

those who complete such programs in that country; or

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

(iii) The nursing program:

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

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

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

#### **How Were These Requirements Implemented?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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