

(C.) COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

Number	Date	Event	Sponsor	Location
24	May 13, 2012	Ocean City Maryland Off-shore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25'42" N, longitude 075°03'06" W; thence east southeast to latitude 38°25'30" N, longitude 075°02'12" W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19'12" N, longitude 075°03'48" W; thence west northwest to the shoreline at latitude 38°19'30" N, longitude 075°05'00" W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22'25.2" N, longitude 075°03'49.4" W, thence easterly to latitude 38°22'00.4" N, longitude 075°02'34.8" W, thence southwesterly to latitude 38°19'35.9" N, longitude 075°03'35.4" W, thence westerly to a position near the shoreline at latitude 38°20'05" N, longitude 075°04'48.4" W, thence northerly along the shoreline to the point of origin.

\* \* \* \* \*  
 Dated: February 17, 2012.

**Mark S. Ogle,**  
*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*  
 [FR Doc. 2012-6380 Filed 3-15-12; 8:45 am]  
**BILLING CODE 9110-04-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 60**

**RIN 2900-AN79**

**Fisher House and Other Temporary Lodging**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations concerning Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA medical facility. We intend that the proposed rule would update current regulations to better describe the application process for this assistance and clarify the distinctions between Fisher House and other temporary lodging provided by VA. The proposed rule generally reflects current VA policy and practice, and conforms to industry standards and expectations.

**DATES:** Comments must be received by VA on or before May 15, 2012.

**ADDRESSES:** Written comments may be submitted through <http://www.regulations.gov>; by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to

(202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AN79, Fisher House and Other Temporary Lodging”. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Deborah Amdur, Chief Consultant, Care Management and Social Work Service (11SW), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-6780. (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** Under the provisions of 38 U.S.C. 1708, VA “may furnish [certain] persons \* \* \* with temporary lodging in a Fisher [H]ouse or other appropriate facility in connection with the examination, treatment, or care of a veteran under [chapter 17].” This authority to provide temporary lodging assists VA in providing appropriate treatment and care to veterans. Individuals receiving such treatment or care often respond better when they are accompanied by relatives, close friends, or caregivers. Thus, the provision of temporary lodging can be an important element of the veteran’s treatment. VA implemented its authority under section 1708 in current 38 CFR part 60. However, we have determined that the current rules can be improved to better distinguish between Fisher House and other types of temporary lodging, and to describe the application process in

greater detail. This proposed rule would provide such clarification, adding details where necessary.

**Section 60.1 Purpose and scope.**

Proposed § 60.1 would state that part 60 applies to the use of Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA health care facility.

**Section 60.2 Definitions.**

Proposed § 60.2 would set forth definitions applicable to part 60. For the purpose of receiving temporary lodging from VA, current regulations use the terms “eligible persons,” “a member of the family,” people who “provide the equivalent of family support,” and “caregivers,” to refer to individuals permitted to accompany veterans during their episode of care. However, VA Form 10-0408A, the application form for Fisher House or other temporary lodging, uses the term “accompanying individual” to refer to such persons. For consistency of terms and to eliminate any ambiguity as to whether applicants must be related to the veteran, we propose to uniformly use the term “accompanying individual.” We propose to define the term to mean “an individual seeking Fisher House or other temporary lodging, who provides familial support or the equivalent of familial support, to a veteran while the veteran is experiencing an episode of care.” The regulation would specifically explain that the term is “defined broadly to include relatives, close friends, and caregivers.” This proposed definition would therefore provide for a broader class of individuals permitted to accompany veterans during an episode of care.

Current § 60.2 defines the term “C&P examination.” C&P is the acronym

commonly used to refer to VA's compensation and pension programs. We propose to use the term "compensation and pension examinations" instead of using the acronym. However, the proposed definition for "compensation and pension" examinations would be substantively identical to the definition in current § 60.2.

We also propose to utilize the term "episode of care" in lieu of "VA medical or compensation and pension examinations." We propose to define an "episode of care" as "a course of outpatient treatment, or a period of hospitalization, during which a veteran receives health care under 38 U.S.C. chapter 17, or 38 U.S.C. 8111 or 8153." Although this would be a new term in part 60, it is well recognized in the medical community and it is generally accepted, used, and understood by the medical community and by managers working in the Fisher House and other temporary lodging programs. Further, using the term "episode of care" in our regulations would be clearer than repeatedly attempting to describe the types of care for which VA may provide lodging assistance, which is how this concept is set forth in the current regulations.

