# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

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

**[INS 2080–00]**

**RIN 1115–AE73**

## Certificates for Certain Health Care Workers

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule specifies the organizations already authorized to issue health care workers certificates, and sets up procedures for authorizing additional organizations, including an appeals process in the event that requests for authorization are denied. In addition, this rule proposes to add the requirement that all nonimmigrants coming to the United States for the primary purpose of labor as health care workers, including those seeking a change of status, be required to submit a health care worker certification. Previously, the Service had implemented health care worker certification requirements through three interim regulations. This proposed rule expands on those three interim rules and allows for a comment period. Finally, the Immigration and Naturalization Service (Service) proposes amendments to a previously created form that will allow organizations to formally seek authorization to issue certificates to health care workers in a uniform manner. Publication of this proposed 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.

**DATES:** Written comments must be submitted on or before December 10, 2002.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2080–00 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov.* When submitting comments electronically, please include INS No. 2080–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Mari F. Johnson, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

**SUPPLEMENTARY INFORMATION:**

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

Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104–208, 110 Stat. 3009, 636–37 (1996), created a new ground of inadmissibility now codified at section 212(a)(5)(C) of the Act, 8 U.S.C. 1182(a)(5)(C). 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 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, now codified at section 212(r) of the Act, 8 U.S.C. 1182(r), 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 Has the Service Implemented These Requirements?**

Section 212(a)(5)(C) of the Act became effective upon enactment on September 30, 1996. Shortly thereafter, the Service met and conferred 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 DOS to reach consensus on the best approach for implementation of the new provision. In addition, the Service 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.

The Service has implemented section 343 of IIRIRA and NRDAA, via three interim rules published in the **Federal Register** as follows:

(1) Interim Procedures for Certain Health Care Workers, 63 FR 55007 (Oct. 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 § 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 (Jan. 16, 2001) (amending § 212.15)(the third Interim Rule).

These current regulatory provisions shall remain in effect until this proposed rule is adopted as a final rule.

**What Were the Provisions of the First Interim Rule?**

The Service 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, the Service authorized CGFNS and the NBCOT 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 was adopted without the notice and comment period ordinarily required by 5 U.S.C. 553, the Administrative Procedure Act, because the Service found that delay in the establishment of a certification process could adversely affect the provision of health care, particularly in medically underserved areas for nursing and occupational therapy. The Service identified two criteria to support the temporary authorization of CGFNS and the NBCOT to issue certificates to immigrant nurses and occupational therapists: (1) The existence of a sustained level of demand for foreign workers for the particular occupation exists; and (2) the fact that these are both organizations with an established track record in providing credentialing services.

The first Interim rule applied only to immigrants. The Service 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 Service 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 applies 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)(TN classification). Under current procedures, a formal application or fee is not required for a nonimmigrant health care worker to obtain the waiver. Nonimmigrant health care workers are admitted on a multiple entry Form I–94, Arrival—Departure Record, for one year. In addition, otherwise admissible dependents are also authorized admission into the United States for the specific dates of stay authorized for the principal alien. A new waiver is not required if the nonimmigrant health care worker makes an application for admission to the United States during the validity period of the previously issued Form I–94. Nonimmigrants applying for TN classification are not required to pay the admission fee described at 8 CFR 214.6(f) when applying for admission during the validity period of the previously issued Form I–94. Finally, nonimmigrant health care workers are eligible for extensions of the waiver and corresponding extensions of stay in increments of one year.

**What Were the Provisions of the Second Interim Rule?**

In the second Interim Rule, the Service temporarily authorized CGFNS to issue certificates to immigrant occupational therapists and physical therapists, 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 Service, in consultation with HHS, evaluated CGFNS' and FCCPT's applications for authorization to issue certificates under the criteria in the first Interim Rule. The Service 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 for physical therapists.

**What Were the Provisions of the Third Interim Rule?**

In the third Interim Rule, the Service temporarily authorized CGFNS 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 Service 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.

