create a safe harbor for non-jurisdictional utilities that wish to interconnect new generation without jeopardizing their non-jurisdictional status.

Request for Rehearing

107. NRECA repeats here the same request it made in the Large Generator Interconnection proceeding that the Commission create a safe harbor to allow non-jurisdictional utilities to avoid the sometimes cumbersome process of interconnecting new generators under FPA sections 210, 211, and 212. NRECA also points out that many cooperatives are not ''transmitting utilities'' as defined in the FPA and that section 211 only applies to interconnections with ''transmitting utilities.'' Specifically, NRECA asks the Commission to clarify that a cooperative may settle a section 211 case and agree to provide wheeling services without that settlement being considered a ''voluntary'' service offering.

Commission Conclusion

108. As the Commission stated in Order No. 2006, FPA section 211 already allows a non-public utility to safeguard its non-jurisdictional status. We see no need to create a second method of doing the same thing. NRECA also asks whether a cooperative may settle a section 211 case and agree to provide wheeling services without that settlement being considered a ''voluntary'' service offering. That issue is outside the scope of this rulemaking. In this rulemaking proceeding, the Commission is acting under its FPA section 205 authority, and does not address obligations under sections 210, 211, or 212.

## IV. Information Collection Statement

109. Order No. 2006 contains information collection requirements for which the Commission obtained approval from the Office of Management and Budget (OMB). The OMB Control Number for this collection of information is 1902–0203. This order denies most rehearing requests, clarifies the provisions of Order No. 2006, and grants rehearing on only three minor issues. This order does not make substantive modifications to the Commission's information collection requirements and, accordingly, OMB approval for this order is not necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

## V. Document Availability

110. In addition to publishing the full text of this document in the **Federal Register**, interested persons may obtain this document from the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time) at 888 First Street, NE., Room 2A, Washington, DC. This document is also available electronically from the Commission's eLibrary system (*http://www.ferc.gov/docs-filing/elibrary.asp*) in PDF and Microsoft Word format. To access this document in eLibrary, type ''RM02–12–'' in the docket number field and specify a date range that includes this document's issuance date. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Help Line at 202–502–8222 or the Public Reference Room at 202–502–8371 Press 0, TTY 202–502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

## VI. Effective Date

111. Changes to Order No. 2006 made in this Order on Rehearing will become effective on December 30, 2005.

## List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

**Magalie R. Salas,**

*Secretary.*

The Appendices will not be published in the **Federal Register** or the Code of Federal Regulations.

[FR Doc. 05–23461 Filed 11–29–05; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AJ28**

## Medical: Advance Health Care Planning

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends VA medical regulations to codify VA policy regarding advance health care planning. The final rule sets forth a mechanism for the use of written advance directives, i.e., a VA living will, a VA durable power of attorney for health care, and a State-authorized advance directive. The final rule also sets forth a mechanism for honoring verbal or non-verbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. This is intended to help ensure that VA acts in compliance with patients' wishes concerning future health care.

**DATES:** Effective Date: December 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ruth Cecire, Ph.D., Policy Analyst, Ethics Policy Service, National Center for Ethics in Health Care (10E), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; 202–501–0364 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on November 2, 1998 (63 FR 58677), the Department of Veterans Affairs (VA) proposed to amend its medical regulations (38 CFR part 17) to codify VA policy concerning advance health care planning. Advance health care planning provides an opportunity for patients to give guidance to their caregivers regarding their treatment preferences for the future should they become incapable of participating fully in the decision-making process. We requested comments for a 60-day period that ended January 4, 1999. We received three comments. Based on the rationale set forth in the proposed rule and this document, we are adopting the proposed rule as a final rule with the changes indicated below.

This final rule sets forth a mechanism for the use of written advance directives, i.e., a VA living will, a VA durable power of attorney for health care, and a State-authorized advance directive. The rule also sets forth a mechanism for honoring verbal or non-verbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. The advance health care planning discussion and completion of a written advance directive ideally would take place prior to a patient being admitted to care in a crisis situation. However, we recognize that this is not always the case. The mechanism for honoring the verbal and non-verbal instructions of patients in this circumstance enables such patients to communicate their preferences regarding their future health care and ensures this information will be carefully documented in the patient's health record and available to guide caregivers should the patient lose capacity. The final rule also states that

a patient who has decision-making capacity may revoke an advance directive or instructions in a critical situation at any time by using any means expressing the intent to revoke. In addition, the final rule emphasizes the obligation of any surrogate, including a health care agent named in the advance directive, making decisions on behalf of a patient who lacks decision-making capacity, to act in compliance with the patient's clearly expressed wishes. The term *surrogate* is defined in 38 CFR 17.32(a). Those authorized to act as surrogates under VA policy are identified in 38 CFR 17.32(e).