For purposes of further clarification regarding the definition of "episode of care," we propose to provide a non-exclusive list of examples of episodes of care. The first would be "[a]n appointment at a VA health care facility to receive health care or a compensation and pension examination." This is consistent with our current regulations. See 38 CFR 60.1 (explaining that part 60 "sets forth requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving \* \* \* [compensation and pension] examinations \* \* \*"); see also 38 CFR 60.3(a) (explaining that veterans with an appointment at a VA health care facility for the purpose of receiving health care or a compensation and pension examination are eligible to stay in temporary lodging).

The second example would be as follows: "Extended outpatient treatment, such as treatment associated with organ transplant, chemotherapy, or radiation." The use of Fisher House or other temporary lodging for such treatment is addressed in current § 60.7. These examples represent the most common episodes of care associated with applications for lodging, and the examples are consistent with current § 60.3.

The third example concerns hospitalizations for a critical injury or where death is imminent. In such cases,

it can be helpful to the veteran to have friends or family present. The example would also include hospitalization "where a veteran is unable to make medical decisions for him/herself and the accompanying individual is authorized to make such decisions on the veteran's behalf." In such cases, VA would consider an application for lodging by an accompanying individual who is authorized to make decisions for the veteran. We note that in most cases, such hospitalizations would also be considered hospitalizations for critical injury or illness. The purpose of this last example is to clarify that lodging may be provided for compassionate reasons, as well as logistically, medically, or legally necessary reasons.

We also propose to define "Fisher House" as "a housing facility that is located at or near a VA health care facility and was constructed by and donated to VA by the Fisher House Foundation (formerly the Zachary and Elizabeth M. Fisher Armed Services Foundation)." This definition would be consistent with the definition of the term in current 38 CFR 60.2. However, we would add that the term includes "a facility that is treated as if it were Fisher House lodging under § 60.3." We discuss this proposed addition below under proposed § 60.3.

The definition of "other temporary lodging" would be slightly more detailed than the definition in current § 60.2, but it would not be substantively different. The definition conforms to current usage and practice.

"VA" would be defined as "the Department of Veterans Affairs."

### **Section 60.3 Other donated temporary lodging.**

Proposed § 60.3 would establish that "[w]henver VA receives, from a source other than the Fisher House Foundation, an undesignated donation of lodging to be used on a temporary basis, the lodging will be designated as if it were Fisher House lodging or be treated as other temporary lodging based upon the types of lodging available in the area." Under 38 U.S.C. 8103(a)(2), the Secretary of Veterans Affairs (Secretary) may accept donations of "any facility \* \* \* that the Secretary considers necessary for use as a medical facility." See also 38 U.S.C. 8104(e) (authorizing VA to accept donations of medical facilities). 38 U.S.C. 8101(3) defines a "medical facility" as a facility used for the provision of health-care services and including any necessary associated buildings. We interpret this definition of "medical facility" as including lodging to be used on a temporary basis in connection with VA health care since

the provision of temporary lodging can be an important element of a veteran's treatment.

Under proposed § 60.3, if the Secretary accepts a gift that specifies the terms of lodging to be provided, then the lodging would be used in the manner specified by the grantor of the gift. However, if no terms are specified, the Secretary would designate, based on consideration of the types of lodging available in the area, whether the gift would be treated as "other temporary lodging" or as if it were donated by the Fisher House Foundation. This is consistent with current VA practice.

### **Section 60.10 Eligibility criteria for Fisher House or other temporary lodging.**

Proposed § 60.10 would set forth the eligibility criteria for lodging under part 60. It would include provisions from several current regulations. However, we propose to reorganize the information for clarity.

Proposed paragraph (a) would establish the general rule that "[w]hile a veteran is undergoing an episode of care, VA may provide either Fisher House or other temporary lodging, as appropriate, if the application meets the requirements of this part 60. These are the only types of lodging provided by VA under this part." Proposed paragraph (a) is consistent with current § 60.3. We would also add a new note to paragraph (a), which would clarify that "[l]odging provided for under this part will not be used by a person participating in a VA residential treatment program, or as a substitute for participation in such a program." This note would help ensure that temporary lodging is properly used for its intended purposes, and not as an alternative to proper residential care.