By the time the third Interim Rule was adopted, the Service had experienced tremendous administrative difficulty in promulgating permanent regulations implementing 8 U.S.C. 1182(a)(5)(C) due to the complexity of the issues to be addressed, particularly the issues concerning the impact on United States obligations under various international agreements. While the Service and DOS had exercised their discretion under section 212(d)(3) of the Act to temporarily waive the inadmissibility of nonimmigrant health care workers, thereby permitting nonimmigrant health care workers to be admitted to the United States without a certification, they lacked the statutory authority to waive the inadmissibility of immigrant health care workers. Accordingly, the Service and DOS were unable to adjudicate the petitions of those immigrant health care workers not covered by the first or second Interim Rules. The immigrant petitions and adjustment applications for speech-language pathologists and audiologists, medical technologists/clinical laboratory scientists, physician assistants, and medical technicians/clinical laboratory technicians had been held in abeyance for several years. Recognizing that it was unable to execute its adjudicative functions with respect to this growing backlog, the Service did not rely on the criterion of a ''sustained level of demand'' for the immigrant workers in question. The Service found that CGFNS had an established track record in issuing certificates for the additional occupations.

**What Were the Provisions of the H–1C Rule?**

The Service also published a related rule in response to the passage of the NRDAA, 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 NRDAA created an alternative certification process for foreign nurses only, as provided in section 212(r) of the Act. In the H–1C rule, the Service announced that it would continue to waive the certification requirements for nonimmigrant nurses, pending the promulgation of new regulations implementing both certification processes. That is the purpose of this proposed rule.

It should be noted that in the H–1C Rule, the Service incorrectly stated that *two* interim rules had been promulgated, which authorized credentialing organizations to issue certifications to immigrant health care workers in *three* occupations. In fact, as previously described, with the publication of the third Interim Rule, the Service had authorized credentialing organizations to issue certifications in all *seven* of the health care occupations initially identified as subject to the certification requirements.

**What Does This Rule Propose?**

This rule proposes 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 proposes to amend 8 CFR 212.15 by:

(1) Specifying which organizations are authorized to issue certificates (§ 212.15(e));

(2) Describing the required content of the certificate itself (§ 212.15(f));

(3) Specifying the English language requirements for certification (§ 212.15(g));

(4) Implementing the alternative certification process for foreign nurses and the required content of the certified statement (§ 212.15(h));

(5) Describing the procedure to qualify as a certifying organization (§ 212.15(j));

(6) Listing the standards that an organization must meet in order to obtain and retain authorization to issue foreign health care worker certifications (§ 212.15(k)); and

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

This rule proposes 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.

This rule proposes 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. This form has not yet been implemented by the Service.

This rule proposes 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 Service in accordance with 8 CFR 212.15(d).

This rule proposes to remove text at 8 CFR 245.14 relating to the adjustment of status of certain health care workers. This provision is duplicated by the provisions of 8 CFR 212.15(d).

This rule proposes 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.

**Who Is Subject to the Health Care Certification Requirements?**

After the Service's consideration of the relevant statutory provisions, legislative history, judicial precedent, international agreements, and other proposed rulemakings, and after extensive consultations that the Service has had with other agencies, this proposed rule takes the position that the requirements of section 212(a)(5)(C) 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, however, are explicitly exempted from the certification requirement by the statute and, therefore, are not covered by this rule.

With respect to immigrants, the certification requirement applies to both aliens overseas who are seeking an immigrant visa before traveling to the United States, and aliens in the United States who are applying for adjustment of status to that of a permanent resident. The Service 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 who has applied for an immigrant visa or adjustment of status, pursuant to a family sponsored petition under section 203(a) of the Act, 8 U.S.C. 1153(a), or pursuant to an EB preference petition for a non-health care occupation, or pursuant to section 209 of the Act, 8 U.S.C. 1159 (adjustment of status of refugees), or pursuant to 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. 1229(b) (cancellation of removal), or pursuant to section 249 of the Act, 8 U.S.C. 1259 (record of admission for permanent residence), or pursuant to any other statutory provision relating to admission as an immigrant, is not subject to the requirements of section 212(a)(5)(C) of the Act.

With respect to nonimmigrants, the proposed rule applies 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 Service is proposing 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 F–1 nonimmigrants receiving practical training and J–1 nonimmigrants coming to the United States to undertake a training program in a medical field. In the Service's view, nonimmigrants 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.

