212.15(d).

The rule further proposed to amend 8 CFR 248.3 by adding paragraph (i) to mandate that a nonimmigrant seeking a change of status to perform labor in a health care occupation must submit a foreign health care worker certification.

Discussion of Comments

What Comments Were Received in Response to the Proposed Rule?

Thirty-three comments were received from a variety of individuals and organizations including health care workers, attorneys, professional organizations, U.S. Government organizations, foreign government officials, and organizations granted authority to issue certifications to health care workers. The comments addressed many aspects of the proposed rule. For the sake of clarity, this section will summarize the justification for the regulatory amendments contained in the proposed rule and then discuss the comments that relate to the specific amendment.

It must be noted that the proposed rule generated a number of comments that were not related to the issue of

certifications for health care workers. For example, two commenters discussed the general issue of the DHS' role in the importation of nurses to the United States while another commented on the issue of Social Security cards and licenses for nurses. One commenter discussed an alleged contradiction in the statutory language. These comments will not be discussed because they are not germane to the proposed rule.

Ten commenters made general observations on the impact of the rule on health care in the United States. Nine of the commenters provided that the rule will have an adverse affect on health care in the United States because it will make it harder for facilities to recruit, hire, and retain foreign health care workers. The commenters stated that the implementation of the regulation will result in increased backlogs and create difficulties for aliens attempting to enter the United States. The other commenter stated that CGFNS will have a difficult time processing the number of requests it will receive for certifications. One commenter stated that the regulation takes away the authority of hospital administrators to make decisions with respect to health care issues. Finally, one commenter stated that the regulation was not flexible and would create operational difficulties for health care facilities.

The statutory provisions relating to the certification process are complex. In drafting the previous interim rules, the proposed rule, and this final rule, every attempt has been made to minimize the adverse affects that they would have on health care facilities and health care workers and, at the same, ensure that they reflect the intent of Congress.

Aliens Who are Subject to the Health Care Certification Requirements

The DHS took the position in the proposed rule that the requirements of section 212(a)(5)(C) of the Act apply to both immigrants and nonimmigrants who seek to enter the United States for the purpose of performing labor as a health care worker. Physicians are explicitly exempted from the certification requirement by the statute and, therefore, are not covered by this rule.

Further, the DHS held that with respect to immigrants, the certification requirement applies to both aliens overseas who are seeking an immigrant visa, and aliens in the United States who are applying for adjustment of status to that of a permanent resident. The DHS interprets the statutory language, "any alien who seeks to enter the United States for the purpose of

performing labor as a health care worker * * * with respect to immigrants, to limit the scope of this provision to aliens with an approved employment-based (EB) preference petition under section 203(b) of the Act, 8 U.S.C. 1153(b), to perform labor in a covered health care occupation. Therefore, an alien is not subject to section 212(a)(5)(C) of the Act if he or she is seeking an immigrant visa or adjustment of status on any other basis pursuant to a family-sponsored petition under section 203(a) of the Act, 8 U.S.C. 1153(a), an EB preference petition for a non-health care occupation; under section 209 of the Act, 8 U.S.C. 1159 (adjustment of status of refugees); under section 210 of the Act, 8 U.S.C. 1160 (special agricultural workers), or pursuant to section 240A of the Act, 8 U.S.C. 1229b (cancellation of removal); under section 249 of the Act, 8 U.S.C. 1259 (record of admission for permanent residence); or under any other statutory provision relating to admission as an immigrant.

With respect to nonimmigrant aliens, the proposed rule applied the certification requirement to all aliens who have obtained nonimmigrant status for the purpose of performing labor as a health care worker, including, but not limited to, those aliens described in sections 101(a)(15)(H), (J), and (O) of the Act, 8 U.S.C. 1101(a)(15), and aliens entering pursuant to section 214(e) of the Act, 8 U.S.C. 1184(e), as TN professionals.

The DHS also proposed that a nonimmigrant entering the United States to receive training in an occupation listed at 8 CFR 212.15(c) will not be required to obtain a health care certification. This includes, but is not limited to, F-1 nonimmigrants receiving practical training and J-1 nonimmigrants coming to the United States to undertake a training program in a medical field. Nonimmigrant aliens entering the United States to receive training in a health care occupation fall outside the ambit of section 212(a)(5)(C) of the Act because they are not independently performing the full range of duties of their occupation and, therefore, are not entering for the purpose of performing labor as a health care worker. Their primary purpose in the U.S. is not to perform health care but is rather to receive training.

Finally, the DHS concluded in the proposed rule that the alien health care certification requirement should not be applied to the spouse and dependent children of an immigrant or nonimmigrant. Dependent aliens enter the United States for the primary purpose of accompanying the principal

alien, not to perform labor as a health care worker, or in any other field. A dependent alien derives his or her nonimmigrant status from his or her familial relationship with the principal alien and is not required to work in a particular occupational field or for a specific employer to maintain his or her status. Accordingly, regardless of whether or not a dependent alien may intend to work in a health care occupation listed at 8 CFR 212.15(c), he or she would not be subject to the health care worker certification requirement.

Eighteen comments were received in response to this portion of the proposed rule. Four commenters stated that all nonimmigrant aliens should be covered by section 212(a)(5)(C) of the Act. Six commenters suggested that section 212(a)(5)(C) of the Act should not apply to TN nonimmigrants because it conflicts with the terms of the North American Free Trade Agreement (NAFTA).

The DHS carefully considered these comments. However, as noted in the proposed rulemaking, based on our consideration of the relevant statutory provisions, legislative history, judicial precedent, and our prior rulemakings, the DHS has concluded that the health care certification requirement is intended to apply to all nonimmigrant health care workers. The legislative history of IIRIRA confirms that, in this instance, the DHS may not rely on the commenters' assertions regarding an alleged conflict with NAFTA to reach a different result. *See* H.R. CONF. REP. NO. 104-828 at 226-27 (1996).

Four commenters also stated that the certification requirement should be applied to the spouse and dependent children of an immigrant or nonimmigrant alien. One commenter stated that nonimmigrant aliens coming to the United States to obtain training, such as F-1 and J-1 nonimmigrants, should not be required to obtain a certificate while two commenters suggested that they should. Likewise, two commenters suggested that an H-3 alien should also be exempt from the provision because an H-3 alien is also coming to the United States to obtain training. Finally, one commenter suggested that the DHS specifically list the nonimmigrant aliens exempted from the certification requirements in the final regulation.

The DHS will not require dependent aliens to obtain a certificate even if they will eventually be employed in a covered health care occupation. Sections 212(a)(5)(C) and 212(r) of the Act relate to grounds of inadmissibility. Since dependent aliens enter the United States for the primary purpose of

accompanying the principal alien, they are not coming to the United States to perform labor as a health care worker, or in any other field, and they will not be required to obtain a certification.

Further, the DHS will not list the specific aliens exempted from the requirement to obtain health care certificates. The language contained in the proposed rule at 8 CFR 212.15(a)(1) provides that the provision applies only to those aliens coming to the United States for the primary purpose of performing labor in a health care occupation. This language clearly does not apply to a nonimmigrant alien coming to the United States for training, including an H-3 nonimmigrant alien. Further, the listing of specific nonimmigrant classifications in the regulation may be erroneously interpreted by some to limit the exemption to those nonimmigrants specifically listed in the regulation.

Health Care Workers Who Were Trained in the United States, or Who Are in Possession of a Valid State License

The proposed rule provided that possession of a state license does not exempt a foreign health care worker from compliance with the certification requirement.

As stated in the proposed rule, this conclusion was reached after considering the language of the statute, and after consultation with HHS. Nothing in the text of section 212(a)(5)(C) of the Act relieves alien health care workers of this requirement, on the ground that they were trained in the United States or are already licensed here. Moreover, the certification requires that any state license the alien may already have is unencumbered. Indeed, had Congress intended to exempt such aliens from the certification requirement, it would not have explicitly provided that the certification must document the fact of an alien's successful passage of any test or examination that is accepted as evidence of an applicant's likely success on a state licensing examination, if a majority of States recognize such a pre-licensing test or examination. In addition, in NRDA, Congress explicitly addressed whether a foreign nurse, in possession of a full and unrestricted license issued by the state of intended employment, should be subject to the certification requirement. The NRDA created a less onerous, alternative method of certification for foreign nurses who have unrestricted state licenses and meet certain other conditions, as provided in section 212(r) of the Act. The fact that Congress has chosen not to provide a less rigorous

alternative certification option to state-licensed foreign health care workers other than nurses supports the inference that Congress intended state-licensed foreign health care workers to comply with the certification process.

In addition to the statutory scheme, there are policy considerations that mitigate in favor of applying the certification requirement to state-licensed foreign health care workers. The state screening process alone would not demonstrate that the other two prongs of the certification requirement, English language competency, and comparable training and unencumbered licensing, had been met. First, the state screening process does not always measure English proficiency. Second, HHS had advised that the state screening process may not always discover encumbrances and restrictions on a license.

The statute and legislative history are silent with respect to whether foreign health care workers, who received their training in the United States, are subject to the certification process. While such aliens would satisfy the comparable training certification requirements, their licensure would not be verified, as required by the statute. Given the lack of evidence of congressional intent that such aliens be exempt from the reach of section 212(a)(5)(C) of the Act, the DHS has concluded that foreign health care workers who received their training in the United States must comply with the certification requirement. The DHS will not modify the proposals contained in the proposed rule to wholly exempt foreign health care workers who received their training in the United States or who hold a license to practice in the United States.

One commenter suggested that the verification requirement for nurses at proposed 8 CFR 212.15(h)(2)(i) be amended to include the parenthetical phrase A(including reliance on evidence provided by the alien)" after the word "Verified." Under the suggested language, credentialing organizations would not be permitted to second-guess a state's licensure verification. The DHS will not adopt this proposal. The statutory language at section 212(r) of the Act authorizes CGFNS or any other authorized credentialing organization to verify that the alien has a valid and unrestricted license in a state where the alien intends to be employed, and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered. The DHS does not have the authority under the statute to determine whether or not a state verifies that the foreign licenses of alien nurses are authentic and unencumbered, nor

does the DHS have the authority to prevent CGFNS or any other authorized credentialing organization from making such a finding before issuing certification.

The proposed rule invited comments regarding the feasibility of having a more streamlined certification process for those who train in the United States or who are already licensed here, and regarding specific proposals on how to adopt such a policy.

The DHS received four comments in response to the request for suggestions relating to a streamlined certification process. Three commenters stated that the DHS should develop a streamlined approach without providing any suggested process while one commenter, CGFNS, provided a detailed description of a proposed process.

