

One commenter suggested that the English language test be separate and apart from the credentialing portion of the certification process. This suggestion cannot be adopted because it is contrary to the statute.

Finally, after publication of the proposed rule, the DHS was notified that the MELAB no longer wishes to be designated as an approved English test for the purpose of issuing health care certifications. Therefore, MELAB has been removed from the list of approved English tests and is not included in this final rule. 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;
- (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 the IELTS examination.

Additional Comments Regarding the Proposed Rule

Two commenters noted that the proposed rule did not contain a requirement that an organization was to verify that an alien either passed a predictor examination or the state licensing examination for his or her occupation. One of the commenters noted that the DHS had previously listed this requirement in the previously published interim rules.

The DHS has unintentionally failed to provide a description of what an organization is required to verify before it can issue a certification under section 212(a)(5)(C) of the Act. This information is now listed at 8 CFR 215.15(f).

Three commenters stated that nurses should not be required to take the predictor examination if they have passed the NCLEX-RN state licensing examination. The statute at sections 212(a)(5)(C) and 212(r) of the Act requires that a certifying entity verify that an alien has passed either the profession's licensing or certification examination, or a predictor test if a majority of states licensing the profession in which the alien intends to work recognize such a predictor test. The DHS has added language at 8 CFR 212.15(f)(1)(iv) to clarify that a nurse who is obtaining a certificate under section 212(a)(5)(C) of the Act must demonstrate that they have passed the profession's licensing examination (NCLEX-RN) or the predictor test.

One commenter stated that some nurses are not eligible to obtain a certified statement as described in section 212(r) of the Act. Section 212(r) of the Act was created as an alternative

to the certification process of section 212(a)(5)(C) of the Act. It was specifically designed to accommodate a limited number of nurses who met certain criteria and not all nonimmigrant nurses.

Finally, CGFNS stated that the language in the proposed rule appeared to preclude them from obtaining authorization to issue certifications to audiologists. The DHS has corrected this oversight by amending the language at 8 CFR 215.15(j)(2) to include audiologists among the covered occupations.

Regulatory Flexibility Act

I have reviewed this regulation, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, I have determined 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 Department of Homeland Security 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.

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 1 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 Homeland Security to be a "significant regulatory action" under Executive Order 12866, section 3(f),

Regulatory Planning and Review. Accordingly, this regulation has been submitted to OMB for review. The Department of Homeland Security has assessed both the costs and the benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this rule justify its costs. Briefly, that assessment is as follows:

The Department of Homeland Security has determined that any entity seeking authorization to issue health care worker certifications must apply for authorization on Form I-905. The Department of Homeland Security 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 Department of Homeland Security has estimated that there will be approximately 10 applicants who will each have a time burden of approximately 4 hours, and who will be required to pay a total of \$2,300. Once the Form I-905 is approved, an authorized entity will be authorized to issue health care worker certification for a period of 5 years, and will be able to recoup the costs of the Form I-905 by charging a fee for each certificate that it issues.

Each credentialing organization may set its own fee to recover the costs of issuing a health care worker certificate, although the price may vary between organizations. The CGFNS is the organization that is currently authorized to issue certifications to the largest number of applicants because it is authorized to issue certifications to all seven occupations. The Department of Homeland Security has estimated that the total time burden associated with each certification is approximately 220 minutes. The current price for a CGFNS certificate or certified statement is approximately \$325, which is charged to an individual alien. In some cases, a petitioning employer may choose to pay on behalf of the alien. Finally, the Department of Homeland Security has determined that the benefit to the United States public of the statute requiring the issuance of certificates will be to ensure that all health care workers covered by the regulations, including all nonimmigrants, have met the same minimum requirements with regard to an evaluation of their credentials, licensing, training and English language ability before commencing employment in their respective occupations. Even in cases where all states require a foreign health