

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

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

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

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

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

Revocation of Certificates

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

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

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

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

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

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

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

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

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

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

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

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