One commenter requested clarification regarding proposed § 17.32(h)(2), which describes ''Instructions in Critical Situations,'' particularly with respect to the meaning of ''non-verbal instructions.'' The commenter suggests that ''specific guidelines must be established'' to define what would constitute acceptable instructions. We agree with the commenter's point that this paragraph could be more explicit, but do not believe it would be possible, for example, to specify all of the possible variety and appearances in the way that a patient who is unable to speak or write might use to communicate. In the final rule we are modifying this paragraph to state more clearly the circumstances and types of instructions to which this paragraph would apply. Those changes include adding that the patient must have decision-making capacity and the patient's verbal or non-verbal instructions must be unambiguous.

A second commenter suggested that the language in proposed § 17.32(h)(1), which describes ''Witnesses,'' was overly restrictive, and could be interpreted to prevent appropriate individuals from serving as a witness. The commenter stated: ''Since a witness'' sole function is to attest to the fact that the witness saw the patient sign the VA Living Will or VA Durable Power of Attorney for Health Care, the general rule should be that a witness' potential conflict of interest in making that attestation may be raised by any person seeking to challenge the validity and enforceability of the VA Living Will or VA Durable Power of Attorney for Health Care, as part of an attempt to discredit the truth of the witness' attestation.'' We agree and in the final rule are modifying this paragraph to make the requirements less restrictive. However, we continue to think it best, in order to avoid even the appearance of a conflict of interest, that persons named in the patient's will, or as health care agent in the advance directive, or financially responsible for the patient's care, should not sign as witnesses on the advance directive form. In the final rule we are removing the proposed rule's requirement that the witness not be ''entitled to, or a claimant against, any portion of the patient's estate; or be financially responsible for the patient's care'' and replacing it with the requirement that the witness not ''to the witnesses'' knowledge be named in the patient's will, appointed as health care agent in the advance directive, or financially responsible for the patient's care.'' The VA Advance Directive: Living Will and Durable Power of Attorney for Health Care form expressly provides that by signing the form, the witness attests to the fact that he or she lacks such knowledge. In the final rule, we are also removing, because we have concluded that it is unnecessarily restrictive, the proposed rule's requirement that VA employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees (e.g., Medical Administration Service, Voluntary Service or Environmental Management Service) may serve as witnesses only ''when other witnesses are not reasonably available.''

The third commenter expressed concern that the proposed rule ''is supposed to address VA employees' responsibilities in following patient's expressed desires in end-of-life decisions,'' but did not go far enough to clarify the weight carried by the patient's expressed desires, e.g., when there is a dispute about the legitimacy of a State-authorized advance directive. Such a dispute might occur, for example, if the veteran completed the State-authorized advance directive while living in one State and later relocated to another jurisdiction. It is our intention that the reference to ''applicable State law'' in the definition of State-authorized advance directive be broadly interpreted for the convenience and benefit of VA patients. Indeed, the chief purpose of the rule is to assure that VA employees and surrogates comply with patients' clearly expressed wishes to the greatest extent possible. We are therefore in the final rule specifying that, ''[f]or the purposes of this paragraph and paragraph (h) of this section, 'applicable State law' means the law of the State where the advance directive was signed, the State where the patient resided when the advance directive was signed, the State where the patient now resides, or the State where the patient is receiving treatment. VA will resolve any conflict between those State laws regarding the validity of the advance directive by following the law of the State that gives effect to the expressed wishes in the advance directive.'' We also are making changes in the opening paragraph of § 17.32(h) to clarify that ''[a]n advance directive that is valid in one or more States under applicable State law, as defined in paragraph (a) of this section, will be recognized throughout the VA health care system.''

We are also adding in the final rule nonsubstantive changes for purposes of clarification. These include adding a revision of the authority citation for § 17.32 to reflect that this rule is issued under the authority of 38 U.S.C. 7331 through 7334.

**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 an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

**Paperwork Reduction Act of 1995**

Two collection of information requirements that are related to 38 CFR 17.32 are currently approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521). OMB has approved collection of information requirements for § 17.32 under OMB control number 2900–0583. In addition, OMB has approved the information collection requirements in VA Form 10–0137, VA Advance Directive: Living Will and Durable Power of Attorney for Health Care, under OMB control number 2900–0556. The references in the final rule to a VA Living Will or to a VA Durable Power of Attorney for Health Care are to that form. No new collections of information are associated with this final rule.