There are currently active duty servicemembers who receive care at VA facilities under the authority of 38 U.S.C. 8111. Under these circumstances we provide lodging in the same manner that lodging is provided for veterans and their accompanying individuals. Servicemembers would be subject to the same rules as veterans and they would be required to meet the same eligibility requirements concerning episodes of care.

Proposed paragraph (b) would set forth the general requirements for Fisher House and other temporary lodging. Further, proposed paragraph (b) would clarify the major distinction between Fisher House lodging and other temporary lodging. We have determined that current regulations lack sufficient clarity regarding these two different types of lodging. The primary

distinction is that Fisher House lodging is generally limited to accompanying individuals. It is not available for unaccompanied veterans.

Also, we propose to add a note to paragraph (b) to clarify that “VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.” This is consistent with VA’s current general practice, which is to allocate lodging on a space-available basis.

Concerning the differences between Fisher House lodging and other temporary lodging provided by VA, proposed paragraph (b)(1) would clarify that Fisher House lodging is not used to lodge unaccompanied veterans or individuals in need of transitional or permanent housing. This distinction is essential to preserve the intent of the Fisher House Foundation, which is to provide support for families while a veteran experiences an episode of care. Because the purpose of Fisher House lodging is to provide a retreat for accompanying individuals from the medical care environment, Fisher House lodging is available only to accompanying individuals and, in limited circumstances of immediate need and no alternative temporary lodging, to veterans with accompanying individuals.

Proposed paragraph (b)(2) would discuss other temporary lodging. We would clarify in this paragraph that for an accompanying individual to stay in other temporary lodging, the veteran must also be staying in temporary lodging. We would further specify in a note to this paragraph that VA may, due to space restrictions, impose a limit on the number of accompanying individuals.

Proposed paragraph (c) would restate the requirement in current § 60.4(h) that the veteran be medically stable and capable of self-care or be accompanied by an individual who is able to provide all necessary care. The proposed rule would clearly state that this requirement applies to both Fisher House lodging and other temporary lodging. The current rule is ambiguous in this regard. The capacity for self-care is required because neither Fisher House lodging nor other temporary lodging is intended to be substitutes for, or supplements to, medical care.

Proposed § 60.10(d) would restate the existing travel time/distance requirement in current § 60.5, but would clarify that the distance requirement applies to both Fisher House and other temporary lodging. The current rule is

ambiguous in this regard. Proposed paragraph (d) would permit the travel time/distance requirement to be applicable to “the applicant,” allowing this requirement to be considered for an accompanying individual as well as for a veteran. This is current VA practice when considering Fisher House applications from non-veterans accompanying veterans. It would also clarify that VA may waive the time/distance requirement under exceptional circumstances that apply to either the accompanying individual or the veteran.

In proposed paragraph (e) we would prescribe special consideration for organ donors and their accompanying individuals. Specifically, regarding individuals who wish to donate an organ to a veteran, we would explain that “VA may provide Fisher House or other temporary lodging for individuals who must be present on site for evaluation, donation, and care related to their status as an organ donor for a veteran. VA may also provide Fisher House or other temporary lodging for the donor’s accompanying individuals at all phases of the transplant process.” This provision is based on clinical need pursuant to 38 U.S.C. 1710(a) regarding eligibility for hospital care and medical services and not on our temporary lodging authority under section 1708. Outcomes of transplantation are linked directly to the presence and competence of accompanying individuals who support the organ donor at all phases of the transplant process. In addition, this paragraph would recognize VA’s obligations to living donors who give veterans the gift of life.

#### **Section 60.15 Application process.**

Proposed § 60.15 would prescribe the application process for Fisher House or other temporary lodging. Under current § 60.4, applications for lodging may be submitted by mail, telephone, facsimile, in person, or electronically. We intend to continue to provide for the same means of submissions. Proposed § 60.15(a) would simply restate a portion of current § 60.4. Under proposed § 60.15(a), we would refer to VA Form 10–0408A as the application and provide information about where to obtain the form. We would also specify where to submit the completed form. This additional information is intended to assist applicants. We do not intend any changes in the current application process.

In proposed paragraph (b), which is based upon current § 60.8 and 60.9, we would describe how VA processes applications and makes decisions to grant temporary lodging. However, we

propose to add detail for purposes of clarification.

