

occupation and the various state licensure requirements required to practice his or her occupation in the United States. In addition, the DHS has limited the information required on the certification to generally address the identity of the certificate holder and his or her admissibility under section 212(a)(5)(C) or 212(r) of the Act, rather than the certificate holder's authority to practice in the health care occupation.

Another commenter stated that an organization should not issue a certification until such time as the alien obtains a United States license to practice in his or her occupation. This comment will not be adopted because some aliens, *e.g.*, EB immigrants and certain nonimmigrants subject to this rule, such as aliens with extraordinary ability (O-1) and exchange visitors (J-1), are not required to satisfy state licensure requirements for classification.

One commenter noted that the proposed rule did not contain a description of what an approved organization was required to verify before it issued a certification. The commenter noted that the DHS had previously required approved organizations to examine the alien's education, training, and license prior to issuing a certification. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(f) to include this information.

English Language Scores for Certification

As stated in the proposed rule, 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.

One commenter suggested that the DHS adopt separate scores and a specific test for the occupation of physician assistant. This comment will not be adopted in this rule because HHS

has not designated a separate test and score for the occupation.

One commenter noted that the DHS had failed to specify which modules of the International English Language Testing System (IELTS) would be required for the covered occupations. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(g)(4) to clarify when an Academic and/or General Module will be required for a covered health care occupation.

The HHS had initially identified four testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The four testing services were the Educational Testing Service (ETS), the Michigan English Language Assessment Battery (MELAB), the Test of English in International Communication (TOEIC) Service International, and the IELTS. The proposed regulation at 8 CFR 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

The DHS received 29 comments in response to the English language testing proposals. Eight commenters agreed that the IELTS and TOEIC tests should be included in the final rule. Six commenters expressed dissatisfaction with the test of spoken English (TSE) given by ETS, asserting that it was too difficult to pass and that it prevented health care facilities from recruiting qualified workers. One commenter even suggested that the test intentionally discriminated against certain nationalities.

The English test offered by ETS has been used by colleges, universities, and accrediting organizations for years to test English language skills. Both HHS and the DoED have reviewed this test prior to its inclusion in the previously published interim rules and the proposed rule. The DHS is not persuaded that the test is not a valid test of English language skills and, as a result, the option of TSE will remain in this final rule.

The DHS also proposed that, as an alternative to listing the tests and appropriate scores by Interim Rule, the DHS would designate, by a separate and comprehensive public notice in the **Federal Register**, the list of tests and appropriate scores. The DHS would maintain this list on its Web site. This method would allow the DHS to update the list of tests and scores more quickly than through publication of interim rules. The DHS will continue to coordinate with the HHS and the DoED to make the designation of tests and

appropriate scores needed to satisfy the English proficiency requirement.

The DHS received four comments on this proposal. Three commenters suggested that the DHS adopt the alternative method of advising the public of the approved English tests by a notice in the **Federal Register** while one commenter suggested that the use of an interim rule would be more appropriate.

After consideration of the comments, the DHS will adopt the alternative method discussed in the proposed rule. In view of the extensive governmental review before a test is approved, it is not likely that the comments received in response to an interim rule would be beneficial. As a result, this final rule at 8 CFR 215.15(g)(4)(iv) provides that the DHS will notify the public of new approved English testing services by publishing a notice in the **Federal Register**. The DHS will also maintain the list of approved English tests and the appropriate scores on its Web site at <http://www.immigration.gov>.

One commenter noted that the current availability of English tests did not meet the demand creating significant delays for health care workers. To solve this problem, other testing services are encouraged to submit information concerning their testing services to the DHS, 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. As noted in the proposed rule, HHS has advised the DHS 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 in order 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 by definition have satisfied the English language requirements.

Six commenters suggested that additional countries be added to the list of countries that should be exempt from the English language requirements. The list of countries has been furnished to HHS for their review for possible inclusion in the list of exempt countries.