The CGFNS proposed that an alien nurse who graduated from an entry-level program accredited by the National League for Nursing Accreditation Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) would be exempt from the educational comparability review and English language proficiency testing. The CGFNS also proposed that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process.

Pursuant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish a level of competence in oral and written English which is appropriate for the health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write.

The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores required by section 343 of IIRIRA. Because the organizations identified as the accrediting bodies for nursing go through a rigorous review prior to being recognized by the DoED, HHS has agreed that the proposal to accept graduation from an NLNAC or CCNE accredited program in lieu of a review of educational comparability and English proficiency has merit. Accordingly, the proposal will be adopted in the final rule. It will shorten the certification process required for health care workers educated in the United States. It will also allow CGFNS and any approved organization to comply with the statutory requirements and, at the same time, ease the burden

on certain health care workers. This proposal has been implemented in this final rule at 8 CFR 215.15(i).

In addition, HHS has agreed to accept graduation from the following programs in lieu of a review of educational comparability and English proficiency:

(1) For occupational therapists, graduation from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA);

(2) For physical therapists, graduation from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA); and

(3) For speech language pathologists and audiologists, graduation from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA).

However, the proposal that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process will not be adopted as general provision, because specific accrediting bodies for other professions were not suggested. The HHS will continue to review further proposals for each profession on a case-by-case basis.

Health Care Occupations That Are Subject to 8 U.S.C. 1182(a)(5)(C)

In the proposed rule, based on congressional history, seven categories of health care workers subject to the health care certification requirements were identified. See H.R. CONF. REP. NO. 104-828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. See the first Interim Rule. The conference report also provided that the DHS could designate additional health care occupations subject to certification by regulation. Since the DHS had limited agency expertise with health care occupations and issues, it consulted extensively with HHS, the agency generally responsible for overseeing health care occupations and other related health care issues in the United States, with respect to the question of whether aliens in additional health care occupations should be required to comply with 8 U.S.C. 1182(a)(5)(C).

The proposed rule identified two factors relevant to the consideration of which health care occupations fall under the ambit of section 212(a)(5)(C) of the Act. The first factor is whether the health care occupation generally requires a license in a majority of the states. This factor reflects the states' historical and practical experience in distinguishing between those health care occupations requiring extensive regulation and those occupations that do not. At the advice of HHS, DHS has included the District of Columbia. While not a state, Washington, DC, has its own licensing authorities and should be included when determining whether a majority of states recognize a licensure or certification predictor exam.

The second factor is whether the health care worker has a direct effect on patient care, or, in other words, whether a health care worker in that occupation could reasonably pose a risk to patient health.

In response to this proposal, CGFNS suggested that a third factor should be considered in determining whether an occupation should be included in the certification process. The CGFNS suggested that an additional factor that should be considered is whether a significant number of foreign nationals enter the United States workforce for the purpose of performing labor in a particular health care occupation. The CGFNS noted that it would not be prudent to spend the time and resources required to establish a certification process for a particular occupation in which very few foreign workers are seeking employment.

The DHS has considered using the factor suggested by CGFNS. It would be difficult to accurately measure the number of "foreign" workers in a given occupation at a particular point in time, and the labor market for any occupation is subject to fluctuations. As the DHS is not currently adding any other occupations to the list of seven occupations requiring certification or certified statements, the DHS will not adopt the suggestion to evaluate inclusion of an occupation based on the number of foreign nationals seeking to enter the United States workforce in that occupation.

Under the proposed rule, health care workers such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry would not be required to comply with the certification requirement. In contrast, health care workers, such as supervisory physical therapists, who may not typically be involved in hands-on patient care but

do have a direct effect on patient care, would be subject to the certification requirements. In the proposed rule, the DHS acknowledged that the job descriptions of certain occupations that could be added to the list may differ in other countries from the United States definition of the occupation. The differences may create confusion about which occupation is subject to certification. The DHS suggested that a possible solution would be to define each health care occupation subject to certification in this final rule. The DHS again invited comments regarding the need to define a health care occupation that is subject to certification.

In response to this provision, the DHS received nine comments. Three commenters suggested that the list of occupations be expanded to include additional occupations including Radiation Therapists and Radiological Technologists. Two commenters suggested that the current list of occupations be retained. Three commenters suggested that the DHS should define a health care occupation as any occupation that requires a license to provide direct and indirect patient care. Another commenter suggested that a health care occupation is any occupation that involves patient care. Finally, one commenter suggested that job descriptions should be used to define a health care occupation.

After reviewing the comments, the DHS will not include a specific definition of each health care occupation subject to certification in the regulation at this time. The definitions offered by the commenters were not sufficiently specific and could cover a range of occupations not contemplated by the legislative history. Further, the suggestions have not addressed concerns that the job descriptions of occupations may differ between the United States and other countries. The DHS will continue the past practice of examining the duties of the position offered to the foreign worker to determine if the position falls into one of the listed health care occupations. The practice of continuing to review the duties of the prospective position on a case by case basis will allow for a thorough evaluation of each application and a determination based on the merits of the case rather than the petitioner's or applicant's ability to make the duties of the position conform to a narrow definition.

When To Submit the Certification to the DHS

The statutory language at section 212(a)(5)(C) of the Act requires certain aliens seeking to enter the United States

for the purpose of performing labor as a health care worker to present a certificate from CGFNS or an equivalent credentialing organization to the consular officer or, in the case of an adjustment of status, the Attorney General. In the proposed rule, the DHS also provided that the certification must be used for initial admission into the United States or for a change of status within 5 years of the date that it was issued.

Two comments were received in response to this proposal. One commenter suggested that the organization that issues the certification send it directly to either the DHS or, if the alien is outside the United States, to the consular post. Since the adoption of this suggestion would be contrary to statute, the requirement that the certificate be presented to a consular officer at the time of visa issuance and to the DHS at the time of admission or adjustment of status will continue in this final rule.

The other commenter suggested that the certification should be valid indefinitely. While the proposed regulation did not establish a validity date for the certification, it did require that it be submitted to the appropriate entity within 5 years of its issuance. The purpose of this proposal is to ensure that when the certification is submitted, the holder still has the appropriate language and technical skills to perform the duties of the occupation in the United States. Foreign licenses may be encumbered and therefore invalid after a prolonged period of time. Additionally, it is quite possible that over the course of time that the alien may lose certain skills necessary to safely perform the duties of the occupation in the United States. The 5-year submission period provides a basis to ensure that the holder of the certificate continues to meet the regulatory requirements for issuance of the certificate. The proposed rule also provided that if an alien seeking entry to the United States to perform labor in a particular health care occupation has already presented the certification and been admitted as a nonimmigrant, an immigrant, or has adjusted to permanent resident status, he or she will not be required to present the certificate again when he or she makes future applications for admission to the United States to perform labor in that particular health care occupation. The presentation of a Form I-94 issued to the alien at the initial admission to the United States, or a fee receipt showing that the alien was processed for admission under NAFTA would be used, if required, as evidence that the

alien has previously presented a foreign health care worker certificate for a particular health care occupation. Similarly, such an alien would not have been required to again present the foreign health care worker certificate to the DHS, with an application for extension of status to perform labor in that particular health care occupation.

The DHS received no comments on this proposal. However, after considering the impact of this provision, the DHS has determined that it will only accept a valid health care worker certificate or certified statement as evidence that the alien is admissible. Currently, an alien is generally required to surrender the departure stub of Form I-94 upon departure from the United States. Controlling the departure of aliens is consistent with the DHS's efforts to fulfill a congressional mandate to implement a comprehensive entry-exit program by 2005. As a result, many aliens will not be able to present a departure stub from a previously issued Form I-94 as evidence of their continuing admissibility under section 212(a)(5)(C) of the Act. In addition, it is noted that information on a Form I-94 does not always include the occupation for an alien nonimmigrant. For this reason, even in exceptional instances where the alien is permitted to retain the departure stub of the Form I-94 when departing the United States, the DHS would not necessarily be able to use the departure stub of the Form I-94 to verify that a particular alien was previously admitted as a health care worker. Accordingly, the DHS has determined that it is in the best interest of affected aliens to require that they present valid health care worker certificates or certified statements each time they seek admission into the United States. Lawful permanent residents will not be required to present this evidence.

Implementation of the Certification Requirement

This rule adds a new 8 CFR 248.3(i) to outline the procedure for submitting the certificate to the DHS when an application is made to change nonimmigrant status within the United States.

The proposed rule also provided that, on the effective date of the final rule, nonimmigrants who have already entered the United States under a waiver of inadmissibility under section 212(d)(3) of the Act and are working as health care workers will be required to present a certificate to the DHS only if, at any point in the future, they file an application for an extension of stay, or

apply for admission to the United States, whichever event occurs first.

The DHS received 13 comments in response to this provision. All 13 commenters suggested that the DHS delay the implementation of this provision for a period of time in order to ensure that the foreign health care workers already in the United States would not be adversely affected. The commenters noted that some health care workers may be required to travel outside of the United States and would not be able to obtain a certification prior to their departure. Other commenters noted that some health care workers who require an extension of their temporary stay would not be able to obtain a certification in a timely fashion and would be forced to terminate their employment at the health care facility.

The DHS believes that these comments are well-founded. The DHS is concerned about the possibility that health care facilities and the United States public will be adversely affected by an immediate implementation date. In addition, DOS also has recommended that the DHS continue to exercise its waiver authority under section 212(d)(3) of the Act for foreign health care workers for at least one year subsequent to the publication of this rule.

If this rule were effective upon publication, potentially every nonimmigrant working in one of the covered health care occupations and seeking admission into the United States would be immediately inadmissible and ineligible to work in the United States under their current nonimmigrant classifications. This would result in a serious disruption to the United States health care system, and is contrary to the intent of the rule. While the DHS does not have precise figures for the number of nonimmigrant health care workers within the United States, health care workers in general comprise a significant portion of the United States workforce. According to the 2001 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics, there are approximately 9,241,840 health care workers in the United States. Of these, approximately 2,217,990 are registered nurses; 683,790 are licensed practical nurses and licensed vocational nurses; 126,450 are physical therapists; 77,080 are occupational therapists; 94,150 are speech language pathologists and audiologists; 292,320 are medical technologists and technicians; and 56,200 are physician assistants.

Further, were this rule to be effective upon publication, there is no evidence that organizations authorized to issue health care certifications will be able to

issue certifications to this potentially large group of workers within a reasonable amount of time. Not only are potentially affected health care workers required to apply for and obtain the actual certifications, but most workers would also be required to pass certain standardized English language tests as a minimum requirement to obtain certification. As discussed in this rule, one of the currently authorized English language testing organizations advised HHS and the DHS that it will no longer provide testing services to foreign health care workers because it cannot meet the demands placed upon it by foreign health care workers seeking health care certificates, and can no longer provide fair access or guarantee testing security.

