

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

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

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

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

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

Form I-905

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

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

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

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

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

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

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

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

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

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

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

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