Finally, the Service has concluded that the health care certification requirement should not be applied to the spouse and dependent children of an immigrant or nonimmigrant alien. 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. Therefore, while he or she may be permitted to work in some circumstances, he or she 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), while accompanying the principal alien to the United States, he or she would not be subject to the health care worker certification requirement.

The Service is very interested in and invites public comment on the appropriate scope of the certification requirement.

**Are Foreign Health Care Workers Who Have Been Trained in the United States, or Who Are In Possession of a Valid State License, Subject to the Health Care Certification Requirement?**

After passage of IIRIRA, the Service received a number of inquiries and comments regarding whether a foreign health care worker in possession of a full and unrestricted license issued by the State of intended employment would be required to obtain a certificate under section 212(a)(5)(C) of the Act. After carefully considering the plain language of the statute, and upon consultation with HHS, the Service has concluded that possession of a State license does not exempt a foreign health care worker from compliance with the certification requirement. First, section 212(a)(5)(C) of the Act applies to all aliens coming to perform labor as health care workers, except for physicians and for registered nurses who can meet the alternative requirements in section 212(r) of the Act. 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, one aspect of the required certification is the certification 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 NRDAA, 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. NRDAA 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. Secondly, HHS has advised the Service 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 Service has concluded that foreign health care workers who received their training in the United States must comply with the certification requirement.

The Service, however, would not be opposed to permitting credentialing organizations to develop a modified or streamlined certification process for foreign health care workers who hold an unrestricted State license, or who have been trained in the United States. The Service invites 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 critical issue would be whether, as a matter of its own professional judgment, the appropriating credentialing organization considers its appropriate to certify an alien's satisfaction of the substantive requirements of section 212(a)(5)(C) of the Act on the basis of the alien's having been trained or licensed in the United States.

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

As previously noted, after passage of IIRIRA the Service identified, on the basis of the legislative history, seven categories of health care workers subject to the health care certification requirements. *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 Service could designate additional health care occupations subject to certification by regulation. Since the Service has limited agency expertise with health care occupations and issues, it has 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 Service and HHS have 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. 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.

Under this 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. The Service invites comments on whether the list of health care occupations should be expanded, addressing its use of these two factors to determine which health care workers are subject to certification, and whether particular occupations should be added to the list.

The Service acknowledges that the job description of certain occupations that could be added to the list, such as a ''clinical social worker,'' may differ in other countries from the U.S. definition of a ''clinical social worker.'' These differences may create confusion about who exactly is subject to certification. A solution may lie in explicitly defining each health care occupation, subject to certification, in the final rule. Accordingly, the Service invites comments regarding the need to define a health care occupation that is subject to certification.

**How Will an Alien Submit the Foreign Health Care Worker Certification to the Service?**

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. Accordingly, the requirement that the certificate be presented to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status will continue.

When 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 the North American Free Trade Agreement after this rule is adopted in final form, can 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 will not be required to again present the foreign health care worker certificate to the Service, with an application for extension of status to perform labor in that particular health care occupation. It should be noted that these proposed regulations do not affect or diminish the authority of State regulatory bodies with respect to whether an alien is permitted to continue employment as a health care worker in that particular State.

This rule proposes to add a new § 248.3(i) to outline the procedure for submitting the certificate to the Service when an application is made to change nonimmigrant status within the United States.

Upon the effective date when this rule is published as a 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 Service 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 Service welcomes comments and suggestions on how this procedure can be modified or altered to better accommodate the aliens affected by this provision.

**How Will an Organization 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 § 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 Service 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 Service to review the content of certificates for the seven health care occupations, and content of 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 Service, 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, the Service will require CGFNS to file an application on Form I–905 with fee under the procedures outlined at proposed § 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. The Service will submit Form I–905 to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995.

For purposes of administrative ease and efficiency, the Service 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 Service 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 Service 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.

The 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 Service to verify the validity of a certificate.

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

The Service is planning to add new organizations that are approved to issue certificates and certified statements to § 212.15(e) via publication of an interim rule in the **Federal Register**. In the alternative, the Service is considering designating, by a separate and comprehensive public notice in the **Federal Register**, the list of organizations approved to issue certification. The Service would also maintain this list on its website at *http://www.ins.usdoj.gov.* This method would allow the Service to update the list of authorized organizations more quickly than through publication of interim rules. The Service seeks comment on whether this alternative method of maintaining a list of authorized organizations would better serve the public.