Paragraph (b)(1) would state that applications “are generally processed in the order that they are received by VA, and temporary lodging is then granted on a first-come, first-served basis; however, in extraordinary circumstances, such as imminent death, critical injury, or organ donation applications may be processed out of order.” The general rule that applications would be processed in the order received would be based upon the last sentence of current § 60.8, which prescribes, “[t]emporary lodging will be provided on a first-come, first-served basis.” However, the proposed exceptions for circumstances involving imminent death, critical injury, or organ donation are new and we propose the exceptions because in these circumstances, we believe that family members and loved ones should be given every opportunity to be with the veteran and, likewise, that the veteran should be accompanied by such people.

Proposed paragraph (b)(2) would state that “[t]emporary lodging is granted on a space-available basis, with some consideration given to the compatibility of the applicant(s) and the room(s) available.” This general rule would be based upon current § 60.8. The proposed paragraph would provide, by way of example, that “although VA may require an applicant to share a room with another veteran’s accompanying individual, VA would not do so if the persons affected are not the same gender.”

Proposed paragraph (b)(3) would essentially restate the second sentence of current § 60.8. It is important that grants of temporary lodging at a VA health care facility, usually in non-utilized beds, be subject to the approval of the Director of the health care facility in order to avoid any negative impact on patient care. For example, a non-utilized bed that might not be provided to an accompanying individual could include a bed located in an intensive care unit or in an area of the hospital from which visitors are limited or barred. In addition, the proposed rule would add that “[n]on-utilized beds provided to accompanying individuals must be reassigned to VA patients when necessary.” If a patient needs to use a bed that was previously non-utilized and was provided to an accompanying individual, the patient would take priority over the accompanying individual and the bed would no longer be considered “non-utilized.” In such cases, VA would make every effort to relocate the accompanying individual into other temporary lodging.

Proposed paragraph (b)(4) would restate the funding limitation prescribed in current § 60.8, without substantive change.

Proposed paragraph (b)(5) would state that “[s]ubject to all criteria provided in this part, the person responsible for coordinating the Fisher House and other temporary lodging program(s) at the VA health care facility of jurisdiction is responsible for making decisions to grant temporary lodging. These decisions are considered to be final VA decisions concerning individual medical treatment plans and the scheduling and use of VA lodging facilities, and they are not appealable to the Board of Veterans’ Appeals.” This general rule would be based upon current § 60.9, and would reflect current VA policy and practice. The Fisher House program is a unique private-public partnership between The Fisher House Foundation, Inc., and the Secretary of Veterans Affairs to provide temporary lodging for individuals who accompany a veteran during the veteran’s hospitalization for an illness, disease, or injury. Fisher Houses are given to the U.S. Government as gifts, and VA subsequently is responsible for the operation and maintenance of Fisher Houses. Lodging in Fisher Houses and other facilities is not a VA benefit, but rather a temporary resource made available to veterans on a first-come first-serve basis, when necessary criteria under the rule are met. Section 1708 gives VA discretion to provide such lodging when appropriate and available, but does not establish a right to such lodging as a VA “benefit.” VA does not guarantee accommodations in VA Fisher Houses or in other temporary lodging facilities, and completion of the application process as described in the rule does not ensure temporary lodging would be provided. VA’s determinations in providing such lodging are based in part on medical judgment regarding the course of a veteran’s treatment and in part on administrative scheduling matters concerning the availability of space. These types of determinations generally are not subject to appellate review, nor could such review ordinarily be accompanied within the timeframes relevant to administering temporary lodging. Therefore, we do not interpret section 1708 as creating any benefit entitlement within the jurisdiction of the Board of Veterans’ Appeals. Rather, lodging decisions made under this proposed rule would be final VA decisions.

Proposed paragraphs (b)(6) and (7) would reflect current practice not prescribed in current regulations. These

paragraphs would explain that when VA cannot grant an application for one type of lodging, we would consider whether the applicant could qualify for the other type of lodging, regardless of any selection on the application. If the application cannot be granted for either type of lodging, we would send the application to a VA social worker to see if other arrangements can be made to assist the applicant.

Proposed paragraph (c) would restate current § 60.10, without substantive revision.

