attorney executed pursuant to paragraph (a) of this section may decline to accept appointment as a claimant's representative by so notifying the claimant and the agency of original jurisdiction in writing prior to taking any action on the claimant's behalf before the Department of Veterans Affairs after execution of the power of attorney by the claimant.

Note to § 14.631(d): Written notification to VA may be submitted via hand delivery, mail, electronic mail, or facsimile.

(e) Questions concerning the validity or effect of powers of attorney shall be referred to the Regional Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(f)(1) Only one organization, representative, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in § 14.629(c) and paragraph (f)(2) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, representative, agent, or attorney of record until notice of a change, if any, is received by the appropriate office of the Department of Veterans Affairs.

* * * * *

(g)(1) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney.

(2) If an attorney submits a letter concerning representation under paragraph (b) of this section regarding a particular claim, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

8. Section 14.632 is revised to read as follows:

§ 14.632 Determination of qualifications.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including any recommendation of the Department of Veterans Affairs facility director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, notification of accreditation will be issued by the General Counsel or the General Counsel's designee and will constitute authority to prepare, present, and prosecute claims in all Department of Veterans Affairs installations.

(Authority: 38 U.S.C. 501(a), 5902, 5904)

§ 14.634 [Amended]

9. Section 14.634 is amended by removing the Cross References paragraph at the end of the section.

10. Section § 14.635 is amended by:

A. Revising the introductory text.

B. Revising paragraph (b), and the authority citation at the end of the section.

C. Removing the Cross References paragraph at the end of the section.

The revisions read as follows:

§ 14.635 Office space and facilities.

The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

* * * * *

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Department of Veterans Affairs, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such space or reassign such space to another organization. In the case of a facility under the control of the Veterans Benefits Administration or the Veterans Health Administration, the final decision on such matters will be made by the Under Secretary for Benefits or the Under Secretary for Health, respectively.

(Authority: 38 U.S.C. 501(a), 5902)

[FR Doc. 03–4203 Filed 2–21–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 60

RIN 2900–AL13

Fisher Houses and Other Temporary Lodging

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or Compensation and Pension (C&P) examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. This is necessary to implement provisions of the Veterans Benefits and Health Care Improvement Act of 2000.

DATES: *Effective Date:* March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Jill E. Manske, Social Work Services (110B), Veterans Health Administration, 202–273–8549 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document sets forth requirements regarding the use of temporary lodging by veterans receiving VA medical care or C&P examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. VA is mandated to establish a program for providing such temporary lodging under section 221(a) of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106–419). These statutory provisions regarding temporary lodging have been codified at 38 U.S.C. 1708 and are administered by the Veterans Health Administration (VHA) of VA.

In a document published in the **Federal Register** on April 30, 2002 (67 FR 21191), VA proposed to provide for temporary lodging at Fisher Houses, VA health care facilities (generally referred to as ''hoptels''), and at temporary non-VA lodging facilities, such as hotels or motels, provided by a VA health care facility. These are the facilities that may be used for temporary lodging under 38 U.S.C. 1708.

The public comment period ended on July 1, 2002. We received one comment asking VA to change the text in paragraph 60.2 (1) to add the words ''or Fisher House Foundation'' after ''Zachary and Elizabeth M. Fisher Armed Services Foundation.'' We agree. This change will accurately reflect the name of this organization.

Based on the rationale set forth in the proposed rule and this document, we

are adopting the provisions of the proposed rule as a final rule with the change mentioned above.

Under 38 U.S.C. 1708(c), a Fisher House is a housing facility that is located at or near a VA health care facility, that is available for residential use on a temporary basis by eligible persons, and that was constructed by and donated to VA by the Zachary and Elizabeth M. Fisher Armed Services Foundation or Fisher House Foundation.

Consistent with the limits of statutory authority in 38 U.S.C. 1708(b) and subject to the conditions discussed in this document, this final rule provides that the following are eligible to stay in temporary lodging:

(a) A veteran with an appointment at a VA health care facility for the purpose of receiving health care or a C&P examination; and

(b) A member of the family of such veteran or another person who accompanies such veteran to provide the equivalent of familial support.

