

approved in accordance with the procedures specified in paragraph (j) of this AD.

#### Optional Terminating Action for Repetitive Inspections

(i) Installing an external repair doubler along the chem-milled steps at stringers S-1 and S-2 right, between STA 827 and STA 847, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD for the repaired area only, provided all of the conditions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD are met. The initial inspection required by paragraph (g) of this AD must be accomplished.

(1) The repair is installed after September 3, 2009;

(2) The repair was approved by the FAA or by a Boeing Company Authorized Representative who was authorized by the FAA to make such findings; and

(3) The repair extends a minimum of three rows of fasteners on each side of the chem-mill line in the circumferential direction.

#### Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590. Or, e-mail information to [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Issued in Renton, Washington, on September 4, 2009.

#### Stephen P. Boyd,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-22081 Filed 9-14-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 73

[Docket No. FAA-2009-0700; Airspace Docket No. 09-AWP-4]

RIN 2120-AA66

#### Proposed Modification of Restricted Areas and Other Special Use Airspace; Fallon, NV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the time of designation and using agency of nine restricted areas located in the vicinity of the Fallon Naval Air Station (NAS), Fallon, NV, as part of a Department of the Navy initiative to standardize the operating hours throughout the Fallon Airspace Complex. The times of use are being expanded to meet the critical need of the Navy for additional nighttime training, and the using agency changes are administrative in accordance with a Navy realignment of functions. Additionally, this action would modify the times of use of the four military operation areas (MOAs) in the Fallon Airspace Complex. Unlike restricted areas, which are designated under 14 CFR part 73, MOAs are not rulemaking airspace actions. However, since the MOAs form an integral part of the Fallon Airspace Complex the FAA is also seeking comment on the proposed MOA changes through this NPRM. The MOA changes described here will also be published in the National Flight Data Digest (NFDD). The Navy requested these airspace changes to provide additional night training time to meet combat readiness requirements currently being carried out in accordance with 14 CFR 99.7.

**DATES:** Comments must be received on or before October 30, 2009.

**ADDRESSES:** Send comments on the proposal to the U.S. Department of Transportation, Dockets Operations, M-30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (202) 366-9826. You must identify FAA docket No. FAA-2009-0700 and Airspace Docket No. 09-AWP-4, at the beginning of your comments. You may also submit comments on the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace

and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2009-0700 and Airspace Docket No. 09-AWP-4) and be submitted in triplicate to the Federal Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2009-0700 and Airspace Docket No. 09-AWP-4." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and

phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

The Fallon Airspace Complex consists of nine restricted areas and four MOAs in the vicinity of the Fallon NAS, NV. Restricted areas are regulatory airspace designations, under Title 14 Code of Federal Regulations (CFR) part 73, which are established to confine or segregate activities considered hazardous to non-participating aircraft. A MOA is a non-rulemaking type of special use airspace (SUA) established to separate or segregate certain non-hazardous military flight activities from aircraft operating in accordance with instrument flight rules (IFR), and to identify for visual flight rules (VFR) pilots where those activities are conducted. IFR aircraft may be routed through an active MOA only when air traffic control can provide approved separation from the MOA activity. VFR pilots are not restricted from flying in an active MOA, but are advised to exercise caution while doing so.

Unlike restricted areas, which are designated through rulemaking procedures, MOAs are non-rulemaking airspace areas that are established administratively and published in the NFDD. Normally, MOA proposals are not published in an NPRM, but instead, are advertised for public comment through a nonrule circular that is distributed by an FAA Service Center office to aviation interests in the affected area. However, when a non-rulemaking action is connected to a rulemaking action, FAA procedures allow for the non-rulemaking proposal to be included in the NPRM. In such cases, the NPRM replaces the nonrule circularization requirement. Because the proposed MOAs are an integral part of the Fallon Airspace Complex, they are being included in this NPRM.

Approximately eighty percent of the current combat missions are flown at night. It is critical that forces train in realistic environments and the current times of use of the Fallon Airspace

Complex does not adequately support the Navy's needs.

The proposed SUA changes are described in the following sections.

#### Proposed MOA Changes

##### Churchill Low MOA, NV

*Times of use.* 0715 to 2245 Monday through Friday and 0800 to 1800 Saturday; other times by NOTAM.

##### Churchill High MOA, NV

*Times of use.* 0715 to 2245 Monday through Friday and 0800 to 1800 Saturday; other times by NOTAM.

##### Ranch High MOA, NV

*Times of use.* 0715 to 2245 Monday through Friday and 0800 to 1800 Saturday; other times by NOTAM.