In addition, health care workers abroad may be required to travel to remote locations in order to take certain tests and will require sufficient time to schedule testing and make any necessary travel arrangements. Although the tests may be offered several times a year, not all required tests are offered in one location. For example, the TSE is not always offered at the same location as the TOEFL, so a health care worker may have to go through several testing cycles in order to obtain a combination of test scores needed for certification. Finally, it should be noted that this rule is implementing the requirement that all approved credentialing organizations obtain evidence of candidate education and licensure directly from the issuing authorities. Thus, once a candidate has passed the requisite tests and submitted an application for certification, there will be additional delays while the authorized credentialing organization obtains and reviews documents such as educational transcripts and licensure materials.

After consideration of these factors, the DHS believes that it must continue the provision for temporary admission under section 212(d)(3) of the Act for a period of 1 year in order to allow for any potential delays in issuance of health care worker certification and to ensure that the United States public is not adversely affected when nonimmigrant health care workers currently employed in the United States are required to obtain certification. Therefore, the DHS has added language at 8 CFR 215.15(n) that continues in force the First Interim Rule's standing provision for temporary admission under section 212(d)(3) of the Act. An alien qualifies for this special provision only if the alien was admitted on or before July 26, 2004. Moreover, any petition or application to extend the alien's period of authorized stay or change the alien's status will be denied unless the alien obtains the required

certification no later than 1 year after the date of the alien's temporary admission.

Process for an Organization to Obtain Authorization to Issue Health Care Certificates

The statute provides that a foreign health care worker must present a certificate from CGFNS or an equivalent credentialing organization or, in the case of certain foreign nurses, a certified statement from CGFNS or an equivalent credentialing organization. In the legislative history to IIRIRA, the conferees identified seven health care occupations (which are currently reflected in 8 CFR 212.15(c)). It is reasonable to infer from the statutory designation of CGFNS as a credentialing organization that Congress considered CGFNS to possess the resources and expertise to issue certificates in at least those seven designated health care occupations. Accordingly, the DHS will not require CGFNS to apply for credentialing status with respect to those seven health care occupations. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I-905 Application for Authorization to Issue Certification for Health Care Workers, without fee with the Director, Nebraska Service Center, in order to enable the DHS to review the content of its certificates for the seven health care occupations, and content of its certified statements for nurses, and ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the DHS, and termination of credentialing status for noncompliance with this rule.

It is less clear, however, that Congress considered whether CGFNS possessed the expertise to issue certificates for health care occupations other than the seven identified in the legislative history. Therefore, although CGFNS' statutory designation creates a strong presumption of expertise with respect to all health care occupations such that the DHS will not charge a fee for review of the Form I-905 in relation to those occupations, the DHS will require CGFNS to file an application on Form I-905 with fee under the procedures outlined at 8 CFR 212.15(j), for credentialing status with respect to any health care occupation other than the seven identified in the legislative history.

Organizations other than CGFNS may be approved to issue certificates or certified statements by submission of Form I-905 to the Director, Nebraska

Service Center, with fee. The fee for Form I-905 will be \$230.

For purposes of administrative ease and efficiency, the DHS will centralize all requests for designation as a credentialing organization at the Nebraska Service Center, regardless of the geographical location of the requesting organization. Centralization of these requests will enable personnel at the Nebraska Service Center to establish and maintain the appropriate contacts with HHS and DoED to assist in the adjudication of applications for credentialing status. The DHS will accord significant weight to the opinion of HHS in the adjudication of applications for credentialing status because of that agency's expertise with credentialing requirements for health care occupations and health care issues. It should be noted, however, that the DHS may deny a request for authorization on grounds unrelated to credentialing requirements for health care occupations or health care issues, despite a favorable HHS opinion. For example, the DHS may find that because an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, it would not be appropriate to authorize an organization to issue certificates or certified statements.

Two comments were received with respect to the DHS's treatment of CGFNS under the proposed rule. One commenter stated that CGFNS should not be permitted to issue certificates to medical laboratory technologists because of the large number of credentialing organizations for this occupation in the United States. The other commenter stated that the treatment of CGFNS in the proposed rule is appropriate.

The DHS will not limit the scope of CGFNS' authority to issue certificates to medical laboratory technologists. The fact that other entities have established different licensing and credentialing processes in the United States does not mean that CGFNS is unable or less qualified to issue certificates to foreign health care workers employed in the same occupation. CGFNS has been issuing certificates and certified statements to health care workers in the field of nursing, a field that has a large number of credentialing entities and with varied standards.

The proposed rule noted that Form I-905 will require the organization seeking credentialing status to:

(1) Provide a point of contact and a written, detailed description of the organization and how the organization

meets the standards described in 8 CFR 212.15(k);

(2) List the health care occupations for which the organization is seeking approval to issue certificates, and describe the organization's expertise in each health care occupation for which approval to issue certificates is sought;

(3) Describe how it will process applications and issue certificates on a timely basis; and

(4) Describe the procedure it has designed in order for the DHS to verify the validity of a certificate.

The DHS will provide the organization with a written decision on its application. An organization granted authorization to issue certificates must agree to provide the DHS with all requested documentation and to allow the DHS access to its records relating to the certification process. If the application is denied, the DHS will explain the reason(s) for the denial. Applications that are denied by the DHS may be appealed to the Administrative Appeals Office pursuant to 8 CFR 103.3.

In the proposed rule, the DHS sought comments on the best method of notifying the public when new organizations are approved to issue certifications and certified statements. One method of notifying the public was through the publication of an interim rule in the **Federal Register**.

In the alternative, the DHS considered designating, by a separate and comprehensive public notice in the **Federal Register**, the list of organizations approved to issue certification. The DHS would also maintain this list on its Web site at <http://www.immigration.gov>). This method would allow the DHS to update the list of authorized organizations more quickly than through publication of interim rules.

The DHS did not receive any comments on this particular issue. However, after additional consideration, the DHS has determined that it will provide notice to the public that an organization has been approved to issue certificates and certified statements through the publication of a comprehensive notice in the **Federal Register**. As a result, this final rule provides at 8 CFR 215.15(e)(4) that the DHS will notify the public of new approved organizations authorized to issue certificates by publishing a public notice in the **Federal Register**. This rule also adds the same provision with respect to organizations authorized to issue certified statements at 8 CFR 215.15(h)(1). The DHS would maintain the list of organizations authorized to issue certificates or certified statements, or whose authorization has been

terminated, on its Web site at <http://www.immigration.gov>.

The proposed rule recognized that more than one organization could be approved to issue certifications for the same health care occupation. An alien may obtain a certificate from any organization authorized to issue certifications for that occupation.

One commenter suggested that recognizing more than one credentialing organization could create difficulties because the two organizations may establish different procedures for issuing certifications. The DHS is aware that organizations may have slightly different requirements for issuing certifications. However, the DHS is convinced that the standards established for approval guarantee that organizations will follow similar, although not identical, procedures for issuance of certifications.

This rule also adopts the language of the proposed rule and provides that the DHS's approval will be for a 5-year period of time subject to the review process described in 8 CFR 215.15(l).

Two commenters suggested that the organizations granted approval under the previously published interim rules be permitted to issue certificates for a given period of time until they could be approved under the standards listed in the final rule. The proposed rule provided that the authorization granted to organizations under the interim rules would continue pending final adjudication of its credentialing status under the provisions contained in the proposed rule.

Form I-905

The proposed rule set a filing fee of \$230 for Form I-905. When establishing fees, the DHS must comply with guidance provided in the Office of Management and Budget (OMB) Circular A-25. This guidance directs federal agencies to charge the "Afull cost" of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular A-25 defined "Afull cost" as including "Aall direct and indirect costs to any part of the Federal Government of providing a good, resource, or service." The DHS determined that \$230 was the appropriate fee for Form I-905 after comparing the processing of the form to the process involved with Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of \$230. The DHS noted in the proposed rule that it will use \$230 for the fee for the Form I-905 until the next biennial fee review, as required by the Chief Financial

Officers Act of 1990, Public Law 101-576, 104 Stat. 2838.

In response to the new form, the DHS received two comments. One commenter suggested that the fee should be higher. The DHS will not increase the fee because the rationale used in the proposed rule to establish the fee is appropriate. The DHS may revise the fee after the next biennial fee review. The other commenter stated that the questions on the Form I-905 should be tailored to a specific occupation. Upon review, the DHS will not make any changes to Form I-905. The answers to the questions contained on the form will provide the DHS with the information necessary to determine an organization's eligibility to issue certifications.

The Standards an Organization Must Meet in Order To Obtain Authorization To Issue Certificates

The proposed rule lists the standards an organization must substantially meet in order to be authorized to issue certificates at 8 CFR 212.15(k). An organization seeking approval to issue certificates or certified statements should submit evidence addressing each of the standards. These standards were developed by HHS in order to ensure that an organization meets the requirements contemplated by Congress. In drafting these standards, HHS drew upon the legislative history to IIRIRA, and drew extensively from the standards of the National Commission for Certifying Agencies, a nationally recognized body that accredits certifying organizations. There are four guiding principles to the standards:

(1) The DHS should not approve a credentialing organization, unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa;

(2) The organization should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession, and the results of examinations for proficiency in the English language appropriate for the health care field in which the alien will be engaged;

(3) The organization should also maintain comprehensive and current information on foreign educational institutions, ministries of health, and foreign health care licensing jurisdictions; and

(4) If the health care field is one for which a majority of the States require a predictor examination (currently, this is done only for nursing), the organization should demonstrate an ability to conduct the examination outside the United States.

Since the statute and the report language is intended to ensure that aliens entering the United States for purposes of performing labor as a health care worker are of the same quality as United States trained workers, HHS has determined that this can be assured by requiring that organizations issuing certificates be held to a select group of standards. The DHS is concerned that in the absence of strict standards, unqualified organizations may obtain authorization from the DHS to issue certificates, which could ultimately have adverse consequences for health care in the United States. Since the provisions of section 212(r) of the Act appear to share with section 212(a)(5)(C) of the Act the goal of ensuring a high quality of health care service in the United States, the DHS will use the same standards to adjudicate applications from credentialing organizations under either provision.