As indicated throughout this preamble, VA Form 10–0408A has been designated as the application form for Fisher House and Other Temporary Lodging. Current regulations do not refer specifically to VA Form 10–0408A. However, the form was approved by the Office of Management and Budget (OMB). Therefore, we intend to note in a parenthetical at the end of proposed § 60.15 that OMB has approved the collection of information under control number 2900–0630.

#### **Section 60.20 Duration of Fisher House or other temporary lodging.**

Proposed § 60.20 would be the final section in part 60 and it would concern the duration of lodging provided by VA under part 60. Substantively, proposed paragraphs (a) and (b) would be similar to current § 60.7, except that the proposed rule would use the term “episode of care” rather than describe specific types of medical treatment.

Proposed § 60.20(c) would permit an extension of a previous period of lodging. The duration of a period of lodging would be specific to each situation set forth on the application and, therefore, would generally be defined by the terms of the granted application. However, in certain cases we might need to provide exceptions, such as when a medical emergency occurs during a scheduled episode of care or when weather changes prevent departure from the lodging provided by VA.

Proposed paragraph (d) would authorize an indefinite period of lodging for individuals accompanying a veteran who is hospitalized for an indefinite period based on the treatment or rehabilitation needs of the veteran as determined by the veteran’s health care team and based on the availability of Fisher House lodging or of funding for other temporary lodging. Lodging in non-utilized VA hospital beds would not be authorized for an indefinite period due to the administrative and medical needs of VA medical facilities.

Proposed paragraphs (e) and (f) would be consistent with current § 60.7. These

paragraphs would restrict awards of temporary lodging to veterans who are unable to arrive for a scheduled appointment at the health care facility if they left their home after 8 a.m. or who would be unable to return home before 7 p.m. We believe that travel before 8 a.m. or after 7 p.m. may be more difficult or dangerous than travel during regular daylight hours.

#### **Effect of Rulemaking**

Title 38 of the Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent VA’s implementation of its exclusive legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary rules or procedures would be authorized. All existing and subsequent VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

#### **Paperwork Reduction Act**

Although this document contains provisions constituting collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection provisions for this section are approved by OMB and have been assigned OMB control number 2900–0630.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would 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. This proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities because the proposed rule would apply only to patients receiving care at VA facilities. Also, this proposed rule might have an insignificant impact on small entities involved in the lodging industry. However, any effect would be minuscule. Therefore, under 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of 5 U.S.C. 603 and 604.

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) classifies a “significant regulatory action,” requiring review by OMB, unless OMB waives such review as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019,

Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 8, 2012, for publication.

#### List of Subjects in 38 CFR Part 60

Health care, Health facilities, Health records, Reporting and recordkeeping requirements, Housing, Travel, Veterans.

Dated: March 13, 2012.

#### Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 60 as follows:

#### PART 60—FISHER HOUSES AND OTHER TEMPORARY LODGING

1. The authority citation for part 60 continues to read as follows:

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

2. Part 60 is revised to read as follows:

Sec.

- 60.1 Purpose and scope.
- 60.2 Definitions.
- 60.3 Other donated temporary lodging.
- 60.10 Eligibility criteria for Fisher House or other temporary lodging.
- 60.15 Application process.
- 60.20 Duration of Fisher House or other temporary lodging.

##### § 60.1 Purpose and scope.

This part applies to Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA health care facility.

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

##### § 60.2 Definitions.

For the purposes of this part: *Accompanying individual* means an individual seeking Fisher House or other temporary lodging, who provides familial support or the equivalent of familial support, to a veteran while the veteran is experiencing an episode of care. This term is defined broadly to include relatives, close friends, and caregivers.

*Compensation and pension examination* means an examination requested by VA’s Veterans Benefits Administration to be conducted at a VA health care facility for the purpose of evaluating a veteran’s claim.

*Episode of care* means a course of outpatient treatment, or a period of hospitalization, during which a veteran receives health care under 38 U.S.C. chapter 17, or 38 U.S.C. 8111 or 8153. Examples of episodes of care include (but are not limited to) the following:

(1) An appointment at a VA health care facility to receive health care or a compensation and pension examination.

(2) Extended outpatient treatment, such as treatment associated with organ transplant, chemotherapy, or radiation.

(3) Hospitalization for a critical injury or illness; where death is imminent; or where a veteran is unable to make medical decisions for him/herself and the accompanying individual is authorized to make such decisions on the veteran’s behalf.

