

# Proposed Rules

Federal Register

Vol. 62, No. 20

Thursday, January 30, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 4 and 375

[Docket No. RM-95-16-000]

#### Regulations for the Relicensing of Hydroelectric Projects

January 23, 1997.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking; extension of comment dates.

**SUMMARY:** On November 26, 1996, the Commission issued a Notice Proposed Rulemaking (61 FR 64031, December 3, 1996) proposing revisions to its regulations for the relicensing of hydropower projects. The dates for filing initial comments and reply comments are being extended at the request of the U.S. Department of the Interior and the National Hydropower Association.

**DATES:** Initial comments should be filed on or before April 4, 1997; reply comments should be filed on or before May 5, 1997.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 1st Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Lois D. Cashell, Secretary, 202-208-0400.

**SUPPLEMENTARY INFORMATION:** On January 13, 1997 and January 14, 1997, the U.S. Department of the Interior (DOI) and the National Hydropower Association (NHA) filed respective motions for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued November 26, 1996, in the above-docketed proceeding. In its motion, DOI states that additional time is needed because the proposed rule raises significant issues which require considerable evaluation and coordination with other agencies for the preparation of responsive comments.

NHA states that an extension is required to allow further consultation with NHA's membership and others to assure properly focused and constructive comments. NHA further states that the American Public Power Association and the Edison Electric Institute join NHA in the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for filing initial comments is granted to and including April 4, 1997. Reply comments shall be filed on or before May 5, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97-2261 Filed 1-29-97; 8:45 am]

BILLING CODE 6717-01-M

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

RIN 0960-AE30

#### Application of State Law in Determining Child Relationship

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise our rules on determining whether a natural child has inheritance rights under appropriate State law and therefore may be entitled to Social Security benefits as the child of an insured worker. Specifically, we propose to revise our rules to explain which version of State law we will apply, depending on whether the insured is living or deceased, how we will apply State law requirements on time limits for determining inheritance rights, and how we will apply State law requirements for a court determination of paternity. We are also proposing to clarify our current rule on determining an applicant's status as a legally adopted child of an insured individual. **DATES:** Your comments will be considered if we receive them no later than March 31, 1997.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration,

3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1713.

#### SUPPLEMENTARY INFORMATION:

Time for Determining Relationship of Natural Child

Section 216(h)(2)(A) of the Social Security Act (the Act) states in part that in determining whether an applicant is the child of a deceased insured individual, the Commissioner shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which the insured individual was domiciled at the time of his or her death. A child of a valid marriage has inheritance rights under the laws of all States.

When determining the relationship of an illegitimate child to a deceased insured person under section 216(h)(2)(A), we have always looked to the law that was in effect in the insured's State of domicile at the time he or she died. Some Federal courts have also interpreted the provision this way. See *Schaefer on behalf of Schaefer*, 792 F.2d 81 (7th Cir. 1986); *Ramon v. Califano*, 493 F. Supp. 158 (W.D. Tex. 1980); and *Allen v. Califano*, 452 F. Supp. 205 (D. Md. 1978).

Other courts have adopted different interpretations. For example, in *Owens v. Schweiker*, 692 F.2d 80 (9th Cir. 1982), the court held that section 216(h)(2)(A) should be read to require the use of the State law of domicile that was in effect at the time of the Secretary's determination on the child's claim. We, therefore, published a final rule (49 FR 21512) on May 22, 1984, amending § 404.354 of our regulations to clarify and reinforce our policy on applying State inheritance laws. However, after we amended our regulations, we also published Acquiescence Ruling (AR) 86-17(9) to clarify that we would apply the *Owens* decision to claims of children residing in the 9th Circuit. (When these

proposed regulations are published as final rules, we will rescind AR 86-17(9.)

Still other courts have held that the relevant law is the law in force at the time the child applies for benefits (see *Cox on behalf of Cox v. Schweiker*, 684 F.2d 310 (5th Cir. 1982); and *Hart by and through Morse v. Bowen*, 802 F.2d 1334 (11th Cir. 1986)).

Recognizing that the language in section 216(h)(2)(A) could be viewed as ambiguous and has not been interpreted the same by all courts, we are proposing to amend our policy as stated in § 404.354(b). We believe that a policy that permits us to apply any of several potentially applicable State inheritance laws would best effectuate Congress' intent with regard to serving the interests of surviving illegitimate children. Therefore, when the insured is deceased, we propose to determine the status of his or her illegitimate child by applying the State inheritance law that is in effect when we adjudicate the child's claim for benefits. If the child does not have inheritance rights under that version of State law, we will apply the State law that was in effect when the insured died, or any version of State law in effect from the time the child first could be entitled to benefits based on his or her application until the time we make our final decision on the claim, whichever version is more beneficial to the child.