The proposed rule solicited comments from the public and from interested organizations regarding the proposed standards, specifically, whether an organization seeking authorization to issue certificates may meet most, but not all of the standards. The DHS sought comment on the question of whether a prospective credentialing organization's inability to meet all of the proposed standards should preclude the DHS from authorizing the organization to issue certificates. The DHS also sought public comment on the question of whether the proposed standards should be considered as guidelines or as strict criteria that would preclude an organization from qualifying. Finally, the DHS invited public comment on the question of how a prospective credentialing organization can meet the requirement that it demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa.

In response to this proposal, the DHS received 18 comments. Four commenters stated that organizations should be required to meet all the proposed standards and that the standards should be viewed as strict criteria, not merely guidelines. Two commenters stated that the organizations must be independent and free from prejudice. One commenter suggested that the DHS remove or modify the standard that requires organizations to compare the passing rate of foreign health care workers on licensure examinations with those of United States health care workers. Another commenter suggested that tracking the performance of certificate holders would not be practical.

One commenter suggested that recognized experts should be on an organization's board while another commenter suggested that members of the health care profession should be included. One commenter suggested that the standards were so complicated that they might discourage entities from applying for approval while one commenter stated that the requirements were not specific. Three commenters stated that the credential review process developed by the approved organizations must follow established guidelines. One commenter stated that organizations should be required to solicit information from applicants seeking a certification. Finally, one commenter suggested that each organization should require that health care workers complete the same course work for each occupation.

Two commenters made suggestions relative to the composition of the organization's board, including a suggestion from one commenter that the proposed language at 8 CFR 212.15(k)(1)(vi) be amended to clarify that a not-for-profit corporation that has a self-perpetuating board of directors may still demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa. Many not-for-profit organizations have self-perpetuating boards of directors but may nevertheless be considered independent and free of material conflicts of interest under the statute. This provision was not intended to exclude not-for-profit corporations from receiving authorization to issue health care worker certifications, and the DHS recognizes that a not-for-profit organization with a self-perpetuating board of directors may yet establish that it has met the statutory requirement. Accordingly, the DHS will adopt this suggestion and has added language at 8 CFR 212.15(k)(1)(vi) to provide that not-for-profit corporations which have difficulty meeting the requirement relating to self-perpetuating boards of directors may nevertheless establish that the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa.

One commenter suggested that any credentialing organization that seeks authorization to issue health care worker certificates should be required to request evidence of an alien's degree and transcript from the issuing educational and licensing authorities, rather than accept those documents from the applicants. The DHS, in consultation with HHS, has determined that this suggestion will provide additional protection against fraudulent

submissions from applicants, and will ensure the authenticity of documentation relating to an applicant's education and licensure. Accordingly, the DHS will adopt this comment and has added language at 8 CFR 212.15(k)(3)(vi).

In general, the standards as written in the proposed rule have been one of the more contentious issues in the entire health care worker certification process; however, they were developed with HHS based in part on those standards held by other currently authorized entities. The standards are voluminous and, in some situations, can be satisfied in a number of different ways. As such, the DHS has determined that these standards are best viewed as guidelines and not strict criteria. Further, since the approval of an organization by the DHS is a matter of discretion, the final rule reflects that an organization seeking approval is required to meet the majority, but not all, of the listed standards. The burden to establish eligibility, however, rests with the organization seeking approval. An organization seeking approval to issue a health care certificate should make every attempt to submit evidence addressing each of the criteria listed. It should be noted that any organization, including a state agency, for example, could be found eligible for authorization to issue certification so long as it meets the majority of the listed standards.

It is the opinion of the DHS that the standards contained in this rule are specific enough to ensure that approved organizations will develop credentialing processes that are reasonably consistent given the differences in the types of health care occupations that will be reviewed. The DHS is aware that approved organizations will be required to develop different credentialing processes because of the differences in the educational and training requirements for the affected occupations. As a result, the DHS will not dictate specific credentialing processes to the approved organizations.

Aside from modifications relating to not-for-profit corporations and the requirement that a credentialing organization obtain educational and licensing documents directly from the issuing authorities, the DHS will not modify the proposed regulation with respect to the composition of its governing board or the portion of the organization responsible for overseeing certification. The standards as currently written provide sufficient flexibility to ensure that organizations will operate in a fair and objective fashion.

The DHS will not amend the standards describing an organization's

responsibility to track the performance of foreign workers holding credentials. These provisions are valuable tools for determining the effectiveness of the credentialing process and are essential to the success of the credentialing program.

Monitoring Organizations Authorized To Issue Certificates or Certified Statements

In the proposed rule, the DHS provided that it intended to develop a regulatory process to monitor credentialing organizations, including CGFNS, to ensure that a credentialing organization continues to follow the standards described in the proposed rule. The DHS proposed to review and reauthorize the credentialing organizations every 5 years. The rule also proposed that the DHS notify the credentialing organization in writing of the results of the review and reauthorization. If the DHS developed adverse information with respect to the performance of the organization, the DHS could institute termination proceedings. The DHS solicited comments from the public regarding the frequency of review, e.g., review as part of the 5-year reauthorization, or an annual or bi-annual review, the nature of the review, and whether reviews, if conducted separately from reauthorization, should be targeted versus random, would be of great assistance in the development of a review process.

The DHS also proposed to assess whether an authorized credentialing organization had issued certificates or certified statements in a timely manner so as to minimize any delays that may affect an alien's ability to proceed with his or her application for an immigration benefit, and to assess whether the fee charged for a certificate or certified statement unduly impairs an alien's ability to seek an immigration benefit. The DHS sought comments on what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates or certified statements, and regarding what methodology the DHS should use in assessing whether a fee constitutes an obstacle to obtaining an immigration benefit.

In response to this proposal the DHS received eight comments. One commenter stated that the 5-year review period was appropriate while two commenters suggested that the DHS conduct bi-annual reviews of approved organizations. Two commenters suggested that the DHS conduct random surveys during the 5-year period.

Finally, CGFNS stated that it should be exempt from the 5-year review process because it is specifically listed in the statute as an organization authorized to issue certifications.

The DHS does not feel that it is appropriate to modify the proposed review process at this time by conducting additional scheduled reviews or by exempting any organizations. The DHS will adopt the suggestion to review an organization at any time during the 5-year period by reserving the right to conduct reviews of the approval of any request for authorization to issue certificates. The DHS retains the right to conduct a review at any time within the 5-year period of authorization. This authority under § 212.15(k)(8)(iii) provides that the DHS can request information of the organization and its program for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization. The DHS intends to use this authority to conduct periodic reviews. The DHS notes the concerns expressed by the commenters that organizations should be monitored on a bi-annual basis to ensure compliance with the approval standards but finds that a 5-year review period appears appropriate at this time. It should be noted that the DHS also has the ability to initiate termination proceedings any time after approval has been granted. The DHS can initiate termination proceedings at any time during the 5-year period based on information received from other sources, e.g., adverse information provided by state licensing boards or uncovered during the course of an ordinary review of approval of an entity's authorization.

The DHS will not exempt CGFNS from the 5-year review process. While CGFNS is named in section 212(a)(5)(C) of the Act, it is named as one of the entities from which an alien may receive a valid certificate in order to gain admission. This language relates to the alien and his or her admissibility, not to CGFNS' authority to issue certificates, which is still subject to approval by the Bureau of Citizenship and Immigration Services. Just as this language does not preclude approval of other certifying organizations, it is the position of the Bureau of Citizenship and Immigration Services that it does not guarantee approval in the case of CGFNS either. Finally, Congress named CGFNS as an example in the statute because it was aware that this entity existed and was active in this field, but did not mean to confer any authority on

CGFNS. Thus, CGFNS is not exempt from governmental oversight. The approval and review process is a guarantee that CGFNS will continue to meet the standards required for all certifying organizations.

The DHS also received two comments relating to the fees that an organization charges for the certification. One commenter stated that the CGFNS fee was too high while the other commenter proposed a rolling fee based on an alien's monthly income in his or her country.

The DHS will not modify the proposed rule to address the fee issue. The statute does not give the DHS the authority to set fees for organizations approved to issue certifications or certified statements. The DHS is confident that organizations authorized to issue certifications and statements will charge a reasonable fee that covers the cost of their respective processes.

Only one comment was received regarding what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates. The commenter suggested that 60 days would be an appropriate time period.

The DHS has decided to accommodate this concern. As the comment notes, this rule provides at 8 CFR 212.15(k)(4)(x) that certificates must be provided to applicants in a timely manner. The BCIS shares the commenter's concern that the certification requirement may unduly delay the recruitment of foreign health care workers and adversely affect health care in the United States. The BCIS notes that in such a case, it retains authority to commence termination proceedings against a certifying organization if the situation warrants. The BCIS may also provide other remedies, such as a waiver under section 212(d)(3) of the Act of the certification requirement in individual cases upon request. Such a waiver will only facilitate a determination of admissibility in the context of an application for admission, change of status, and/or extension of stay, however, and the alien must continue the process of obtaining the certificate as described in 8 CFR 212.15(n)(2)(i). The BCIS intends to monitor this situation and welcomes input from the public on the performance of certifying organizations.

Finally, it should be noted that the proposed criteria for awarding and governing certificate holders had the unintended effect of requiring an alien to submit evidence of passage of the profession's licensing or certification examination when in fact the statute

permits an alien to demonstrate that he or she has passed the profession's licensing or certification examination or a test predicting the success on such an examination, if a majority of states licensing the profession recognize such a predictor test. After consultation with HHS, the DHS has amended language at 8 CFR 212.15(k)(7)(i) to clarify that health care workers have the option to demonstrate passage of an acceptable predictor test for purposes of obtaining health care worker certification.

Process for Terminating an Organization's Authorization To Issue Certifications

The proposed rule provided that, upon notification that an authorized credentialing organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted, of a violation of state or federal laws, so that the fitness of the organization to continue to issue certificates is called into question, the DHS shall automatically terminate authorization to issue certificates via notice to the credentialing organization.

Upon receipt or discovery of information that the credentialing organization is no longer complying with the standards contained in 8 CFR 212.15(k), or upon receipt or discovery of information that termination of the organization's approval is otherwise warranted, the DHS will issue a Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to the credentialing organization. The credentialing organization will be given 30 days from the date of the Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to rebut or cure the allegations made in the DHS' notice.

DHS will submit any information received in response to the Notice to HHS upon receipt. Thirty days after the date of the Notice of Intent to Terminate, the DHS will request an opinion from HHS regarding whether the organization's authorization should be terminated and forward any additional evidence. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the organization's response, if any, to the Notice of Intent to Terminate, and of HHS' opinion, the DHS will provide the organization with a written decision.