*Fisher House* means a housing facility that is located at or near a VA health care facility and was constructed by and donated to VA by the Fisher House Foundation (formerly the Zachary and Elizabeth M. Fisher Armed Services Foundation), or a facility that is treated as if it were Fisher House lodging under § 60.3.

*Other temporary lodging* includes:

(1) Lodging at a temporary lodging facility, other than a Fisher House, located at a VA health care facility (generally referred to as a “hoptel”);

(2) A hotel or motel;

(3) Non-utilized beds at a VA health care facility designated as lodging beds; and

(4) Other donated lodging to be used on a temporary basis in accordance with 38 U.S.C. 1708.

VA means the Department of Veterans Affairs.

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

##### § 60.3 Other donated temporary lodging.

Whenever VA receives, from a source other than the Fisher House Foundation, an undesignated donation of lodging to be used on a temporary basis, the lodging will be designated as if it were Fisher House lodging or be treated as other temporary lodging based upon the types of lodging available in the area. If VA receives a gift that specifies the terms of the lodging provided, VA will use the lodging provided in the manner specified by the donor.

(Authority: 38 U.S.C. 501, 1708, 8103, 8104)

**§ 60.10 Eligibility criteria for Fisher House or other temporary lodging.**

(a) *General.* While a veteran is undergoing an episode of care, VA may provide either Fisher House or other temporary lodging, as appropriate, if the application meets the requirements of this part 60. These are the only types of lodging provided by VA under this part. **Note:** Lodging provided for under this part will not be used by a person participating in a VA residential treatment program, or as a substitute for participation in such a program.

(b) *Eligible persons.* (1) *Fisher House.* VA may provide Fisher House lodging to accompanying individual(s) and, in limited circumstances of immediate need and no alternative temporary lodging, to a veteran with one or more accompanying individual(s). Fisher House lodging will not be used to lodge unaccompanied veterans or individuals in need of transitional or permanent housing. **Note:** VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.

(2) *Other temporary lodging.* VA may provide other temporary lodging to a veteran or to a veteran and his or her accompanying individual(s). Accompanying individuals may not stay in other temporary lodging unless the veteran is also staying in temporary lodging. **Note:** VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.

(c) *Condition of the veteran.* Fisher House or other temporary lodging will not be provided to a veteran unless the VA official reviewing the application determines, based on the application and on any necessary clinical information, that the veteran is:

- (1) Medically stable and capable of self-care; or
- (2) Accompanied by an individual who is able to provide all necessary care.

(d) *Travel time/distance requirement.* Fisher House or other temporary lodging may be provided only if the applicant seeking lodging must travel at least 50 miles, or for 2 hours, from his or her home to the VA health care facility. VA may waive these requirements based on exceptional circumstances, such as when the physical condition of an accompanying individual and/or the veteran, inclement weather, road conditions, or the mode of transportation, make it difficult or dangerous to travel to or return from the

VA health care facility without an overnight stay.

(e) *Special authority for organ transplant cases.* Notwithstanding any other provision of this part, VA may provide Fisher House or other temporary lodging for individuals who must be present on site for evaluation, donation, and care related to their status as an organ donor for a veteran. VA may also provide Fisher House or other temporary lodging for the donor's accompanying individuals at all phases of the transplant process.

(Authority: 38 U.S.C. 501, 1708, 1710(a))

**§ 60.15 Application process.**

(a) *Obtaining and submitting the application.* VA Form 10–0408A is the application for Fisher House and other temporary lodging. Applications may be submitted by mail, telephone, facsimile, in person, or electronically. VA Form 10–0408A is available from any VA medical center or may be obtained online at <http://vaww4.va.gov/vaforms/medical/pdf/vha-10-0408A-fill.pdf>. The completed application must be submitted as follows:

(1) For Fisher House lodging, to the Fisher House Manager at the VA medical center of jurisdiction.

(2) For other temporary lodging, to the temporary lodging program coordinator at the VA medical center of jurisdiction.

(b) *Processing applications.* (1) Applications are generally processed in the order that they are received by VA, and temporary lodging is then granted on a first come first serve basis; however, in extraordinary circumstances, such as imminent death, critical injury, or organ donation applications may be processed out of order.

