

U.S. Department of Homeland Security
Citizenship and Immigration Services

425 I Street NW
Washington, DC 20536

September 22, 2003

MEMORANDUM FOR SERVICE CENTER DIRECTORS, CIS
REGIONAL DIRECTORS, CIS
OFFICE OF INTERNATIONAL AFFAIRS, CIS
BUREAU OF CUSTOMS AND BORDER PROTECTION

FROM: William R. Yates /S/ by Janis Sposato
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SUBJECT: Final Regulation on Certification of Foreign Health Care Workers: Adjudicator's
Field Manual Update AD 03-31

On July 25, 2003, the Department of Homeland Security (DHS) published a final regulation implementing section 212(a)(5)(C) of the Immigration and Nationality Act (Act) and section 212(r) of the Act. The rule establishes that certain nonimmigrant health care workers are required to obtain certification in accordance with section 212(a)(5)(C) of the Act under a phased-in process. Nurses may be able to demonstrate that they meet the alternate certification requirements of section 212(r) of the Act. The rule also describes the English language testing requirements that the workers must meet in order to obtain certification in their respective occupations, and lists the acceptable testing organizations (these provisions are also listed in the March 26, 2003, memorandum titled *Guidance for Acceptance of English Language Testing Scores on Health Care Worker Certification*). The rule describes the process under which an organization may apply for authorization to issue health care worker certification, what the organization must do to retain its authorization, and the procedure by which the authorization may be reviewed and/or terminated.

A. Statutory Requirements under section 212(a)(5)(C) of the Act

Under section 212(a)(5)(C) of the Act, an alien who seeks admission to the United States for the primary purpose of performing labor as a health care worker, other than a physician, is inadmissible unless he or she presents a certificate from the Commission on Graduates of

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Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization. Section 212(r) of the Act provides an alternate certification process for nurses.

B. Affected Health Care Occupations

The health care occupations requiring certification are nurses (licensed practical nurses, licensed vocational nurses, and registered 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.

C. How the Legacy Immigration and Naturalization Service (INS) Previously Implemented Section 212(a)(5)(C) of the Act

The Legacy INS and the Department of State jointly exercised discretion under section 212(d)(3) of the Act to waive the foreign health care worker certification requirement for all nonimmigrant health care workers until promulgation of final implementing regulations. This has allowed nonimmigrants to enter the United States for the purpose of employment as health care workers without having to obtain the health care worker certification. The Legacy INS and the Department of State jointly 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 quality service to the public.

D. Effect of the Final Rule on Nonimmigrants

This final rule requires nonimmigrant health care workers to obtain and present certification to the DHS each time they apply for admission to the United States, an extension of stay, or a change of status. Such health care workers will most likely be in an H-1C, H-1B, J, O, or TN nonimmigrant classification. The ground of inadmissibility under section 212(a)(5)(C) of the Act will not apply to aliens admitted to perform services in a non-clinical health care occupation (e.g. medical teachers, medical researchers, and managers of health care facilities) or aliens coming to the United States to receive training in a health care worker occupation. The latter group will most likely be admitted in the F-1, J-1, or H-3 nonimmigrant classifications.

The final rule will be effective on September 23, 2003. The DHS will continue to exercise its discretion to waive the ground of inadmissibility for nonimmigrant health care workers for a period of one year after publication of the final rule. During that period, the DHS will admit and approve applications for extension of stay and/or change of status for nonimmigrant health care workers. Also, during the one-year waiver period, the temporary admission, extension of stay, or change of status of a nonimmigrant health care worker will be subject to the following conditions:

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- (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 requisite health care worker certification within 1 year of the date of admission or the date of the decision to extend the alien's stay or change the alien's status; and,
- (ii) 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 health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien's performing labor in an affected health care occupation.

Accordingly, on or after July 26, 2004, if an alien seeks admission to the United States, a change of status, or an extension of stay, the alien must provide evidence of health care worker certification if his or her primary purpose for coming to or remaining in the United States is employment in one of the affected health care occupations.