**Executive Order 12866**

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

**Regulatory Flexibility Act**

The Secretary hereby certifies that 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 rule will affect only individuals and will not directly affect any small entities.

Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

There are no applicable Catalog of Federal Domestic Assistance program numbers.

**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, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 15, 2005.

**R. James Nicholson,**

*Secretary of Veterans Affairs.*

■ For the reasons set out above, 38 CFR part 17 is amended to read as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as stated in specific sections.

■ 2. Section 17.32 is amended by:
■ a. Revising the section heading and authority citation.
■ b. In paragraph (a), adding a new definition in alphabetical order.
■ c. Adding paragraph (h) immediately following paragraph (g)(4).

The revisions and additions read as follows:

**§ 17.32 Informed consent and advance health care planning.**

(a) * * *

*Advance Directive.* Specific written statements made by a patient who has decision-making capacity regarding future health care decisions in any of the following:

(i) *VA Living Will.* A written statement made by a patient on an authorized VA form which sets forth the patient's wishes regarding the patient's health care treatment preferences including the withholding and withdrawal of life-sustaining treatment.

(ii) *VA Durable Power of Attorney for Health Care.* A written instruction on a VA form which designates the patient's choice of health care agent.

(iii) *State-Authorized Advance Directive.* A non-VA living will, durable power of attorney for health care, or other advance health care planning document, the validity of which is determined pursuant to applicable State law. For the purposes of this paragraph and paragraph (h) of this section, ''applicable State law'' means the law of the State where the advance directive was signed, the State where the patient resided when the advance directive was signed, the State where the patient now resides, or the State where the patient is receiving treatment. VA will resolve any conflict between those State laws regarding the validity of the advance directive by following the law of the State that gives effect to the expressed wishes in the advance directive.

* * * * *

(h) *Advance health care planning.* Subject to the provisions of paragraphs (h)(1) through (h)(4) of this section, VA will follow the wishes of a patient expressed in an Advance Directive when the attending physician determines and documents in the patient's medical record that the patient lacks decision-making capacity and is not expected to regain it. An advance directive that is valid in one or more States under applicable State law, as defined in paragraph (a) of this section, will be recognized throughout the VA health care system.

(1) *Witnesses.* A VA Advance Directive: Living Will and Durable Power of Attorney for Health Care must be signed by the patient in the presence of two witnesses. Neither witness may to the witness' knowledge be named in the patient's will, appointed as health care agent in the advance directive, or financially responsible for the patient's care. VA employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees (e.g., Medical Administration Service, Voluntary Service, or Environmental Management Service) may serve as witnesses. Other individuals employed by the VA facility in which the patient is being treated may not sign as witnesses to the advance directive. Witnesses are attesting only to the fact that they saw the patient sign the form.

(2) *Instructions in critical situations.* VA will follow the unambiguous verbal or non-verbal instructions regarding future health care decisions of a patient who has decision-making capacity when the patient is admitted to care when critically ill and loss of capacity may be imminent and the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. The patient's instructions must have been expressed to at least two members of the health care team. The substance of the patient's instructions must be recorded in a progress note in the patient's medical record and must be co-signed by at least two members of the health care team who were present and can attest to the wishes expressed by the patient. These instructions will be given effect only if the patient loses decision-making capacity during the presenting situation.

(3) *Revocation.* A patient who has decision-making capacity may revoke an advance directive or instructions in a critical situation at any time by using any means expressing the intent to revoke.

(4) *VA policy and disputes.* Neither the treatment team nor surrogate may override a patient's clear instructions in an Advance Directive or in instructions in critical situations, except that those portions of an Advance Directive or instructions given in a critical situation that are not consistent with VA policy will not be given effect.

* * * * *

(Authority: 38 U.S.C. 7331 through 7334)

[FR Doc. 05–23505 Filed 11–29–05; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Region 2 Docket No. R02–OAR–2005–NJ–0002, FRL–7999–8]**

### Approval and Promulgation of Implementation Plans; New Jersey Architectural Coatings Rule

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the New Jersey State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings'' of 7:27 of the New Jersey Administrative Code, which are needed to meet the shortfall in emissions reduction identified by EPA in New Jersey's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve a control strategy required by the Clean Air Act, which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

**DATES:** *Effective Date*: This rule will be effective December 30, 2005.