(2) Temporary lodging is granted on a space-available basis, with some consideration given to the compatibility of the applicant(s) and the room(s) available. For example, although VA may require an applicant to share a room with another veteran's accompanying individual, VA would not do so if the persons affected are not the same gender.

(3) Temporary lodging at a VA health care facility, such as non-utilized beds in a VA medical facility, may be made available only if not barred by law and if the Director of the medical facility determines that such action would not have a negative impact on patient care. Non-utilized beds provided to accompanying individuals must be reassigned to VA patients when necessary.

(4) The Director of the VA Medical Center of jurisdiction will determine whether local funding is sufficient to

allow the use of temporary lodging in hotels and motels.

(5) Subject to all criteria provided in this part, the person responsible for coordinating the Fisher House and other temporary lodging program(s) at the VA health care facility of jurisdiction is responsible for making decisions to grant temporary lodging. These decisions are considered to be final VA decisions concerning individual medical treatment plans and the scheduling and use of VA lodging facilities, and they are not appealable to the Board of Veterans' Appeals.

(6) If VA denies an application for one type of lodging, such as at a Fisher House, the application will be considered for other temporary lodging and vice versa, if the applicant is eligible.

(7) If VA denies the application for all types of temporary lodging, VA will refer the application to a VA social worker at the VA medical center of jurisdiction to determine if other arrangements can be made.

(c) Costs for Fisher House and other temporary lodging under this part are borne by VA.

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

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

**§ 60.20 Duration of Fisher House or other temporary lodging.**

Fisher House or other temporary lodging may be awarded for the following periods:

(a) While the veteran is undergoing an episode of care.

(b) While the veteran is hospitalized, if the veteran is admitted to a VA medical facility while undergoing an outpatient episode of care for which temporary lodging was already provided.

(c) As extended by the appropriate VA clinician or social worker based on an emergency situation or unforeseen circumstances.

(d) For an indefinite period for accompanying individuals who are visiting veterans hospitalized for an indefinite period, provided that the accompanying individual is not using a VA medical facility bed. Whether a veteran is hospitalized for an indefinite period will be based upon the treatment or rehabilitation needs of the veteran as determined by the veteran's health care team.

(e) Temporary lodging may be furnished the night before the day of a scheduled appointment if, the veteran leaving home after 8 a.m., would be

unable to arrive at the health care facility by the time of the scheduled appointment.

(f) Temporary lodging may be furnished the night of the scheduled appointment if, after the appointment, the veteran would be unable to return home before 7 p.m. When a veteran is undergoing outpatient treatment or procedures the veteran and accompanying individual(s) may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section.

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

[FR Doc. 2012-6397 Filed 3-15-12; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 52**

[EPA-HQ-OAR-2003-0062; FRL-9648-1]

RIN 2060-AR30

**Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>): Amendment to the Definition “Regulated NSR Pollutant” Concerning Condensable Particulate Matter**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to revise the definition “regulated NSR pollutant” contained in two sets of Prevention of Significant Deterioration (PSD) regulations and in the EPA’s Emission Offset Interpretative Ruling. This revision would correct an inadvertent error made in 2008 when the EPA issued its final rule to implement the new source review (NSR) program for fine particles with an aerodynamic diameter of less than or equal to 2.5 micrometers (PM<sub>2.5</sub>). Effectively, this revision would reestablish the interpretation that for measurement of “particulate matter emissions” in the context of the PSD and NSR regulations there is no explicit requirement to include measurement of condensable PM. However, the condensable portion would continue to be required for emissions of particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM<sub>10</sub>) and PM<sub>2.5</sub>.

**DATES:** Comments must be received on or before May 15, 2012.

**Public Hearing.** If anyone contacts the EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by March 26, 2012, the EPA will hold a public hearing approximately 30 days after publication in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0062, by one of the following methods:

- <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Email:** [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- **Mail:** Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.

- **Hand Delivery:** EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to the applicable docket. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other

contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1742, and the telephone number for the Air Docket is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan deRoeck, Air Quality Policy Division (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541-5593; fax number (919) 541-5509; or email address: [deroeck.dan@epa.gov](mailto:deroeck.dan@epa.gov).

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; email address: [long.pam@epa.gov](mailto:long.pam@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups that emit particulate matter:

Industry group	NAICS <sup>a</sup>
Electric services .....	221111, 221112, 221113, 221119, 221121, 221122
Petroleum refining .....	32411