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Manager, Air Traffic Division, Great Lakes Region.

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 4

RIN 2900-AK86

#### Schedule for Rating Disabilities: Evaluation of Tinnitus

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities to state more explicitly the method of evaluation of tinnitus under diagnostic code 6260 in the portion of the rating schedule that addresses evaluation of disabilities of the ear. The intended effect of this action is to codify current standard VA practice by stating that recurrent tinnitus will be assigned only a single 10-percent evaluation, whether it is perceived in one ear, both ears, or somewhere in the head.

**DATES:** Comments must be received by VA on or before November 18, 2002.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are submitted in response to "RIN 2900-AK86." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (the rating schedule) to state more explicitly the method of evaluation of recurrent tinnitus, diagnostic code 6260, in § 4.87, the portion of the rating schedule that

addresses evaluation of disabilities of the ear. The current rating schedule directs that recurrent tinnitus be evaluated at 10 percent. A note under diagnostic code 6260 indicates that a separate evaluation for tinnitus may be combined with an evaluation under other diagnostic codes for hearing impairment or certain diseases of the ear, except when tinnitus supports an evaluation under one of those diagnostic codes. Recently, VA has received claims for two separate evaluations for tinnitus in the same individual, one for each side, when recurrent tinnitus is perceived bilaterally. To avoid any possible misunderstanding, VA is proposing to amend the rating schedule to definitively state that recurrent tinnitus is assigned only one evaluation whether it is perceived in one ear, both ears, or an indeterminate site in the head. This amendment involves no substantive change and is consistent with current practice.

"The Merck Manual" (665, 17th ed. 1999) states that tinnitus is the perception of sound in the absence of an acoustic stimulus, and the American Tinnitus Association defines tinnitus as the perception of sound when no external sound is present ([http://www.ata.org/about\\_tinnitus/](http://www.ata.org/about_tinnitus/)). "Tinnitus: Facts, Theories, and Treatments (1982)," published by the National Academy Press, states that tinnitus is the conscious experience of a sound that originates in the head of its owner (<http://books.nap/books/0309033284/html>).

Tinnitus is classified either as subjective tinnitus (over 95% of cases) or objective tinnitus. In subjective or "true" tinnitus, the sound is audible only to the patient. In the much rarer objective tinnitus (sometimes called extrinsic tinnitus or "pseudo-tinnitus"), the sound is audible to other people, either simply by listening or with a stethoscope. Objective tinnitus commonly has a definite cause that generates the sound, such as vascular or muscular disorders. Objective tinnitus may also be due to such nonpathologic causes as noise from the temporomandibular joints, openings of the eustachian tubes, or repetitive muscle contractions.

True (subjective) tinnitus does not originate in the inner ear, although damage to the inner ear may be a precursor of subjective tinnitus. It is theorized that in true tinnitus the brain creates phantom sensations to replace missing inputs from the damaged inner ear, similar to the brain's creation of phantom pain in amputated limbs (Diseases of the Ear, H. Ludman, and T. Wright, 6th ed., chapter 11; Phantom

auditory perception (tinnitus): mechanisms of generation and perception, Neuroscience Research 8:221-2, P. Jasterboff, 1990; and Mechanisms of Tinnitus. Allyn and Bacon, 1995, J. Vernon and A. Moller (Eds)). The Oregon Tinnitus Data Archive found in a study of 1630 individuals with tinnitus that 63% reported tinnitus in both ears and 11% reported it as filling the head (<http://www.ohsu.edu/ohrc-otda/95-01/data/08.html>). Therefore, in the great majority of cases, tinnitus is reported as either bilateral or undefined as to side.

True tinnitus, *i.e.*, the perception of sound in the absence of an external stimulus, appears to arise from the brain rather than the ears. We, therefore, propose to state more explicitly that recurrent tinnitus is assigned only one evaluation whether it is perceived in one ear, both ears, or an indeterminate site in the head.

To assure that tinnitus is consistently and correctly evaluated, we propose to add a second note under diagnostic code 6260 directing that only a single evaluation be assigned for recurrent tinnitus, whether the sound is perceived in one ear, both ears, or in the head. We also propose to add a third note concerning the evaluation of objective tinnitus that would direct raters not to evaluate objective tinnitus (in which the sound is audible to other people and has a definable cause that may or may not be pathologic) under this diagnostic code, but to evaluate it as part of any underlying condition causing it.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

**Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

**List of Subjects in 38 CFR Part 4**

Disability benefits, Pensions, Veterans.

Approved: June 14, 2002.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

**PART 4—SCHEDULE FOR RATING DISABILITIES**

1. The authority citation for part 4 continues to read as follows:

**Authority:** 38 U.S.C. 1155, unless otherwise noted.

**Subpart B—Disability Ratings**

2. In § 4.87, diagnostic code 6260 is revised to read as follows:

**§ 4.87 Schedule of ratings—ear.**

DISEASES OF THE EAR

	Rating
* * * * *	
6260 Tinnitus, recurrent .....	10

**Note (1):** A separate evaluation for tinnitus may be combined with an evaluation under diagnostic codes 6100, 6200, 6204, or other diagnostic code, except when tinnitus supports an evaluation under one of those diagnostic codes.

**Note (2):** Assign only a single evaluation for recurrent tinnitus, whether the sound is perceived in one ear, both ears, or in the head.

**Note (3):** Do not evaluate objective tinnitus (in which the sound is audible to other people and has a definable cause that may or may not be pathologic) under this diagnostic code, but evaluate it as part of any underlying condition causing it.

**Authority:** 38 U.S.C. 1155

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[SIP No. UT-001-0043b, UT-001-0044b; FRL-7376-6]**

**Approval and Promulgation of Air Quality Implementation Plans; Utah; New Source Performance Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On January 8, 1999 and December 10, 1999, the Governor of Utah submitted revisions to the New Source Performance Standards (NSPS) rules in Utah's Air Conservation Regulations. We are proposing to approve updates to the NSPS "Delegation Status of New Source Performance Standards" table to indicate the State has been delegated the authority to implement and enforce NSPS and to add entries for newly delegated NSPS. Also, given that the State has been delegated the authority for implementation and enforcement of the NSPS, we are proposing to remove the NSPS rules from the Utah SIP. These actions are being taken under sections 110 and 111 of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Comments must be received in writing on or before October 21, 2002.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA, Region 8, (303) 312-6144.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 27, 2002.

**Jack W. McGraw,**  
*Acting Regional Administrator, Region 8.*  
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**BILLING CODE** 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL-7379-2]**

**Approval of Section 112(I) Authority for Hazardous Air Pollutants; Delegation of Section 111 and Section 112 Standards; State of New Hampshire**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve New Hampshire Department of Environmental Services' (NH DES) request for delegation of authority to implement and enforce its New Source Performance Standards (NSPSs) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) that have been adopted by reference into New Hampshire's state regulations from the Federal requirements set forth in the Code of Federal Regulations. In addition, EPA proposes to approve NH DES's mechanism for receiving delegation of future NESHAPs and NSPSs. Approval of this action would delegate existing standards for both major and area sources and would automatically delegate future