This final rule provides that to obtain temporary lodging, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. Under the final rule, the veteran must provide the following information:

(a) Veteran's name;

(b) Beginning date and time and duration of scheduled care;

(c) Type of scheduled care;

(d) Name, gender, and relationship to the veteran of person accompanying veteran;

(e) Requested dates for temporary lodging;

(f) Distance, time, and means of travel from the veteran's home to VA health care facility;

(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and

(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care. This will allow for ease of application and provide VA with information necessary to determine whether the veteran is eligible for temporary lodging.

This final rule provides that, as a condition for receiving temporary lodging, a veteran must be required to travel either 50 or more miles, or at least two hours from their home to the VA health care facility, except that the facility Director at the VA health care facility of jurisdiction may make an exception to distance or time provisions based on exceptional circumstances, such as condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran. We believe this a reasonable interpretation of the requirement at 38 U.S.C. 1708(b)(1) which provides that a veteran must travel a ''significant distance'' for the veteran and other person to be eligible for temporary housing.

The final rule also provides that, as a condition for receiving temporary lodging, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. This is necessary because VA does not provide nursing or other medical care for temporary lodging beds.

This final rule establishes criteria for determining when temporary lodging will be made available. Consistent with VHA's health care mission, the rule provides that temporary lodging may be furnished in connection with care or C&P examinations provided at a VA health care facility. The rule provides that if the veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care. The rule also provides that temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8 a.m., would be unable to arrive at the health care facility by the time of the scheduled care. Further, the rule provides that temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7 p.m. These provisions are designed to allow temporary lodging during the times it would be reasonably needed.

Fisher Houses are available solely for temporary lodging. The final rule provides that non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. The rule also provides that temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility. In addition, temporary lodging will be provided on a first-come first-serve basis. We believe that these provisions constitute an appropriate use of VA facilities and establish a reasonable method for determining priority.

Except for certain medically-related decisions that are left to health care personnel, the final rule provides that decisions concerning temporary lodging are to be made by the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. We believe these are appropriate delegations of authority.

VA has authority under 38 U.S.C. 1708 to establish charges for temporary lodging. We believe that if we were to charge, we would need to establish exemptions for those who lack the means to pay for lodging accommodations. Further, based on our experience, we believe that the vast majority of veterans who seek temporary lodging fall into this category. Moreover, we believe that administrative costs for determining need and the additional billing costs would exceed amounts we could reasonably expect to collect based on any reasonable charge amount. Accordingly, the final rule provides that costs for temporary lodging shall be borne by VA.

Paperwork Reduction Act

This document contains provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) approved by the Office of Management and Budget under control number 2900–0630.

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.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the final rule will not have an effect on small entities other than possibly the lodging industry. However, any effect would be minuscule. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial

and final regulatory flexibility analysis requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: November 27, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR chapter I is amended by adding a new part 60 to read as follows:

PART 60—FISHER HOUSES AND OTHER TEMPORARY LODGING

Sec.

Authority: 38 U.S.C. 501, 1708.

§ 60.1 Purpose.

This part sets forth requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or C&P examinations and a family member or other person accompanying the veteran to provide the equivalent of familial support.

(Authority: 38 U.S.C. 501, 1708)

§ 60.2 Definitions.

For the purposes of this part:

C&P examination means an examination requested by VA's Compensation and Pension Service to be conducted at a VA health care facility for the purpose of evaluating claims by veterans.

Temporary lodging means:

(1) Lodging at a Fisher House which is a housing facility that is located at or near a VA health care facility, that is available for residential use on a temporary basis by eligible persons, and that was constructed by and donated to VA by the Zachary and Elizabeth M. Fisher Armed Services Foundation or Fisher House Foundation; or

(2) Lodging at a temporary lodging facility located at a VA health care facility (generally referred to as a ''hoptel''), or a temporary non-VA lodging facility, such as a hotel or motel, provided by a VA health care facility.

VA means the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 1708)

§ 60.3 Eligible persons.

The following are eligible to stay in temporary lodging subject to the conditions of this part:

(a) A veteran with an appointment at a VA health care facility for the purpose of receiving health care or a C&P examination; and

(b) A member of the family of such veteran or another person who accompanies such veteran to provide the equivalent of familial support.

(Authority: 38 U.S.C. 501, 1708)

§ 60.4 Application.