The DHS's decision terminating an organization's authorization may be appealed to the AAO pursuant to 8 CFR 103.3. Termination of credentialing

status will occur on the date of the decision and remain in effect until and unless the terminated organization reapplies, with fee, for credentialing status and is approved, or its appeal of the termination decision is sustained by the AAO. There is no waiting period for an organization to re-apply for credentialing status.

The DHS received six comments in response to the DHS's proposal on the termination of an organization's authorization to issue certifications. One commenter stated that the two grounds for termination of an organization's approval were sufficient and that no further grounds should be added to the regulation. One commenter suggested that an organization's authorization should be terminated only if the organization has failed to comply with a material term of its authorization. A technical violation should not be grounds for termination. One commenter suggested that HHS should have 30 days to respond to the DHS's Notice of Intent to Terminate. One commenter suggested that the term "or other adverse information" contained in the proposed rule at 8 CFR 215.15(m)(2) is too vague. Finally, CGFNS stated that it should be permitted to issue certifications while the appeal of the termination decision is pending at the AAO.

The DHS will not modify the language contained in the proposed rule relating to the termination process. While certain portions of the regulatory language may be vague, the regulatory language is sufficiently clear to provide the required protection to the public. Further, the term "or other adverse information" provides the DHS with a vehicle to institute termination proceedings based on situations that arise that cannot be predicted at this time. Further, the DHS will not require HHS to respond to the DHS's termination notice within any specific time period because some issues are far too complex to be decided in arbitrarily established timeframes. Finally, although CGFNS has been specifically identified in the statute as an organization authorized to issue certifications, there is nothing in the statutory language that requires the DHS to establish a separate process to determine whether their authorization to issue certifications should be terminated for any of the reasons described in this rule.

This rule also clarifies that the immediate termination provisions of 8 CFR 212(n)(1) may be triggered upon receipt of any information calling into question the entity's fitness to issue certificates. For example, national

security concerns, or issues relating to fraud, may not lead to prosecution but certainly relate to the fitness of the organization to issue certificates. This clarification has been made necessary by events and issues identified during the course of the DHS' administration of this program since the proposed rule. The lack of a criminal prosecution or conviction in cases involving national security does not reduce the need to act appropriately to protect the public in such cases.

Revocation of Certificates

The proposed rule provided that a credentialing organization must develop policies and procedures for the revocation of certificates at any time if it finds that the certificate holder was not eligible to receive the certificate at the time it was issued. These policies and procedures include notification to the DHS, via the Nebraska Service Center, that a certificate has been revoked. The DHS may then take any appropriate action against the individual alien, including revocation of the petition, and initiation of removal proceedings under section 240 of the Act.

Three commenters responded to this provision. One commenter suggested that an alien's certification should be revoked if the alien does not obtain a license to practice within 1 year of the issuance of the certification. Another commenter suggested that the certification should be revoked if the alien's ability to practice in the occupation is restricted.

The DHS will not adopt the first suggestion. Certifications must be used within 5 years of their issuance. The DHS can envision a number of situations where the alien may be unable to obtain licensure within 1 year of issuance of the certification. In fact, in the case of EB petitions, there is no regulatory or statutory requirement that the alien ever obtain a license. Further, sections 212(a)(5)(C) and 212(r) of the Act are merely grounds of inadmissibility to the United States and therefore address an alien's ability to enter the United States and immediately begin the intended employment. They were not designed to regulate the practice of health care or the continuing qualifications of health care workers within the United States.

However, the DHS is concerned about events that may occur subsequent to an alien's certification and the effect those events may have upon an alien's admissibility to and status in the United States. This final rule therefore adopts the second commenter's suggestion and provides that an organization issuing

certificates must include in its revocation process a mechanism to revoke a certificate when it learns that a holder is no longer eligible to hold a certificate.

The third commenter suggested that an alien that is issued a certification should be required to report employment information to the credentialing organization which will then be reported to the DHS. This comment will not be adopted because the role of credentialing organizations is to review a health care worker's qualifications, including education, training, license, and experience. The role of credentialing organizations does not include making a determination that an employment offer is valid and that the alien is continuing to work for the employer.

Form of the Health Care Worker Certification or Foreign Nurse Certified Statement

The proposed rule at 8 CFR 212.15(f) described the content of the certificate. The proposed rule at 8 CFR 212.15(h) described the content of the certified statement. The proposed rule provided that the certification should contain the following information:

- (1) The name, designated point of contact to verify the validity of the certificate, address, and telephone number of the certifying organization;
- (2) The date the certificate was issued;
- (3) The health care occupation for which the certificate was issued; and
- (4) The alien's name, and date and place of birth.

The proposed rule also provided that the certificate or certified statement does not constitute professional authorization to practice in that health care occupation.

The DHS received one comment regarding the information that should be included on the certification. The commenter suggested that each certification should contain the regulatory language indicating that the certification did not grant the holder authority to work in a health care occupation.

The DHS will not adopt this suggestion because it is unnecessary. A health care worker certificate or certified statement is evidence of an alien's admissibility under section 212(a) of the Act and not an employment authorization document. Acceptable employment authorization documents are enumerated under 8 CFR 274a. An alien who has made an application for a certification will be aware of the difference between the immigration requirements for entry in order to work in a covered health care

occupation and the various state licensure requirements required to practice his or her occupation in the United States. In addition, the DHS has limited the information required on the certification to generally address the identity of the certificate holder and his or her admissibility under section 212(a)(5)(C) or 212(r) of the Act, rather than the certificate holder's authority to practice in the health care occupation.

Another commenter stated that an organization should not issue a certification until such time as the alien obtains a United States license to practice in his or her occupation. This comment will not be adopted because some aliens, *e.g.*, EB immigrants and certain nonimmigrants subject to this rule, such as aliens with extraordinary ability (O-1) and exchange visitors (J-1), are not required to satisfy state licensure requirements for classification.

One commenter noted that the proposed rule did not contain a description of what an approved organization was required to verify before it issued a certification. The commenter noted that the DHS had previously required approved organizations to examine the alien's education, training, and license prior to issuing a certification. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(f) to include this information.

English Language Scores for Certification

As stated in the proposed rule, HHS, in consultation with DoED, is required to establish a level of competence in oral and written English appropriate for the health care field in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write. The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores. In developing the English language test scores, HHS consulted with DoED and appropriate health care professional organizations. HHS also examined a study sponsored in part by NBCOT entitled "Standards for Examinations Assessing English as a Second Language." The scores reflect the current industry requirements for particular health care occupations.

One commenter suggested that the DHS adopt separate scores and a specific test for the occupation of physician assistant. This comment will not be adopted in this rule because HHS

has not designated a separate test and score for the occupation.

One commenter noted that the DHS had failed to specify which modules of the International English Language Testing System (IELTS) would be required for the covered occupations. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(g)(4) to clarify when an Academic and/or General Module will be required for a covered health care occupation.

The HHS had initially identified four testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The four testing services were the Educational Testing Service (ETS), the Michigan English Language Assessment Battery (MELAB), the Test of English in International Communication (TOEIC) Service International, and the IELTS. The proposed regulation at 8 CFR 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

The DHS received 29 comments in response to the English language testing proposals. Eight commenters agreed that the IELTS and TOEIC tests should be included in the final rule. Six commenters expressed dissatisfaction with the test of spoken English (TSE) given by ETS, asserting that it was too difficult to pass and that it prevented health care facilities from recruiting qualified workers. One commenter even suggested that the test intentionally discriminated against certain nationalities.

The English test offered by ETS has been used by colleges, universities, and accrediting organizations for years to test English language skills. Both HHS and the DoED have reviewed this test prior to its inclusion in the previously published interim rules and the proposed rule. The DHS is not persuaded that the test is not a valid test of English language skills and, as a result, the option of TSE will remain in this final rule.

The DHS also proposed that, as an alternative to listing the tests and appropriate scores by Interim Rule, the DHS would designate, by a separate and comprehensive public notice in the **Federal Register**, the list of tests and appropriate scores. The DHS would maintain this list on its Web site. This method would allow the DHS to update the list of tests and scores more quickly than through publication of interim rules. The DHS will continue to coordinate with the HHS and the DoED to make the designation of tests and

appropriate scores needed to satisfy the English proficiency requirement.

The DHS received four comments on this proposal. Three commenters suggested that the DHS adopt the alternative method of advising the public of the approved English tests by a notice in the **Federal Register** while one commenter suggested that the use of an interim rule would be more appropriate.

After consideration of the comments, the DHS will adopt the alternative method discussed in the proposed rule. In view of the extensive governmental review before a test is approved, it is not likely that the comments received in response to an interim rule would be beneficial. As a result, this final rule at 8 CFR 215.15(g)(4)(iv) provides that the DHS will notify the public of new approved English testing services by publishing a notice in the **Federal Register**. The DHS will also maintain the list of approved English tests and the appropriate scores on its Web site at <http://www.immigration.gov>.

One commenter noted that the current availability of English tests did not meet the demand creating significant delays for health care workers. To solve this problem, other testing services are encouraged to submit information concerning their testing services to the DHS, for HHS and DoED review, and credentialing organizations are encouraged to develop a test specifically designed to measure English language skills and to seek HHS approval of the test. As noted in the proposed rule, HHS has advised the DHS that graduates of health profession programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are deemed to have met the English language requirements. HHS has determined that aliens who have graduated from these programs have the requisite competency in oral and written English. The level of English that the graduates of these health profession programs would need in order to graduate is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the tests previously described. Nurses who are eligible to present an alternate certified statement under section 212(r) of the Act by definition have satisfied the English language requirements.

Six commenters suggested that additional countries be added to the list of countries that should be exempt from the English language requirements. The list of countries has been furnished to HHS for their review for possible inclusion in the list of exempt countries.

One commenter suggested that the English language test be separate and apart from the credentialing portion of the certification process. This suggestion cannot be adopted because it is contrary to the statute.

Finally, after publication of the proposed rule, the DHS was notified that the MELAB no longer wishes to be designated as an approved English test for the purpose of issuing health care certifications. Therefore, MELAB has been removed from the list of approved English tests and is not included in this final rule. As a result, individuals who seek to meet the English language requirements will be required to do one of the following:

- (1) Take the three tests offered by ETS;
- (2) Take the TOEIC offered by TOEIC Service International, in addition to the test of spoken English and the test of written English offered by ETS; or
- (3) Take the IELTS examination.

Additional Comments Regarding the Proposed Rule

Two commenters noted that the proposed rule did not contain a requirement that an organization was to verify that an alien either passed a predictor examination or the state licensing examination for his or her occupation. One of the commenters noted that the DHS had previously listed this requirement in the previously published interim rules.