E. Effect of the Final Rule on Immigrants

Immigrant health care workers are currently required to present certification to the Department of State at the time of immigrant visa issuance or to the DHS at the time of adjustment of status. If the alien is adjusting status, all eligibility requirements must be met at the time of filing the application for adjustment of status. 8 CFR 103.2(b)(12). Therefore, a health care worker in one of the affected occupations must submit evidence of certification at the time the adjustment of status is filed.

F. Authorization to Issue Health Care Worker Certificates

This rule provides a process by which credentialing organizations may be authorized to issue health care worker certificates. An organization must apply for authorization by submitting Form I-905, Application for Authorization to Issue Certification for Health Care Workers, to the Nebraska Service Center (NSC). The application must be accompanied by a filing fee of \$230. The NSC will issue a receipt notice, and then forward the packet to this address at the Department of Health and Human Services (HHS):

Deputy Director
Office of Planning and Evaluation
Health Resources and Services Administration, DHHS
Parklawn Bldg. Room 14-45
5600 Fishers Lane
Rockville, MD 20857

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Once HHS has reviewed the application, it will return the Form I-905 and any accompanying documents to the NSC with a formal recommendation on whether the credentialing organization should be authorized to issue health care worker certificates for the requested occupations. The NSC will issue a final decision to the applicant advising the applicant whether the application has been approved. Though DHS will give great weight to the HHS recommendation, final authority to approve or deny the application rests with the DHS. If the application is approved, the NSC will advise the applicant that it has been authorized to issue health care certificates for a period of 5 years and notify the public through publication in the Federal Register. The approval notice must list all of the health care occupations for which the organization is authorized to issue certificates. If the application for authorization is not approved, the applicant will have 30 days in which to appeal the decision to the Administrative Appeals Office.

Credentialing organizations that seek to extend their authorization must file an application on Form I-905 prior to the expiration of the five-year authorization period. If an organization's authorization expires prior to CIS approval of the extension application, the organization will not be authorized to issue health care worker certificates until the CIS approves the extension application. At the time the authorization extension is filed, the DHS will review the credentialing organization to ensure continued compliance with the regulatory standards. In addition, the DHS reserves the right to conduct a review of the approval at any time within the 5-year period. 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. The DHS will provide notice, including the basis for the termination, to the organization.

G. Information on the Certificates

A certifying organization generally must verify that the foreign health care workers' education, training, licensing, experience and English competency meet all statutory and regulatory requirements of section 212(a)(5)(C) or, for certain nurses, section 212(r) of the Act. It should be noted that this verification is not binding on the DHS; however, the DHS is not required to re-verify the elements of certification. The health care worker certificate or certified statement must contain the following elements:

- The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate or certified statement;
- The date the certificate or certified statement was issued;
- The health care occupation for which the certificate was issued; and
- The alien's name, and date and place of birth.

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Questions regarding this memorandum may be directed to Joe Holliday at Service Center Operations or to Paola I. Rodriguez in the Office of Program and Regulation Development through appropriate channels.

Accordingly, the *Adjudicator's Field Manual (AFM)* is revised as follows:

Chapter 30 of the Adjudicator's Field Manual, has been expanded to include a new chapter at 30.12.

Λ **30.12 Nonimmigrant Health Care Workers**

(a) General. Under section 212(a)(5)(C) of the Act, an alien who seeks admission to the United States for the primary purpose of performing labor as a health care worker, other than a physician, is inadmissible unless he or she presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization. Section 212(r) of the Act provides an alternate certification process for nurses. The certification generally verifies that the alien's training, license, experience, and English-language ability meet minimum standards and are comparable with that required for an American health care worker of the same type.. Any equivalent credentialing organizations must be approved by the Department of Homeland Security (DHS) in consultation with the Secretary of Health and Human Services.

(b) Health Care Occupations Requiring Certification. The health care occupations requiring certification are nurses (licensed practical nurses, licensed vocational nurses, and registered 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.

(c) Affected Nonimmigrant Classifications. Nonimmigrants coming for the primary purpose of performing work as a health care worker will most likely be in the H-1B, H-1C, J, O, and TNs, although they may be petitioned for in other classifications. (Link to H-1B, H-1C, J, O and TN buttons).