To obtain temporary lodging under this part, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. The veteran shall provide the following information:

(a) Veteran's name;

(b) Beginning date and time and duration of scheduled care;

(c) Type of scheduled care;

(d) Name, gender, and relationship to the veteran of person accompanying veteran;

(e) Requested dates for temporary lodging;

(f) Distance, time, and means of travel from the veteran's home to VA health care facility;

(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and

(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care.

(Authority: 38 U.S.C. 501, 1708)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0630.)

§ 60.5 Travel.

As a condition for receiving temporary lodging under this part, a veteran must be required to travel either 50 or more miles, or at least two hours from his or her home to the VA health care facility, except that the facility Director at the VA health care facility of jurisdiction may make an exception to distance or time provisions based on exceptional circumstances, such as condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran.

(Authority: 38 U.S.C. 501, 1708)

§ 60.6 Condition of veteran.

As a condition for receiving temporary lodging under this part, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. Questions regarding these issues will be resolved by an appropriate health care provider at the VA health care facility of jurisdiction.

(Authority: 38 U.S.C. 501, 1708)

§ 60.7 Duration of temporary lodging.

Temporary lodging may be furnished to eligible persons in connection with care or C&P examinations provided at a VA health care facility. When a veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section. Temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8 a.m., would be unable to arrive at the health care facility by the time of the scheduled care. Temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7 p.m.

(Authority: 38 U.S.C. 501, 1708)

§ 60.8 Lodging availability.

Fisher Houses are available solely for temporary lodging under this part. Non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. Temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility of jurisdiction. Temporary lodging will be provided on a first-come first-serve basis.

(Authority: 38 U.S.C. 501, 1708)

§ 60.9 Decisionmaker.

Except as otherwise provided in this part, the person responsible for

coordinating the temporary lodging program at the VA health care facility of jurisdiction is responsible for making decisions under this part.

(Authority: 38 U.S.C. 501, 1708)

§ 60.10 Costs.

Costs for temporary lodging under this part shall be borne by VA.

(Authority: 38 U.S.C. 501, 1708)

[FR Doc. 03–4204 Filed 2–21–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI80–01–7289a, FRL–7442–9]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Excess Emissions During Startup, Shutdown or Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving several rule revisions for incorporation into Michigan's State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions to EPA on September 23, 2002. They include rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions.

DATES: This rule is effective on April 25, 2003, unless EPA receives adverse written comments by March 26, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Did Michigan Submit?

On September 23, 2002, the MDEQ submitted a revision to its SIP containing rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions. MDEQ submitted the following rules:

R 336.1102 Definitions; B
R 336.1104 Definitions; D
R 336.1105 Definitions; E
R 336.1107 Definitions; G
R 336.1108 Definitions; H
R 336.1113 Definitions; M
R 336.1118 Definitions; R
R 336.1120 Definitions; T
R 336.1915 Enforcement discretion in instances of excess emissions resulting from malfunction, start-up or shutdown.
R 336.1916 Affirmative defense for excess emissions during start-up or shutdown.

II. What Action Is EPA Taking?

EPA is approving all of these rules for incorporation into Michigan's SIP.

III. What Criteria Is EPA Using in Reviewing the State's Submission?

In determining the approvability of a rule for incorporation into a state SIP, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (Act), EPA regulations and the EPA's interpretation of these requirements as expressed in EPA policy documents. The EPA's policy on excess emissions occurring during startup, shutdown or malfunction is set forth in the following documents: a memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions;'' EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown;'' and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977).

The policy documents referenced above note that, because excess emissions might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation. Nevertheless, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. With respect to startup and shutdown of process equipment, EPA also recognizes that this is part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will, in most cases, eliminate violations of emission limitations during such periods. However, EPA acknowledges that for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided.

One way of addressing these situations is through an ''enforcement discretion'' approach. In this type of approach, a state or EPA can refrain from taking an enforcement action if appropriate criteria are met. A second way of addressing excess emissions occurring during startup and shutdown periods is through an ''affirmative defense'' approach. Under this approach, a SIP provision would, in the context of an enforcement action for excess emissions, excuse a source from penalties if the source can demonstrate that it meets certain objective criteria (an ''affirmative defense''). See EPA's September 20, 1999 policy memorandum. Michigan's rules contain both enforcement discretion and affirmative defense provisions.