The DHS has unintentionally failed to provide a description of what an organization is required to verify before it can issue a certification under section 212(a)(5)(C) of the Act. This information is now listed at 8 CFR 215.15(f).

Three commenters stated that nurses should not be required to take the predictor examination if they have passed the NCLEX-RN state licensing examination. The statute at sections 212(a)(5)(C) and 212(r) of the Act requires that a certifying entity verify that an alien has passed either the profession's licensing or certification examination, or a predictor test if a majority of states licensing the profession in which the alien intends to work recognize such a predictor test. The DHS has added language at 8 CFR 212.15(f)(1)(iv) to clarify that a nurse who is obtaining a certificate under section 212(a)(5)(C) of the Act must demonstrate that they have passed the profession's licensing examination (NCLEX-RN) or the predictor test.

One commenter stated that some nurses are not eligible to obtain a certified statement as described in section 212(r) of the Act. Section 212(r) of the Act was created as an alternative

to the certification process of section 212(a)(5)(C) of the Act. It was specifically designed to accommodate a limited number of nurses who met certain criteria and not all nonimmigrant nurses.

Finally, CGFNS stated that the language in the proposed rule appeared to preclude them from obtaining authorization to issue certifications to audiologists. The DHS has corrected this oversight by amending the language at 8 CFR 215.15(j)(2) to include audiologists among the covered occupations.

Regulatory Flexibility Act

I have reviewed this regulation, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, I have determined that this rule will not have a significant economic impact on a substantial number of small entities. It is projected that there will be, at most, 21 small businesses that apply to the Department of Homeland Security to issue certificates for health care workers. Although these small entities are required to pay a fee when submitting their applications, these small entities may recoup this expense if they charge aliens who must obtain a foreign health care worker certificate.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a "significant regulatory action" under Executive Order 12866, section 3(f),

Regulatory Planning and Review. Accordingly, this regulation has been submitted to OMB for review. The Department of Homeland Security has assessed both the costs and the benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this rule justify its costs. Briefly, that assessment is as follows:

The Department of Homeland Security has determined that any entity seeking authorization to issue health care worker certifications must apply for authorization on Form I-905. The Department of Homeland Security determined that \$230 was the appropriate fee for Form I-905 after comparing the processing of the form to the process involved with Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of \$230. The Department of Homeland Security has estimated that there will be approximately 10 applicants who will each have a time burden of approximately 4 hours, and who will be required to pay a total of \$2,300. Once the Form I-905 is approved, an authorized entity will be authorized to issue health care worker certification for a period of 5 years, and will be able to recoup the costs of the Form I-905 by charging a fee for each certificate that it issues.

Each credentialing organization may set its own fee to recover the costs of issuing a health care worker certificate, although the price may vary between organizations. The CGFNS is the organization that is currently authorized to issue certifications to the largest number of applicants because it is authorized to issue certifications to all seven occupations. The Department of Homeland Security has estimated that the total time burden associated with each certification is approximately 220 minutes. The current price for a CGFNS certificate or certified statement is approximately \$325, which is charged to an individual alien. In some cases, a petitioning employer may choose to pay on behalf of the alien. Finally, the Department of Homeland Security has determined that the benefit to the United States public of the statute requiring the issuance of certificates will be to ensure that all health care workers covered by the regulations, including all nonimmigrants, have met the same minimum requirements with regard to an evaluation of their credentials, licensing, training and English language ability before commencing employment in their respective occupations. Even in cases where all states require a foreign health

care worker to be licensed to practice within the United States, as in the case of nurses, the underlying requirements for licensure differ from state to state. This rule will ensure that uniformly qualified foreign health care professionals enter the United States workforce and that foreign health care workers and the Department of Homeland Security are in compliance with the statutory requirements of section 212(a)(5)(C) of the Act.

Executive Order 13132

The rule will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

The information collection requirement contained in this rule (Form I-905) (OMB Control Number 1115-0238) has been approved for use by OMB under the Paperwork Reduction Act. The information required on the health care certificate or certified statement (OMB Control Number 1115-0226) has been revised to reflect that a certificate must demonstrate that an alien has met the requirements of section 212(a)(5)(C) of the Act. This revision was submitted to OMB for review in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government Agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment,

Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103 B—POWERS AND DUTIES OF SERVICE OFFICER; AVAILABILITY OF SERVICE RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

■ 2. Section 103.7(b)(1) is amended by adding a new entry for the Form "I-905" to the list of fees in alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

*	*	*	*	*	*
(b)	*	*	*		
(l)	*	*	*		
*	*	*	*	*	*

Form I-905, Application for authorization to issue certification for health care workers—\$230.

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PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

■ 4. Section 212.15 is revised to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) *General certification requirements.*
(1) Except as provided in paragraph (b) or paragraph (d)(1) of this section, any alien who seeks admission to the United States as an immigrant or as a nonimmigrant for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a

credentialing organization, listed in paragraph (e) of this section.

(2) In the alternative, an eligible alien who seeks to enter the United States for the primary purpose of performing labor as a nurse may present a certified statement as provided in paragraph (h) of this section.

(3) A certificate or certified statement described in this section does not constitute professional authorization to practice in that health care occupation.

(b) *Inapplicability of the ground of inadmissibility.* This section does not apply to:

(1) Physicians;
(2) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical care occupation is one in which the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, and managers of health care facilities;

(3) Aliens coming to the United States to receive training as an H-3 nonimmigrant, or receiving training as part of an F or J nonimmigrant program.

(4) The spouse and dependent children of any immigrant or nonimmigrant alien;

(5) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than under section 245 of the Act, or any alien who is seeking adjustment of status under section 245 of the Act on the basis of a relative visa petition approved under section 203(a) of the Act, or any alien seeking adjustment of status under section 245 of the Act on the basis of an employment-based petition approved pursuant to section 203(b) of the Act for employment that does not fall under one of the covered health care occupations listed in paragraph (c) of this section.

(c) *Covered health care occupations.*

With the exception of the aliens described in paragraph (b) of this section, this paragraph (c) applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.
(2) Occupational Therapists.
(3) Physical Therapists.
(4) Speech Language Pathologists and Audiologists.
(5) Medical Technologists (Clinical Laboratory Scientists).
(6) Physician Assistants.

(7) Medical Technicians (Clinical Laboratory Technicians)

(d) *Presentation of certificate or certified statements.* (1) *Aliens required to obtain visas.* Except as provided in paragraph (n) of this section, if 8 CFR 212.1 requires an alien who is described in paragraph (a) of this section and who is applying for admission as a nonimmigrant seeking to perform labor in a health care occupation as described in this section to obtain a nonimmigrant visa, the alien must present a certificate or certified statement to a consular officer at the time of visa issuance and to the Department of Homeland Security (DHS) at the time of admission. The certificate or certified statement must be valid at the time of visa issuance and admission at a port-of-entry. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of visa issuance or each admission to the United States.

(2) *Aliens not requiring a nonimmigrant visa.* Except as provided in paragraph (n) of this section, an alien described in paragraph (a) of this section who, pursuant to 8 CFR 212.1, is not required to obtain a nonimmigrant visa to apply for admission to the United States must present a certificate or certified statement as provided in this section to an immigration officer at the time of initial application for admission to the United States to perform labor in a particular health care occupation. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of each application for admission.

(e) *Approved credentialing organizations for health care workers.* An alien may present a certificate from any credentialing organization listed in this paragraph (e) with respect to a particular health care field. In addition to paragraphs (e)(1) through (e)(3) of this section, the DHS will notify the public of additional credentialing organizations through the publication of notices in the **Federal Register**.

(1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

(2) The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates in the field of occupational therapy pending final adjudication of its credentialing status under this part.

(3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates in the field of physical therapy pending final adjudication of its credentialing status under this part.

(f) *Requirements for issuance of health care certification.* (1) Prior to issuing a certification to an alien, the organization must verify the following:

(i) That the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(ii) That the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(iii) That the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States. This verification is not binding on the DHS; and

(iv) Either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of states licensing the occupation for which the certification is issued, or that the alien has passed the occupation's licensing or certification examination.

(2) A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate;

(ii) The date the certificate was issued;

(iii) The health care occupation for which the certificate was issued; and

(iv) The alien's name, and date and place of birth.

(g) *English language requirements.* (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of HHS has sole authority to set standards for these English language requirements, and has determined that an alien must have a passing score on one of the three tests listed in paragraph (g)(3) of this section before he or she can be granted a certificate. HHS will notify The Department of Homeland Security of additions or deletions to this list, and The Department of Homeland Security

will publish such changes in the **Federal Register**.

(2) The following aliens are exempt from the English language requirements:

(i) Alien nurses who are presenting a certified statement under section 212(r) of the Act; and

(ii) Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States.

(3) The following English testing services have been approved by the Secretary of HHS:

(i) Educational Testing Service (ETS).

(ii) Test of English in International Communication (TOEIC) Service International.

(iii) International English Language Testing System (IELTS).

(4) Passing English test scores for various occupations.

(i) *Occupational and physical therapists.* An alien seeking to perform labor in the United States as an occupational or physical therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL): Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. The certifying organizations shall not accept the results of the TOEIC, or the IELTS for the occupation of occupational therapy or physical therapy.

(ii) *Registered nurses and other health care workers requiring the attainment of a baccalaureate degree.* An alien coming to the United States to perform labor as a registered nurse (other than a nurse presenting a certified statement under section 212(r) of the Act) or to perform labor in another health care occupation requiring a baccalaureate degree (other than occupational or physical therapy) must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 725; plus TWE: 4.0 and TSE: 50; or

(C) IELTS: 6.5 overall with a spoken band score of 7.0. This would require the Academic module.

(iii) *Occupations requiring less than a baccalaureate degree.* An alien coming to the United States to perform labor in a health care occupation that does not require a baccalaureate degree must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 700; plus TWE 4.0 and TSE: 50; or

(C) IELTS: 6.0 overall with a spoken band score of 7.0. This would allow either the Academic or the General module.

(h) *Alternative certified statement for certain nurses.* (1) CGFNS is authorized to issue certified statements under section 212(r) of the Act for aliens seeking to enter the United States to perform labor as nurses. The DHS will notify the public of new organizations that are approved to issue certified statements through notices published in the **Federal Register**.

(2) An approved credentialing organization may issue a certified statement to an alien if each of the following requirements is satisfied:

(i) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(ii) The alien has passed the National Council Licensure Examination for registered nurses (NCLEX-RN);

(iii) The alien is a graduate of a nursing program in which the language of instruction was English;

(iv) The nursing program was located in Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom, or the United States; or in any other country designated by unanimous agreement of CGFNS and any equivalent credentialing organizations which have been approved for the certification of nurses and which are listed at paragraph (e) of this section; and

(v) The nursing program was in operation on or before November 12, 1999, or has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations that have been approved for the certification of nurses.