We also explain in these proposed regulations how we will determine which law was in effect as of the date of death. First we will look to the inheritance law that was in effect on the date of the insured's death. Then, if a law enacted after the insured's death is retroactive to the date of his or her death, we will apply that law. However, if a law in effect at the time of death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

Regarding the child of a living insured worker, our current rule in § 404.354(b) provides that the Commissioner of Social Security (the Commissioner) will apply the inheritance law that was in effect when the child's claim was filed. We are proposing to amend §§ 404.354 and 404.355 to clarify that we will look to the versions of State inheritance laws that were in effect from the first month for which the child could be entitled to benefits up to and including the time of our final decision and we will apply the version most beneficial to the child.

#### State Law Time Limits

As previously stated, section 216(h)(2)(A) of the Act provides that, in determining whether an applicant is the

child of a deceased insured individual, the Commissioner shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which the insured individual was domiciled at the time of his or her death. That section further states that an applicant who, according to such law, would have the same status relative to taking intestate personal property as a child or parent shall be deemed such respective child or parent.

Many State laws impose time limits on when someone must act to establish paternity for purposes of intestate succession. Such time limits are intended to provide for an orderly and expeditious settlement of estates. Since this is not the purpose of Social Security benefits for children, we provide in these proposed regulations that we will not apply a State's time limits relative to the time at which a child's relationship must be established when we determine the child's status under section 216(h)(2)(A). Not applying time limits is consistent with our belief that such a policy on applying State inheritance laws will best serve the interests of the children Congress sought to protect when it enacted section 216(h)(2)(A) of the Act.

#### Court Order Requirements

Some State laws require a court determination of paternity for an illegitimate child to have inheritance rights. In determining a child's status under section 216(h)(2)(A), our policy has been to require that a claimant submit a court determination of paternity if one is required under State inheritance law. However, we propose to revise this policy by stating in these rules that in a State that requires a court determination of paternity, we will use the standard of proof that the State court would use as the basis for such a determination, but we will not actually require a determination by a State court. Of course, if a State court with jurisdiction over the matter declares that a child can take a child's share of an insured individual's estate through intestacy, or if a State court determines a child's paternity and such determination would prevail in that State's intestacy proceedings, SSA could generally rely on such State court findings. So, while we will not require an applicant to obtain a State court's determination, we will be guided by such determinations that an applicant has obtained, subject to the prerequisites stated in Social Security Ruling 83-37c for accepting State court determinations. Those prerequisites are: (1) an issue in a claim for Social

Security benefits previously has been determined by a State court of competent jurisdiction; (2) this issue was genuinely contested before the State court by parties with opposing interests; (3) the issue falls within the general category of domestic relations law; and (4) the resolution by the State trial court is consistent with the law enunciated by the highest court in the State.

If we evaluate paternity by using the same standards that the appropriate State court would use if the issue were properly before it, we believe we will satisfy the intent of section 216(h)(2)(A) that we apply "such law as would be applied" by the State court to determine inheritance rights. We believe that the requirement of section 216(h)(2)(A) to apply State law will be satisfied if we apply the same substantive standard as a State court would apply to determine paternity.

#### Legally Adopted Child

The provisions for paying benefits to children of an insured individual were added to the Act by the Social Security Act Amendments of 1939 (Public Law 76-379). Our policy for determining whether an applicant qualifies as the "child" of an insured individual has always been that we apply State law on inheritance rights to determine the status under the Act of a natural child, i.e., biological child, and State law on adoption to determine the status of a child legally adopted by the insured. To avoid any uncertainty about our policy, we are proposing to amend our regulations to state more clearly how we determine a child's status as an individual's natural child or adopted child.

Section 202(d)(1) of the Act provides for benefits to a child as defined in section 216(e) of the Act. Section 216(e) states, in part, that the term "child" means the child or legally adopted child of an individual. Section 216(e) further states the requirements for a person to be deemed the legally adopted child of a deceased individual. Section 216(e) thus distinguishes between a natural child and an adopted child.

Further, section 216(h)(2)(A) provides that the status of an applicant for benefits as a child (as opposed to a legally adopted child, a stepchild, or other type of individual who can qualify under section 216(e) of the Act as a "child" for purposes of section 202(d) of the Act) is determined by applying the law on devolution of intestate personal property that would be applied by the courts in the State of the insured individual's domicile. This is a test for the status of a natural child only.

The legislative history of sections 216(e) and 216(h)(2)(A) shows that Congress intended us to use section 216(h)(2)(A) to determine the status of natural children only. Section 209(k), enacted in 1939, provided the first definition of "child" by stating in part that the term means the child of an individual, the stepchild of an individual, and a child legally adopted by an individual before he or she attained age 60 and prior to the beginning of the twelfth month before the month in which he or she died. Section 209(m), also enacted in 1939, contained language that is the same as the present section 216(h)(2)(A) and described how we determine whether an applicant is the "child" of the insured individual.

Then in 1946, Congress amended section 209(k) to allow some children adopted by individuals aged 60 or older to receive benefits. Congress' explanation of the amended section 209(k) was that under existing provisions of the Act, a stepchild or an adopted child is not a "child" for benefit purposes unless certain conditions are met. H.R. Rep. No. 2526, 79th Cong., 2d Sess. 26 (1946); S. Rep. No. 1862, 79th Cong., 2d Sess. 34 (1946). Thus, since the first provision for paying benefits to children of an insured worker, there has been a clearly defined distinction between natural children and adopted children and clearly defined conditions for determining the status of an adopted child, which conditions are not affected by section 216(h)(2)(A).