##### Ranch MOA, NV

*Times of use.* 0715 to 2245 Monday through Friday and 0800 to 1800 Saturday; other times by NOTAM.

### The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to modify the designated times of use to restricted areas R-4803, Fallon; R-4804A & B, Twin Peaks; R-4810, Desert Mountain; R-4812, Sand Springs; R-4813A & B, Carson Sink; and R-4816 North & South, Dixie Valley, NV. These changes are part of the Fallon NAS proposal. Specifically, the FAA is proposing changing the current wording to include the phrase "other times by NOTAM". This would allow the Navy to train between 2330 hours and 0715 hours local to meet their training requirements. The Navy is currently meeting these night training requirements in accordance with 14 CFR 99.7, Special Security Instructions. This action also would reflect the using agency name change to USN, Naval Strike and Air Warfare Center, Fallon, NV.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it proposes to modify restricted area airspace at Fallon NAS, Fallon, NV.

### Environmental Review

This proposal will be subjected to the appropriate environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

### PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### § 73.48 [Amended]

2. 73.48 is amended as follows:

\* \* \* \* \*

#### R-4803 Fallon, NV [Amended]

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM.

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

#### R-4804A Twin Peaks, NV [Amended]

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM.

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4804B Twin Peaks, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** Intermittent by NOTAM 0715 to 2330 local time daily; other times by NOTAM.

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

\* \* \* \* \*

**R-4810 Desert Mountains, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

\* \* \* \* \*

**R-4812 Sand Springs, NV [Amended]**

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4813A Carson Sink, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4813B Carson Sink, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** Intermittent by NOTAM 0715 to 2330 local time daily; other times by NOTAM.

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4816N Dixie Valley, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4816S Dixie Valley, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

\* \* \* \* \*

Issued in Washington, DC, on September 2, 2009.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E9-22139 Filed 9-14-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG-127270-06]**

**RIN 1545-BF81**

**Damages Received on Account of Personal Physical Injuries or Physical Sickness**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the exclusion from gross income for amounts received on account of personal physical injuries or physical sickness. The proposed regulations reflect amendments under the Small Business Job Protection Act of 1996. The proposed regulations also delete the requirement that to qualify for exclusion from gross income, damages received from a legal suit, action, or settlement agreement must be based upon "tort or tort type rights." The proposed regulations affect taxpayers receiving damages on account of personal physical injuries or physical sickness and taxpayers paying these damages.

**DATES:** Written (paper or electronic) comments must be received by December 14, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-127270-06), room 5203, Internal Revenue Service, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-127270-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-127270-06).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Sheldon A. Iskow, (202) 622-4920 (not a toll-free number); concerning the submission of comments and/or requests for a public hearing, Richard Hurst at

*Richard.A.Hurst@irs.counsel.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to reflect amendments made to section 104(a)(2) of the Internal Revenue Code (Code) by section 1605(a) and (b) of the Small Business Job Protection Act of 1996, Public Law 104-188, (110 Stat. 1838 (the 1996 Act)), and to delete the "tort or tort type rights" test under § 1.104-1(c) of the Income Tax Regulations.

As amended, section 104(a)(2) excludes from gross income the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness. These proposed regulations conform the regulations to these statutory amendments and clarify the changes for taxpayers and practitioners.

*1. The 1996 Act Amendments*

Section 1605(a) of the 1996 Act amended section 104(a)(2) to provide expressly that punitive damages do not qualify for the income exclusion. The amendment was a response to divergent court opinions, some holding that punitive damages are received "on account of" a personal injury. See H.R. Conf. Rept. 104-737 (1996) at 301. The amendment is consistent with *O'Gilvie v. United States*, 519 U.S. 79 (1996), holding that punitive damages are not compensation for personal injuries and do not satisfy the "on account of" test under section 104(a)(2).

Section 1605(a) also amended section 104(a)(2) to provide that the income exclusion generally is limited to amounts received on account of personal "physical" injuries or "physical" sickness. Section 1605(b) of the 1996 Act further amended section 104(a) to provide that, for purposes of section 104(a)(2), even though emotional distress is not considered a physical injury or a physical sickness, damages not in excess of the amount paid for "medical care" (described in section 213(d)(1)(A) or (B)) for emotional distress are excluded from income.

The proposed regulations reflect these statutory amendments. The proposed regulations also provide that a taxpayer may exclude damages received for emotional distress "attributable" to a physical injury or physical sickness. See H.R. Conf. Rept. 104-737 (1996) at 301.