(3) An individual who obtains a certified statement need not comply with the certificate requirements of paragraph (f) or the English language requirements of paragraph (g) of this section.

(4) A certified statement issued to a nurse under section 212(r) of the Act must contain the following information:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certified statement;

(ii) The date the certified statement was issued; and

(iii) The alien's name, and date and place of birth.

(i) *Streamlined certification process.*

(1) *Nurses.* An alien nurse who has graduated from an entry level program accredited by the National League for Nursing Accreditation Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) is exempt from the educational comparability review and English language proficiency testing.

(2) *Occupational Therapists.* An alien occupational therapist who has graduated from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA) is exempt from the educational comparability review and English language proficiency testing.

(3) *Physical therapists.* An alien physical therapist who has graduated from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA) is exempt from the educational comparability review and English language proficiency testing.

(4) *Speech language pathologists and audiologists.* An alien speech language pathologists and/or audiologist who has graduated from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA) is exempt from the educational comparability review and English language proficiency testing.

(j) *Application process for credentialing organizations.* (1) *Organizations other than CGFNS.* An organization, other than CGFNS, seeking to obtain approval to issue certificates to health care workers, or certified statements to nurses shall submit Form I-905, Application for Authorization to Issue Certification for Health Care Workers, and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1). An organization seeking authorization to issue certificates or certified statements must agree to submit all evidence required by the DHS and, upon request, allow the DHS to review the organization's records related to the certification process. As required on Form I-905, the application must:

(i) Clearly describe and identify the organization seeking authorization to issue certificates;

(ii) List the occupations for which the organization desires to provide certificates;

(iii) Describe how the organization substantially meets the standards described at paragraph (k) of this section;

(iv) Describe the organization's expertise, knowledge, and experience in the health care occupation(s) for which it desires to issue certificates;

(v) Provide a point of contact;

(vi) Describe the verification procedure the organization has designed in order for the DHS to verify the validity of a certificate; and

(vii) Describe how the organization will process and issue in a timely manner the certificates.

(2) *Applications filed by CGFNS.* (i) CGFNS shall submit Form I-905 to the Director, Nebraska Service Center, to ensure that it will be in compliance with the regulations governing the issuance and content of certificates to nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants under section 212(a)(5)(C) of the Act, or issuing certified statements to nurses under section 212(r) of the Act.

(ii) Prior to issuing certificates for any other health care occupations, CGFNS shall submit Form I-905, Application for Authorization to Issue Certification for Health Care Workers, to the Director, Nebraska Service Center with the appropriate fee contained in 8 CFR 103.7(b)(1) for authorization to issue such certificates. The DHS will evaluate CGFNS' expertise with respect to the particular health care occupation for which authorization to issue certificates is sought, in light of CGFNS' statutory designation as a credentialing organization.

(3) *Procedure for review of applications by credentialing organizations.* (i) After receipt of Form I-905, the Director, Nebraska Service Center shall, in all cases, forward a copy of the application and supporting documents to the Secretary of HHS in order to obtain an opinion on the merits of the application. The DHS will not render a decision on the request until the Secretary of HHS provides an opinion. The DHS shall accord the Secretary of HHS' opinion great weight in reaching its decision. The DHS may deny the organization's request notwithstanding the favorable recommendation from the Secretary of HHS, on grounds unrelated to the

credentialing of health care occupations or health care services.

(ii) The DHS will notify the organization of the decision on its application in writing and, if the request is denied, of the reasons for the denial. Approval of authorization to issue certificates to foreign health care workers or certified statements to nurses will be made in 5-year increments, subject to the review process described at paragraph (l) of this section.

(iii) If the application is denied, the decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations.

(k) *Standards for credentialing organizations.* The DHS will evaluate organizations, including CGFNS, seeking to obtain approval from the DHS to issue certificates for health care workers, or certified statements for nurses. Any organization meeting the standards set forth in paragraph (k)(1) of this section can be eligible for authorization to issue certificates. While CGFNS has been specifically listed in the statute as an entity authorized to issue certificates, it is not exempt from governmental oversight. All organizations will be reviewed, including CGFNS, to guarantee that they continue to meet the standards required of all certifying organizations, under the following:

(1) *Structure of the organization.* (i) The organization shall be incorporated as a legal entity.

(ii)(A) The organization shall be independent of any organization that functions as a representative of the occupation or profession in question or serves as or is related to a recruitment/placement organization.

(B) The DHS shall not approve an organization that is unable to render impartial advice regarding an individual's qualifications regarding training, experience, and licensure.

(C) The organization must also be independent in all decision making matters pertaining to evaluations and/or examinations that it develops including, but not limited to: policies and procedures; eligibility requirements and application processing; standards for granting certificates and their renewal; examination content, development, and administration; examination cut-off scores, excluding those pertaining to English language requirements; grievance and disciplinary processes; governing body and committee meeting rules; publications about qualifying for a certificate and its renewal; setting fees for application and all other services provided as part of the screening process; funding, spending, and budget authority related to the operation of the

certification organization; ability to enter into contracts and grant arrangements; ability to demonstrate adequate staffing and management resources to conduct the program(s) including the authority to approve selection of, evaluate, and initiate dismissal of the chief staff member.

(D) An organization whose fees are based on whether an applicant receives a visa may not be approved.

(iii) The organization shall include the following representation in the portion of its organization responsible for overseeing certification and, where applicable, examinations:

(A) Individuals from the same health care discipline as the alien health care worker being evaluated who are eligible to practice in the United States; and

(B) At least one voting public member to represent the interests of consumers and protect the interests of the public at large. The public member shall not be a member of the discipline or derive significant income from the discipline, its related organizations, or the organization issuing the certificate.

(iv) The organization must have a balanced representation such that the individuals from the same health care discipline, the voting public members, and any other appointed individuals have an equal say in matters relating to credentialing and/or examinations.

(v) The organization must select representatives of the discipline using one of the following recommended methods, or demonstrate that it has a selection process that meets the intent of these methods:

(A) Be selected directly by members of the discipline eligible to practice in the United States;

(B) Be selected by members of a membership organization representing the discipline or by duly elected representatives of a membership organization; or

(C) Be selected by a membership organization representing the discipline from a list of acceptable candidates supplied by the credentialing body.

(vi) The organization shall use formal procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors. Not-for-profit corporations which have difficulty meeting this requirement may provide in their applications evidence that the organization is independent, and free of material conflicts of interest regarding whether an alien receives a visa.

(vii) The organization shall be separate from the accreditation and educational functions of the discipline, except for those entities recognized by the Department of Education as having

satisfied the requirement of independence.

(viii) The organization shall publish and make available a document which clearly defines the responsibilities of the organization and outlines any other activities, arrangements, or agreements of the organization that are not directly related to the certification of health care workers.

(2) *Resources of the organization.* (i) The organization shall demonstrate that its staff possess the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

(ii) The organization shall demonstrate the availability of financial and material resources to effectively and thoroughly conduct regular and ongoing evaluations on an international basis.

(iii) If the health care field is one for which a majority of the states require a predictor test, the organization shall demonstrate the ability to conduct examinations in those countries with educational and evaluation systems comparable to the majority of states.

(iv) The organization shall have the resources to publish and make available general descriptive materials on the procedures used to evaluate and validate credentials, including eligibility requirements, determination procedures, examination schedules, locations, fees, reporting of results, and disciplinary and grievance procedures.

(3) *Candidate evaluation and testing mechanisms.* (i) The organization shall publish and make available a comprehensive outline of the information, knowledge, or functions covered by the evaluation/examination process, including information regarding testing for English language competency.

(ii) The organization shall use reliable evaluation/examination mechanisms to evaluate individual credentials and competence that is objective, fair to all candidates, job related, and based on knowledge and skills needed in the discipline.

(iii) The organization shall conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

(iv) The organization shall implement a formal policy of periodic review of the evaluation/examination mechanism to ensure ongoing relevance of the mechanism with respect to knowledge and skills needed in the discipline.

(v) The organization shall use policies and procedures to ensure that all

aspects of the evaluation/examination procedures, as well as the development and administration of any tests, are secure.

(vi) The organization shall institute procedures to protect against falsification of documents and misrepresentation, including a policy to request each applicant's transcript(s) and degree(s) directly from the educational licensing authorities.

(vii) The organization shall establish policies and procedures that govern the length of time the applicant's records must be kept in their original format.

(viii) The organization shall publish and make available, at least annually, a summary of all screening activities for each discipline including, at least, the number of applications received, the number of applicants evaluated, the number receiving certificates, the number who failed, and the number receiving renewals.

(4) *Responsibilities to applicants applying for an initial certificate or renewal.* (i) The organization shall not discriminate among applicants as to age, sex, race, religion, national origin, disability, or marital status and shall include a statement of nondiscrimination in announcements of the evaluation/examination procedures and renewal certification process.

(ii) The organization shall provide all applicants with copies of formalized application procedures for evaluation/examination and shall uniformly follow and enforce such procedures for all applicants. Instructions shall include standards regarding English language requirements.

(iii) The organization shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.

(iv) Where examinations are used, the organization shall provide competently proctored examination sites at least once annually.

(v) The organization shall report examination results to applicants in a uniform and timely fashion.

(vi) The organization shall provide applicants who failed either the evaluation or examination with information on general areas of deficiency.

(vii) The organization shall implement policies and procedures to ensure that each applicant's examination results are held confidential and delineate the circumstances under which the applicant's certification status may be made public.

(viii) The organization shall have a formal policy for renewing the

certification if an individual's original certification has expired before the individual first seeks admission to the United States or applies for adjustment of status. Such procedures shall be restricted to updating information on licensure to determine the existence of any adverse actions and the need to re-establish English competency.

(ix) The organization shall publish due process policies and procedures for applicants to question eligibility determinations, examination or evaluation results, and eligibility status.

(x) The organization shall provide all qualified applicants with a certificate in a timely manner.

(5) *Maintenance of comprehensive and current information.* (i) The organization shall maintain comprehensive and current information of the type necessary to evaluate foreign educational institutions and accrediting bodies for purposes of ensuring that the quality of foreign educational programs is equivalent to those training the same occupation in the United States. The organization shall examine, evaluate, and validate the academic and clinical requirements applied to each country's accrediting body or bodies, or in countries not having such bodies, of the educational institution itself.

(ii) The organization shall also evaluate the licensing and credentialing system(s) of each country or licensing jurisdiction to determine which systems are equivalent to that of the majority of the licensing jurisdictions in the United States.

