

these terms in the Report of the House of Representatives Committee on the Judiciary, H.R. No. 103-387, November 20, 1993. The relevant comments, found on pages 5 and 6 of the report, read:

The bill also provides a general waiver of all testing requirements for persons of any age who, because of "physical or developmental disability or mental impairment," could not reasonably be expected to pass the test. This is not intended to include conditions that are either temporary or that have resulted from an individual's illegal use of drugs.

An individual who is developmentally disabled is one who shows delayed development of a specific cognitive area of maturation, i.e., reading, language, or speech, resulting in intellectual functioning so impaired as to render the individual unable to participate in the normal testing procedures for naturalization. This is not an acquired disability, but one whose onset occurred prior to the 18th birthday. An individual who is mentally disabled is one for whom there is a primary impairment of brain function, generally associated with an organic basis upon which diagnosis is based, resulting in an impairment of intellectual functions, including memory, orientation or judgment. This definition does not include individuals whose mental disability is not the result of a physical disorder. An individual who is physically disabled is one who has a physical impairment that substantially limits a major life activity.

It is clear that the amendment to section 312 is to exempt only those individuals who, because of their disability, cannot demonstrate the requisite literacy and knowledge as required under section 312 of the Act.

On November 21, 1995, the Service provided policy guidance to its field offices with preliminary instructions for adjudication of naturalization applications based on the expanded exemptions provided under the Technical Corrections Act. The Service also provided preliminary definitions of the terms "developmental disability," "physical disability," and "mental impairment" following the language in H.R. No. 103-387. Applicants seeking disability waivers were required to submit medical evidence (e.g., a one-page certification from a designated civil surgeon) with their N-400, Application for Naturalization, supporting their claim of disability.

Amendment of Existing Regulation

In order to implement the changes to section 312 of the Act as mandated by the Technical Corrections Act, the Service is proposing to amend 8 CFR 312.1 and 312.2 to provide definitions of the terms "developmental disability," "physical disability," and "mental impairment," and to outline procedures for individuals who seek disability

exemption pursuant to section 312(b)(1) of the Act.

This proposed rule not only modifies the Service's current preliminary guidance to the field but also comports with existing Federal policies and regulations for implementing nondiscriminatory disability based programs as required under section 504 of the Rehabilitation Act of 1973, as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, and 28 CFR part 39. This proposed rule also provides that an exemption will be granted only to those individuals with disabilities who, because of the nature of their disability, cannot demonstrate the required understanding of the English language and knowledge of American history and government.

The section 312(b) disability-exemption is not a blanket waiver from the testing requirements to be granted based solely on evidence of a disability. To interpret section 312(b) as a blanket exemption not only would have the tacit effect of perpetuating the negative stereotype that people with disabilities are unable to participate fully in mainstream activities, but also would be contrary to the requirements of section 504 of the Rehabilitation Act.

All waiver eligibility determinations will be based on individual assessments by civil surgeons or qualified individuals or entities designated by the Attorney General, who determine that the applicant has a disability that renders the individual unable to demonstrate the English proficiency or knowledge required by this part or renders the individual unable, even with reasonable modifications, to participate in the testing procedures for naturalization.

Pursuant to section 504 of the Rehabilitation Act of 1973, the Service will provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Reasonable modifications may include providing wheelchair-accessible test sites, sign language interpreters, or brailled materials. In addition, modifications may be made in the test format or test administration procedures. An applicant will be deemed unable to participate in the testing procedures only in those situations where there are no reasonable modifications that would enable the applicant to participate.

It will be the responsibility of the disabled person applying for naturalization to provide the documentation necessary to substantiate

the claim for a disability-based exception. The Service has no desire for applicants with disabilities to submit extensive medical reports or medical background information regarding their condition. Since Service officers are not physicians and should not be placed in the position of making a medical determination, the Service is proposing use of civil surgeons for assessing the disability claimed by applicants. In addition, as reflected in the language of the proposed rule, the Service is considering use of qualified individuals or entities designated by the Attorney General to perform such assessments. The designees will review the necessary background medical reports, submitted by the applicant or the applicant's medical specialist. Civil surgeons not experienced in diagnosing developmental disabilities or other cognitive impairments shall be required to consult with professionals who are experienced in diagnosing cognitive impairments prior to making an eligibility determination. If the surgeon or designee is in agreement with the background information and has consulted with the necessary specialist, he or she will issue a one-page certification, verifying the existence of a disability as defined under 8 CFR 312.1(b)(3) and 312.2(b)(1), and attesting to the applicant's inability to participate in the testing procedures required under section 312 of the Act. The Service fully intends to work with the civil surgeons and other qualified individuals or entities in developing guidance and procedures for the preparation of the certification needed by an applicant with a disability for this particular exception.

Request for Comments

The Service is seeking public comments regarding this proposed rule. The Service is interested in public comment on the requirements for medical certifications. The Service also seeks public comment on the use of civil surgeons and on the circumstances under which the Service should consider use of qualified individuals or entities, other than civil surgeons, for disability determinations such as licensed physicians, other health care professionals, or other government or private entities designated by the Attorney General. It should also be noted that the Service is engaged in an additional revision of 8 CFR part 312. That revision will be issued as a proposed rule, also with a request for public comments.

Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by OMB under the Paperwork Reductions Act of 1995 (Pub. L. 104-13). Therefore, the agency solicits public comments on the revised information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 300,000 applicants may apply for an exemption from the requirements of section 312. The Service also estimates that it will take each applicant three (3) hours to obtain the necessary attestation for an exemption. This amounts to 900,000 total burden hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the revised information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Office of Information and Regulatory Affairs (OMB), 725 17th Street, NW, Washington, DC 20503, Attn: DOJ/INS Desk Officer, Room 10235.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objectives.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3) (B)-(D), this proposed rule has been submitted to the Office of Management and Budget for review. This rule is mandated by the 1994 Technical Corrections Act in order to afford certain disabled naturalization applicants an exemption from the educational requirements outlined in section 312 of the Immigration and Nationality Act.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 312

Citizenship and naturalization, Education.

Accordingly, part 312 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 312—EDUCATIONAL
REQUIREMENTS FOR
NATURALIZATION**

1. The authority citation for part 312 continues to read as follows:

Authority: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

2. In § 312.1, paragraph (b)(3) is revised to read as follows:

§ 312.1 Literacy requirements.

* * * * *

(b) * * *

(3) The requirements of paragraph (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to demonstrate an understanding of the English language, as noted in paragraph (a) of this section. *Physical disability*, *developmental disability*, and *mental impairment* do not include conditions that are temporary or that have resulted from an individual's illegal drug use.

(i) For the purposes of this paragraph (b)(3), the term:

Developmental disability means an impairment, the onset of which precedes an individual's 18th birthday, that causes an individual to show delayed development of a specific cognitive area of maturation, i.e., reading, language or speech, resulting in intellectual functioning so impaired as to render an individual to be unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications.

Mental impairment means a primary impairment of brain function, generally associated with an organic basis upon which the diagnosis is based, resulting in an impairment of intellectual functions such as memory, orientation, or judgment that causes an individual to be unable to demonstrate an understanding of the English language required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications. This definition does not include a mental impairment that is not the result of a physical disorder.

Physical disability means a physical impairment that substantially limits an individual's major life activities in a way that causes that individual to be unable to demonstrate an understanding of the English language required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications.

(ii) [Reserved]

* * * * *

3. Section 312.2 is amended by:

a. Revising the last sentence of paragraph (a);

b. Redesignating paragraph (b) as paragraph (c) and by

c. Adding a new paragraph (b), to read as follows:

§ 312.2 Knowledge of history and government of the United States.

(a) * * * A person who is exempt from the literacy requirement under § 312.1(b) (1) and (2) must still satisfy this requirement.

(b) *Exceptions.* (1) The requirements of paragraph (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States. *Physical disability*, *developmental disability*, and *mental impairment* do not include conditions that are

temporary, or that have resulted from an individual's illegal drug use.

(i) For the purposes of this paragraph (b)(1), the term:

Developmental disability means an impairment, the onset of which precedes an individual's 18th birthday, that causes an individual to show delayed development of a specific cognitive area of maturation, i.e., reading, language or speech, resulting in intellectual functioning so impaired as to render the individual unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

Mental impairment means a primary impairment of brain function, generally associated with an organic basis upon which the diagnosis is based, resulting in an impairment of intellectual functions such as memory, orientation, or judgment that renders the individual unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications. This definition does not include a mental impairment that is not the result of a physical disorder.

Physical disability means a physical impairment that substantially limits an individual's major life activities in a way that renders the individual unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

(ii) [Reserved]

(2) *Medical certification.* All persons applying for naturalization and seeking an exemption from the requirements of § 312.1(a) and paragraph (a) of this section based on one of the enumerated disability exceptions must submit a certification from a designated civil surgeon (as defined in 42 CFR 34.2) or qualified individuals or entities designated by the Attorney General, attesting to the origin, nature, and extent of the person's medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph (b)(1) of this section. The certification shall be a letter-sized one-page document, signed and dated by the civil surgeon or qualified individuals or entities. The civil surgeon, in particular those not experts in diagnosing developmental disabilities or other cognitive impairments, shall consult with other qualified physicians and psychologists prior to providing a certification, and may require the person seeking a disability-based exception to furnish

evidence from a medical specialist or psychologist to support the person's claim of a qualifying disability. Any additional medical evidence required by a civil surgeon to assist in the evaluation shall only be for the use of the civil surgeon. The additional evidence shall not be attached to the civil surgeon's certification or filed with the applicant's application for naturalization as background or supporting documentation. An affidavit or attestation by the person, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement. The Service may consult with other Federal agencies in making its determination on whether an individual previously determined to be disabled by another Federal agency has a disability as defined in this section. This consultation may be used in lieu of the individual's medical certification.

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Dated: August 23, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-145-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-100 and -200 series airplanes. This proposal would require replacing the aileron (lateral) control transfer mechanism with a new modified mechanism, or reworking the existing mechanism. This proposal is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by the proposed AD are intended to prevent unexpected, significant control wheel forces and reduced travel of a control wheel due to mechanical interference within the lateral control

system transfer mechanism during a jam override condition.

DATES: Comments must be received by October 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-145-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2798; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-145-AD." The postcard will be date stamped and returned to the commenter.