More than one organization may be approved by the Service to issue certificates for the same health care occupation. An alien may obtain a certificate from any organization authorized to issue certificates for that occupation. This rule also provides that the Service's approval will be for a 5-year period of time subject to the review process described in 8 CFR 215.15(l).

The Service proposes to extend the temporary authorization of CGFNS, NBCOT, and FCCPT to issue health care certificates and/or certified statements until adjudication of their credentialing status under this final rule.

**How Did the Service Decide That the Form I–905 Application Fee Should Be $230?**

The Service believes that it is reasonable to identify a current application whose process is similar to the requirements outlined under § 212.15(k) in order to select an appropriate fee to charge organizations who wish to be authorized to issue health care worker certifications. Organizations filing health care worker certification applications are requesting that the Service review their resources, including staffing and financial and material resources, their ability to evaluate foreign credentials, and their ability to conduct examinations outside the United States. The current Service petition whose process is most similar to the application process for authorization to issue health care worker certification is the Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which is currently used by other organizations that seek approval to admit nonimmigrant students. In developing fees, the Service must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. This guidance directs Federal agencies to charge the ''full cost'' of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular A–25 defined ''full cost'' as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' In its most recent review of immigration and naturalization benefits, the Service identified the current full cost of the Form I–17 to be $230. The Service determined that a $230 fee for the Form I–17 would underwrite the Service's processing and administrative costs incurred in the Form I–17 adjudication process, such as staffing, training of Service personnel, and adjudication of the petitions. The Service will thus 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.

**What Are the Standards an Organization Must Meet in Order To Obtain Authorization To Issue Certificates?**

This proposed rule lists the standards an organization must substantially meet in order to be authorized to issue certificates at § 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 Attorney General 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 intend 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, the HHS has determined that this can be assured by requiring that organizations issuing certificates be held to a select group of standards. The Service is concerned that in the absence of strict standards, unqualified organizations may obtain authorization from the Service to issue certificates that 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) the goal of ensuring a high quality of health care service in the United States, the Service will use the same standards to adjudicate applications from credentialing organizations under either provision.

The Service welcomes comments from the public and from interested organizations regarding the proposed standards. Specifically, the Service is concerned that an organization seeking authorization to issue certificates may meet most, but not all of the proposed standards. The Service seeks comment on the question of whether a prospective credentialing organization's inability to meet all of the proposed standards should preclude the Service from authorizing the organization to issue certificates. Also, the Service seeks 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 Service invites 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.

**How Will the Service Monitor Organizations Authorized To Issue Certificates or Certified Statements?**

The Service intends to develop a regulatory process to monitor credentialing organizations, including CGFNS. This process will ensure that a credentialing organization continues to follow the standards described in this rule. The Service proposes to review and reauthorize the credentialing organizations every 5 years. This rule proposes that the Service will notify the credentialing organization in writing of the results of the review and reauthorization. If the Service develops adverse information with respect to the performance of the organization, the Service may institute termination proceedings. Comments from the public regarding the frequency of review, *e.g.*, review as part of the 5-year reauthorization, or an annual or biannual 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.

In particular, as part of the review process, the Service proposes to assess whether an authorized credentialing organization has issued certificates 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 unduly impairs an alien's ability to seek an immigration benefit. Accordingly, the Service seeks comments on what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates, and regarding what methodology the Service should use in assessing whether a fee constitutes an obstacle to obtaining an immigration benefit.

**How will the Service terminate an Organization's Authorization?**

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, such that the fitness of the organization to continue to issue certificates is called into question, the Service shall automatically terminate authorization to issue certificates via notice to the credentialing organization.

Upon receipt of information that the credentialing organization is no longer complying with the standards contained in § 212.15(k), or upon receipt of information that termination of the organization's approval is otherwise warranted, the Service 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 Service's notice.

Thirty days after the date of the Notice of Intent to Terminate, the Service will request an opinion from HHS regarding whether the organization's authorization should be terminated. The Service 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 Service will provide the organization with a written decision.