(d) Certification Not Required. Certification is required for all nonimmigrants who are entering for the primary purpose of performing labor as a health care worker. Accordingly, a nonimmigrant entering the United States to receive training in an occupation, including an F-1 or H-3 nonimmigrant receiving practical training or a J-1 nonimmigrant coming to undertake a training program in a medical field, is not required to obtain certification. The nonimmigrant spouse and dependent children of an immigrant or nonimmigrant alien subject to the certification requirement are not required to obtain certification.

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(e) Authorized Credentialing Organizations. CGFNS is authorized to issue health care worker certificates for all 7 occupations. The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates for occupational therapists only. The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates for physical therapists only.

(f) Implementation Dates.

(1) Prior to July 26, 2004, the DHS will admit and approve applications for extension of stay or change of status for nonimmigrant health care workers without requiring certification. The temporary admission, extension of stay, or change of status of such a nonimmigrant will be subject to the following conditions:

- (iii) 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 requisite health care worker certification 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 status or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension or stay or change of status is sought for the primary purpose of the alien's performing labor in an affected health care occupation. If the alien is adjusting status, all eligibility requirements must be met at the time of filing the application for adjustment of status. 8 CFR 103.2(b)(12). Therefore, a health care worker in one of the affected occupations must submit evidence of certification at the time the adjustment of status is filed.

(2) On or after July 26, 2004, if an alien seeks admission to the United States, a change of status, or an extension of stay, the alien must provide evidence of health care worker certification if his or her primary purpose for coming to or remaining in the United States is employment in one of the affected health care occupations. The DHS will then exercise its discretion to waive the certification requirement only on a case by case basis.

(g) Applications for Authorization to Issue Health Care Worker Certificates.

Credentialing organizations may seek authorization from CIS issue health care worker certificates. An organization must apply for authorization by submitting Form I-905,

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Application for Authorization to Issue Certification for Health Care Workers, to the Nebraska Service Center (NSC). The application must be accompanied by a filing fee of \$230. The NSC will issue a receipt notice, and then forward the packet to this address at the Department of Health and Human Services (HHS):

Deputy Director
Office of Planning and Evaluation
Health Resources and Services Administration, DHHS
Parklawn Bldg. Room 14-45
5600 Fishers Lane
Rockville, MD 20857

Once HHS has reviewed the application, it will return the Form I-905 and any accompanying documents to the NSC with a formal recommendation on whether or not the credentialing organization should be authorized to issue health care worker certificates for the requested occupations. The NSC will issue a final decision to the applicant advising the applicant whether or not the Form I-905 has been approved. Though DHS will give great weight to the HHS recommendation, the final authority to approve or deny the application rests with the DHS. If the application is approved, the NSC will advise the applicant that it has been authorized to issue health care certificates for a period of five years and notify the public through publication in the Federal Register. The approval notice must list all of the health care occupations for which the organization is authorized to issue certificates. If the application for authorization is not approved, the applicant will have 30 days in which to appeal the decision to the Administrative Appeals Office.

Credentialing organizations that seek to extend their authorization must file an application on Form I-905 prior to the expiration of the five-year authorization period. If an organization's authorization expires prior to CIS approval of the extension application, the organization will not be authorized to issue health care worker certificates until the CIS approves the extension application. At the time the authorization extension is filed, the DHS will review the credentialing organization to ensure continued compliance with the regulatory standards. In addition, the DHS reserves the right to conduct a review of the approval at any time within the 5-year period. 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. The DHS will provide notice, including the basis for the termination, to the organization.

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(h) Information on the Certificates. A certifying organization generally must verify that the foreign health care workers' education, training, licensing, experience and English competency meet all statutory and regulatory requirements of section 212(a)(5)(C) of the Act or, for certain nurses, section 212(r) of the Act. The health care worker certificate or certified statement must contain the following elements:

- The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate or certified statement;
- The date the certificate or certified statement was issued;
- The health care occupation for which the certificate was issued; and
- The alien's name, and date and place of birth.

Λ 4. The *AFM Transmittal Memoranda* button is revised by adding the following entry:

AD 03-31 [INSERT SIGNATURE DATE OF MEMO]	Chapter 30.12	Provides guidance on Health Care Worker Certification
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