

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71****[Airspace Docket No. 02-AGL-13]****Proposed Modification of Class E Airspace; Dayton, OH****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class E airspace at Dayton, OH. Standard Instrument Approach Procedures (SIAPS) have been developed for James M Cox Dayton International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for James M Cox Dayton International Airport.

**DATES:** Comments must be received on or before October 30, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL-7, Rules Docket No. 02-AGL-13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**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 the

airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02-AGL-13." 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 Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Dayton, OH, for James M Cox Dayton International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 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.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AGL MI E5 Dayton, OH [Revised]**

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 39°59'00" N., long. 83°40'00" W., to lat. 39°55'00" N., long. 83°37'00" W., to lat. 39°45'00" N., long. 83°43'00" W., to lat. 39°39'00" N., long. 84°07'00" W., to lat. 39°45'00" N., long. 84°24'00" W., to lat. 39°49'00" N., long. 84°27'00" W., to lat. 40°04'06" N., long. 84°17'45" W., to the point of beginning.

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Issued in Des Plaines, Illinois on August 22, 2002.

**Nancy B. Shelton,**

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02-23829 Filed 9-18-02; 8:45 am]

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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.