The Service's decision terminating an organization's authorization may be appealed to the Administrative Appeals Office 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 Administrative Appeals Office. There is no waiting period for an organization to re-apply for credentialing status.

**What Actions Will the Service Take When It Finds That an Alien Certificate Holder Was Not Eligible To Receive the Certificate at the Time That It Was Issued?**

A credentialing organization must develop policies and procedures for 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 Service that a certificate has been revoked. The Service may then take any appropriate action, including revocation of the petition, and initiation of removal proceedings against the individual alien under section 240 of the Act.

**What Will the Foreign Health Care Worker Certificate or Foreign Nurses Certified Statement Look Like?**

The proposed regulation at § 212.15(f) describes the content of the certificate. The proposed regulation at § 212.15(h) describes the content of the certified statement. They will generally 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.

It should be noted that the certificate or certified statement does not constitute professional authorization to practice in that health care occupation.

**What Are the Requisite English Language Scores for Certification?**

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.

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

As an alternative to listing the tests and appropriate scores by regulation or interim rule, the Service is considering designating, by a separate and comprehensive public notice in the **Federal Register**, the list of tests and appropriate scores. The Service would also maintain this list on its website at *http://www.ins.gov.* This method would allow the Service to update the list of tests and scores more quickly than through publication of interim rules. The Service seeks comment on whether this alternative method of providing the public with the lists of tests and appropriate scores would better serve the public.

Other testing services are encouraged to submit information concerning their testing services to the Service, 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. This rule provides that the Service will notify the public of new approved testing services in the future by publishing an interim rule in the **Federal Register**.

HHS has advised the Service 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 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 also by definition have satisfied the English language requirements.

Finally, HHS has advised the Service that the MELAB will no longer offer the English-speaking portion of its test outside the United States and Canada. 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; or

(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 Parts 1, 2, and 3 of MELAB overseas and then take the test of spoken English offered by ETS; or

(4) Take Parts 1, 2, and 3 of MELAB overseas and then take the test of spoken English in the United States or Canada; or

(5) Take the IELTS examination.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies 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 Service 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. The Service invites comment on whether and how this rule may have a significant impact on small entities.

**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 one 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 Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

**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 requirements contained in this rule (Form I–905 (OMB Control Number 1115–0238) and the information required on the health care certificate or certified statement (OMB Control Number 1115–0226)) are being revised. Accordingly, these revisions will be submitted to the Office of Management and Budget 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 proposed to be amended as follows:

## PART 103—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 103.1 is amended by:

a. Removing the word ''and'' at the end of paragraph (f)(3)(iii)(NN);

b. Removing the period at the end of paragraph (b)(3)(iii)(oo) and adding a semicolon and the word ''and'' in it's place, and adding and reserving paragraph (f)(3)(iii)(PP); and by

c. Adding paragraphs (f)(3)(iii)(QQ) and (RR).

The additions read as follows:

**§ 103.1 Delegations of authority.**

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(PP) Reserved.

(QQ) Application for authorization to issue certificates to foreign health care workers under 8 CFR part 215; and

(RR) Termination of authorization to issue certificates to foreign health care workers under 8 CFR part 215.

* * * * *

3. Section 103.7(b)(1) is amended by adding a new entry for the ''Form I–905'' to the list in alpha/numeric sequence, to read as follows:

**§ 103.7 Fees.**

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–905, Application for Authorization to Issue Certification for Health Care Workers—$230.00.

* * * * *

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

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

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

5. Section 212.15 is revised to read as follows:

**§ 212.15 Certificates for foreign health care workers.**

(a) *General.*

(1) Any alien who seeks to enter the United States 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) The spouse and dependent children of any immigrant or nonimmigrant alien;

(4) 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 section 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 requiring a nonimmigrant visa.* An alien described in paragraph (a) of this section who is applying for admission as a nonimmigrant seeking to perform labor in a health care occupation as described in this section must present a certificate or certified statement to a consular officer at the time of visa issuance and to the Service 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

not be required to present it again at the time of visa issuance or admission to the United States.

(2) *Aliens not requiring a nonimmigrant visa.* An alien described in paragraph (a) of this section who, pursuant to § 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 not be required to present it again at the time of a subsequent application for admission.