(6) *Ability to conduct examinations fairly and impartially.* An organization undertaking the administration of a predictor examination, or a licensing or certification examination shall demonstrate the ability to conduct such examination fairly and impartially.

(7) *Criteria for awarding and governing certificate holders.* (i) The organization shall issue a certificate after the education, experience, license, and English language competency have been evaluated and determined to be equivalent to their United States counterparts. In situations where a United States nationally recognized licensure or certification examination, or a test predicting the success on the licensure or certification examination, is offered overseas, the applicant must pass the examination or the predictor test prior to receiving certification. Passage of a test predicting the success on the licensure or certification examination may be accepted only if a majority of states (and Washington, DC) licensing the profession in which the alien intends to work recognize such a test.

(ii) The organization shall have policies and procedures for the revocation of certificates at any time if it is determined that the certificate holder was not eligible to receive the certificate at the time that it was issued. If the organization revokes an individual's certificate, it must notify the DHS, via the Nebraska Service Center, and the appropriate state regulatory authority with jurisdiction over the individual's health care profession. The organization may not reissue a certificate to an individual whose certificate has been revoked.

(8) *Criteria for maintaining accreditation.* (i) The organization shall advise the DHS of any changes in purpose, structure, or activities of the organization or its program(s).

(ii) The organization shall advise the DHS of any major changes in the evaluation of credentials and examination techniques, if any, or in the scope or objectives of such examinations.

(iii) The organization shall, upon the request of the DHS, submit to the DHS, or any organization designated by the DHS, information requested of the organization and its programs for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization.

(iv) The organization shall establish performance outcome measures that track the ability of the certificate holders to pass United States licensure or certification examinations. The purpose of the process is to ensure that certificate holders pass United States licensure or certification examinations at the same pass rate as graduates of United States programs. Failure to establish such measures, or having a record showing an inability of persons granted certificates to pass United States licensure examinations at the same rate as graduates of United States programs, may result in a ground for termination of approval. Information regarding the passage rates of certificate holders shall be maintained by the organization and provided to HHS on an annual basis, to the DHS as part of the 5-year reauthorization application, and at any other time upon request by HHS or the DHS.

(v) The organization shall be in ongoing compliance with other policies specified by the DHS.

(l) *DHS review of the performance of certifying organizations.* The DHS will review credentialing organizations every 5 years to ensure continued compliance with the standards described in this section. Such review will occur

concurrent with the adjudication of a Form I-905 requesting reauthorization to issue health care worker certificates. The DHS will notify the credentialing organization in writing of the results of the review and request for reauthorization. The DHS may conduct a review of the approval of any request for authorization to issue certificates at any time within the 5-year period of authorization for any reason. If at any time the DHS determines that an organization is not complying with the terms of its authorization or if other adverse information relating to eligibility to issue certificates is developed, the DHS may initiate termination proceedings.

(m) *Termination of certifying organizations.* (1) If the DHS determines that an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, or other information is developed such that the fitness of the organization to continue to issue certificates or certified statements is called into question, the DHS shall automatically terminate authorization for that organization to issue certificates or certified statements by issuing to the organization a notice of termination of authorization to issue certificates to foreign health care workers. The notice shall reference the specific conviction that is the basis of the automatic termination.

(2) If the DHS determines that an organization is not complying with the terms of its authorization or other adverse information relating to eligibility to issue certificates is uncovered during the course of a review or otherwise brought to the DHS' attention, or if the DHS determines that an organization currently authorized to issue certificates or certified statements has not submitted an application or provided all information required on Form I-905 within 6 months of July 25, 2003, the DHS will issue a Notice of Intent to Terminate authorization to issue certificates to the credentialing organization. The Notice shall set forth reasons for the proposed termination.

(i) The credentialing organization shall have 30 days from the date of the Notice of Intent to Terminate authorization to rebut the allegations, or to cure the noncompliance identified in the DHS's notice of intent to terminate.

(ii) DHS will forward to HHS upon receipt any information received in response to a Notice of Intent to Terminate an entity's authorization to issue certificates. Thirty days after the date of the Notice of Intent to Terminate, the DHS shall forward any

additional evidence and shall request an opinion from HHS regarding whether the organization's authorization should be terminated. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the rebuttal evidence, if any, and consideration of HHS' opinion, the DHS will promptly provide the organization with a written decision. If termination of credentialing status is made, the written decision shall set forth the reasons for the termination.

(3) An adverse decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations. Termination of credentialing status shall remain in effect until and unless the terminated organization reapplies for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an organization to re-apply for credentialing status.

(n) *Transition.* (1) *One year waiver.* Under the discretion given to the Secretary, DHS, under section 212(d)(3) of the Act (and, for cases described in paragraph (d)(1) of this section, upon the recommendation of the Secretary of State), the Secretary has determined that until July 26, 2004 the DHS shall, subject to the conditions in paragraph (n)(2) of this section, exercise favorably the discretion given to the Secretary under section 212(d)(3) of the Act and may admit, extend the period of authorized stay, or change the nonimmigrant status of an alien described in paragraph (d)(1) or paragraph (d)(2) of this section to the United States temporarily, despite the alien's inadmissibility under section 212(a)(5)(C) of the Act and paragraph (a) of this section in any case, if the DHS admits the alien, or extends the alien's period of authorized stay, or changes the alien's status on or before July 26, 2004; and the alien is not inadmissible under any other provision of section 212(a) of the Act (or has obtained a waiver of that inadmissibility). On or after July 26, 2004, such discretion shall be applied on a case by case basis.

(2) *Conditions.* Until July 26, 2004, the temporary admission, extension of stay, or change of status of an alien described in paragraph (d)(1) or (d)(2) of this section that is provided for under this paragraph (n) is subject to the following conditions:

(i) The admission, extension of stay, or change of status may not be for a period longer than 1 year from the date of the decision, even if the relevant provision of 8 CFR 214.2 would

ordinarily permit the alien's admission for a longer period;

(ii) The alien must obtain the certification required by paragraph (a) of this section within 1 year of the date of decision to admit the alien or to extend the alien's stay or change the alien's status; and,

(iii) Any subsequent petition or application to extend the period of the alien's authorized stay or change the alien's nonimmigrant status must include proof that the alien has obtained the certification required by paragraph (a) of this section, if the extension or stay or change of status is sought for the primary purpose of the alien's performing labor in a health care occupation listed in paragraph (c) of this section.

(3) *Immigrant aliens.* An alien described in paragraph (a) of this section, who is coming to the United States as an immigrant or is applying for adjustment of status pursuant to section 245 of the Act (8 U.S.C. 1255), to perform labor in a health care occupation described in paragraph (c) of this section, must submit the certificate or certified statement as provided in this section at the time of visa issuance or adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for any admission into the United States, change of status within the United States, or adjustment of status within 5 years of the date that it is issued.

(5) *Revocation of certificate or certified statement.* When a credentialing organization notifies the DHS, via the Nebraska Service Center, that an individual's certification or certified statement has been revoked, the DHS will take appropriate action, including, but not limited to, revocation of approval of any related petitions, consistent with the Act and DHS regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

PART 214—NONIMMIGRANT CLASSES

■ 5. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–15 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009 B 708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

■ 6. Section 214.1 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(i) *Employment in a health care occupation.* Except as provided in 8 CFR 212.15(n), any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a health care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Department of Homeland Security (DHS) in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

(j) Extension of stay or change of status for health care worker. In the case of any alien admitted temporarily as a nonimmigrant under section 212(d)(3) of the Act and 8 CFR 212.15(n) for the primary purpose of the providing labor in a health care occupation described in 8 CFR 212.15(c), a petition to extend the period of the alien's authorized stay or to change the alien's status shall be denied if:

(1) The petitioner or applicant fails to submit the certification required by 8 CFR 212.15(a) with the petition or application to extend the alien's stay or change the alien's status; or

(2) The petition or application to extend the alien's stay or change the alien's status does include the certification required by 8 CFR 212.15(a), but the alien obtained the certification more than 1 year after the date of the alien's admission under section 212(d)(3) of the Act and 8 CFR 212.15(n). While the DHS may admit, extend the period of authorize stay, or change the status of a nonimmigrant health care worker for a period of 1 year if the alien does not have certification on or before July 26, 2004, the alien will not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if the alien has not obtained the requisite certification 1 year after the initial date of admission, change of status, or extension of stay as a health care worker.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 7. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681, 8 CFR part 2.

§ 245.14 [Removed and Reserved]

■ 8. Section 245.14 is removed and reserved.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 9. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 11. Section 248.3 is amended by adding a new paragraph (i) to read as follows:

§ 248.3 Application.

* * * * *

(i) *Change of nonimmigrant status to perform labor in a health care occupation.* A request for a change of nonimmigrant status filed by, or on behalf of, an alien seeking to perform labor in a health care occupation as provided in 8 CFR 212.15(c), must be accompanied by a certificate as described in 8 CFR 212.15(f), or if the alien is eligible, a certified statement as described in 8 CFR 212.15(h). See 8 CFR 214.1(j) for a special rule concerning applications for change of status for aliens admitted temporarily under section 212(d)(3) of the Act and 8 CFR 212.15(n).

PART 299—IMMIGRATION FORMS

■ 10. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

■ 13. Section 299.1 is amended in the table by adding “Form I–905” to the list of prescribed forms in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * *	* * *	* * *
I–905	04–15–02	Application for Authorization to Issue Certification for Health Care Workers.
* * *	* * *	* * *

■ 14. Section 299.5 is amended in the table by:

■ a. Adding the Form “I–905” in proper alpha/numeric sequence; and by

■ b. Adding the entry “Certificates for Health Care Benefits” at the end of the table.

The additions read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* * *	* * *	* * *
I–905	Application for Authorization to Issue Certification for Health Care Workers.	1115–0238
* * *	* * *	* * *
	Certificates for Health Care Benefits.	1115–0226

Dated: July 17, 2003.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–18710 Filed 7–24–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2003–15299; Airspace Docket No. 03–AWP–9]

Modification of Class E Airspace; Window Rock, AZ; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a rule that was published in the **Federal Register** on June 19, 2003, (68 FR 36743; FR Doc. 03–15526). It corrects an error in the legal description of the 1,200 Class E airspace for Window Rock, AZ.

DATES: The direct final rule is effective at 0901 UTC on September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Branch, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: The FAA published FR Document 03–15526 in the **Federal Register** on June 19, 2003, (68 FR 36743) to modify Class E airspace at Window Rock, AZ. The paragraph pertaining to the legal description of the 1,200' Class E airspace was described incorrectly. The following information corrects the