(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 8 U.S.C. 1255, section 245 of the Act, 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 to the Service at the time of adjustment of status. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will not be required to present it again at the time of an adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for an initial 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 Service that an individual's certification or certified statement has been revoked, the Service will take appropriate action, including revocation of approval of any related petitions, consistent with the Act and Service regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

(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.

(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.

(4) The Service will notify the public of additional credentialing organizations through interim rules published in the **Federal Register**.

(f) *Contents of the health care certificate.* A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

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

(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.

(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 determined that an alien must have a passing score on one of five combinations of the four tests listed in paragraph (j)(3) of this section before he or she can be granted a certificate.

(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.

(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, and the United States.

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

(i) Michigan English Language Assessment Battery (MELAB).

(ii) Educational Testing Service (ETS).

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

(iv) 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 MELAB, 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 five combinations of scores to obtain a certificate:

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

(B) MELAB: Final Score 79; Oral Interview: 3+;

(C) MELAB: Final Score 79; plus TSE: 50;

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

(E) IELTS: 6.5 overall with a spoken band score of 7.0.

(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 five combinations of scores to obtain a certificate:

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

(B) MELAB: Final Score 77; Oral Interview: 3+;

(C) MELAB: Final Score 77; plus TSE: 50;

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

(E) IELTS: 6.0 overall with a spoken band score of 7.0.

(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 Service will notify the public of new

organizations that are approved to issue certified statements through interim rules published in the **Federal Register**.

(2) An approved credentialing organization may issue a certified statement to an alien if:

(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 (NCLEX);

(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:

(A) Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom, or the United States; or

(B) Another 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) [Reserved]

(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 Service and, upon request, allow the Service 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 8 CFR 212.15(k);

(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 Service 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) Prior to issuing certificates to 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 under section 212(a)(5)(C) of the Act, or issuing certified statements to nurses under section 212(r) of the Act, 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 and certified statements.

(ii) Prior to issuing certificates for any other health care occupation listed in paragraph (c) of this section, 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 Service 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 Service will not render a decision on the request until the Secretary of HHS provides an opinion. The Service shall accord the Secretary of HHS' opinion great weight in reaching its decision. The Service 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 Service 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 Service will evaluate organizations, including CGFNS, seeking to obtain approval from the Service to issue certificates for health care workers, or certified statements for nurses, under the following standards.

(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 Service 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 which prohibit the governing body from selecting a majority of its successors.

(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.

(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 outside of the United States.* 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 exam is offered overseas, the applicant must pass such an examination prior to receiving a certification. In situations where both a licensure and certification examination are offered overseas, the licensure examination, or its equivalent, shall be the standard for receiving a certification, provided a license is required in at least a majority of the licensing jurisdictions in the United States. If a majority of the licensing jurisdictions do not require licensure, then the certification examination shall be the standard.

(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 Service and the appropriate State regulatory authority with jurisdiction over the individual's health care profession.

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

(ii) The organization shall advise the Service 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 Service, submit to the Service, or any organization designated by the Service, 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 Service as part of the 5 year reauthorization application, and at any other time upon request by HHS or the Service.

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

(l) *Service review of the performance of certifying organizations.* The Service 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 the request for reauthorization to issue health care worker certificates. The Service will notify the credentialing organization of the results of the review and request for reauthorization in writing. If the Service determines that an organization is not complying with the terms of its authorization or if other adverse information is developed, the Service may initiate termination proceedings.

(m) *Termination of certifying organizations.* (1) If the Service 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, such that the fitness of the organization to continue to issue certificates or certified statements is called into question, the Service 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 Service determines that an organization is not complying with the terms of its authorization or other adverse information is brought to the Service's attention, the Service 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 Service's notice of intent to terminate.

(ii) Thirty days after the date of the Notice of Intent to Terminate, the Service shall request an opinion from HHS regarding whether the organization's authorization should be terminated. The Service 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 Service 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.

## PART 214—NONIMMIGRANT CLASSES

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

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; 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.

7. Section 214.1 is amended by adding a new paragraph (h) to read as follows:

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

* * * * *

(h) *Employment in a health care occupation.* Any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a heath 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 Service 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).

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

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

**Authority:** 8 U.S.C. 1101, 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]

9. Section 245.14 is removed and reserved.

## PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

10. 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).

## PART 299—IMMIGRATION FORMS

12. 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 | ..... | 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 | Current 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: October 7, 2002.

**James W. Ziglar,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 02–25974 Filed 10–10–02; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 35

**[Docket No. RM01–12–000]**

## Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

October 2, 2002.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of conferences and revisions to public comment schedule for proposed rule.

**SUMMARY:** On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. The Commission is scheduling a series of public conferences to discuss areas of concern about the proposed rule and extending the deadline for filing comments that address the following issues: Market design for the Western Interconnection; transmission planning and pricing, including participant funding; Regional State Advisory Committees and state participation; resource adequacy; and Congestion Revenue Rights and transition issues.

**DATES:** Initial comments on specified issues are due on or before January 10, 2003. Initial comments on all other issues are due on or before November 15, 2002. Reply comments are due on or before February 17, 2003. All initial and reply comments should include an executive summary that should not exceed ten pages.

Conferences will be held on: November 4, 2002, November 6, 2002, November 10–13, 2002, November 19, 2002 and December 3, 2002.

**ADDRESSES:** Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. See **SUPPLEMENTARY INFORMATION** for conference locations.

**FOR FURTHER INFORMATION CONTACT:** Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

**SUPPLEMENTARY INFORMATION:**

### Notice of Conferences and Revisions to Public Comment Schedule

1. In the nine weeks since the Commission issued its Notice of Proposed Rulemaking (NOPR) in the above-captioned docket (67 FR 55452, August 29, 2002), Commission members and staff have participated in numerous meetings and conferences throughout the country to discuss the proposed rule. These meetings have been a valuable source of information about the response of the general public, and specifically the electric utility industry, to the proposed Standard Market Design rule and the issues that the Commission must address going forward.

2. Commission staff has identified areas of public concern about the proposed rule and recommended that the Commission hold meetings that will address and attempt to resolve these issues. A copy of the staff memorandum that makes these recommendations is attached to this notice.

3. Standard Market Design is an important initiative that will bring the public significant benefits, but the rule must be formulated properly in order to work as the Commission envisions. We understand the public concerns, and we want to work through them individually and in detail. As a first step, the Commission will hold a series of public meetings to discuss specific items of concern.

4. The public meetings will be held as follows. Unless otherwise noted, these meetings are open to the public, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to *customer@ferc.gov.* Members of the Commission may attend and participate in the discussions. Further details about each Commission conference will be provided in supplemental documents.

- *November 4, 2002:* (Portland, Oregon) This conference will address the unique operating characteristics of Western bulk power markets. It will also attempt to identify aspects of the proposed Standard Market Design for which regional flexibility may be appropriate for the West, and corresponding degrees of flexibility.
- *November 6, 2002:* (Washington, DC) This conference will focus on pricing proposals for network upgrades and expansions. In particular, the discussions will attempt to clarify the definition of ''participant funding'' and seek consensus on the types of facilities that should be eligible for participant funding.
- *November 10–13, 2002:* (Chicago, Illinois) Commissioners and staff propose to participate in the National Association of Regulatory Utilities Commissioners Annual Convention. The Commission will make a presentation on the morning of Wednesday, November 13, and the Chairman will deliver a keynote address.

Registration is required for this conference. You may obtain a copy of the registration form and information about fees at *http://www.naruc.org/Meetings/annualconv/2002/index.html,* under the ''Registration'' link.

- *November 19, 2002:* (Washington, DC) This conference will focus on aspects of the resource adequacy requirement proposed in the NOPR, specifically: (1) The sufficiency of proposed penalties; (2) the function of the resource adequacy requirement in areas that have retail access; and (3) how to accommodate regional variations in proposals to satisfy the resource adequacy requirement without interfering with state jurisdiction.
- *December 3, 2002:* (Washington, DC) This conference will discuss specific issues related to the transition to congestion revenue rights (CRRs), such as: (1) Ensuring that native load and load serving entities receive sufficient CRRs; (2) guarding against the use of CRRs to exercise market power; and (3) the possibility of regional variation on how rights are allocated to load.

5. Each Washington, DC conference will be held from approximately 9:30 a.m. to 5:00 p.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. Transcripts of the conferences will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''