Along with the structure of the Act and the legislative history of provisions defining "child," we have consistently interpreted the State intestacy law provisions of section 216(h)(2)(A) as not applying to children legally adopted by the insured individual. Our first regulation on the status of a child was published in 1940. That regulation defined a "child" as a son or daughter (by blood) of a wage earner and then went on to define "adopted children." 5 FR 1880 (May 21, 1940). We have maintained that position from the first regulation to the present. In the present § 404.354, we state that a child may be related to the insured as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. In § 404.355, we explain the conditions for eligibility as a natural child, which include applying State inheritance law, and in § 404.356 we state the requirement for eligibility as a legally adopted child.

In these proposed regulations, we are amending § 404.356 to explicitly provide that we will determine an

applicant's status as a legally adopted child by applying the adoption laws of the State or foreign country where the adoption took place.

#### Addition of Northern Mariana Islands

Further, we are proposing to add the Northern Mariana Islands to the names of entities whose laws we will use to determine a child's relationship to the insured individual, depending on his or her permanent home.

#### Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

#### Regulatory Procedures

##### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

##### *Regulatory Flexibility Act*

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

##### *Paperwork Reduction Act*

These proposed regulations impose no additional reporting or recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance)

#### List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: January 17, 1997.

Shirley S. Chater,

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are proposing to amend

subpart D of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

### **PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

#### **Subpart D—[Amended]**

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.354 is revised to read as follows:

#### **§ 404.354 Your relationship to the insured.**

You may be related to the insured person in one of several ways and be entitled to benefits as his or her child, i.e., as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. For details on how we determine your relationship to the insured person, see §§ 404.355 through 404.359.

3. Section 404.355 is revised to read as follows:

#### **§ 404.355 Who is the insured's natural child?**

(a) *Eligibility as a natural child.* You may be eligible for benefits as the insured's natural child if one of the following conditions is met:

(1) You could inherit the insured's personal property as his or her natural child under State inheritance laws, as described in paragraph (b) of this section.

(2) You are the insured's natural child and the insured and your mother or father went through a ceremony which would have resulted in a valid marriage between them except for a "legal impediment" as described in § 404.346(a).

(3) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child. If the insured is deceased, the acknowledgment, court decree, or court order must have been made or issued before his or her death. To determine whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a), the written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.

(4) Your mother or father has not married the insured but you have evidence other than the evidence described in paragraph (a)(3) to show that the insured is your natural father or mother. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he or she died. See § 404.366 for an explanation of the terms "living with" and "contributions for support."

(b) *Use of State Laws—(1) General.* To decide whether you have inheritance rights as the natural child of the insured, we use the law on inheritance rights that the State courts would use to decide whether you could inherit a child's share of the insured's personal property if the insured were to die without leaving a will. If the insured is living, we look to the laws of the State where the insured has his or her permanent home when you apply for benefits. If the insured is deceased, we look to the laws of the State where the insured had his or her permanent home when he or she died. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, we will look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. For a further discussion of the State laws we use to determine whether you qualify as the insured's natural child, see paragraphs (b)(3) and (b)(4) of this section. If these laws would permit you to inherit the insured's personal property as his or her child, we will consider you the child of the insured.

(2) *Standards.* We will not apply any State inheritance law requirement that an action to establish paternity must be taken within a specified period of time measured from the worker's death or the child's birth, or that an action to establish paternity must have been started or completed before the worker's death. If applicable State inheritance law requires a court determination of paternity, we will not require that you obtain such a determination but will decide your paternity by using the standard of proof that the State court would use as the basis for a determination of paternity.

(3) *Insured is living.* If the insured is living, the inheritance laws that we use are those that are in effect in the State where the insured has his or her

permanent home when we make our final decision on your application for benefits. We will apply the version of State law in effect when we make that decision. If you do not qualify as a child of the insured under that version of State law, we look at all versions of State law that were in effect from the first month for which you could be entitled to benefits up until the time of our final decision and apply the version of State law that is most beneficial to you.

(4) *Insured is deceased.* If the insured is deceased, we apply the law of the State where the insured had his or her permanent home when he or she died. We apply the version of State law in effect when we make our final decision on your application for benefits. If you do not qualify as a child of the insured under that version of State law, we will apply the version of State law that was in effect at the time the insured died, or any version of State law in effect from the first month for which you could be entitled to benefits up until our final decision on your application. We will apply whichever version is most beneficial to you. We use the following rules to determine the law in effect as of the date of death:

(A) If a State inheritance law enacted after the insured's death indicates that the law would be retroactive to the time of death, we will apply that law; or

(B) If the inheritance law in effect at the time of the insured's death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

4. Section 404.356 is amended by adding a sentence at the end to read as follows:

**§ 404.356 Who is the insured's legally adopted child?**

\* \* \* We apply the adoption laws of the State or foreign country where the adoption took place, not the State inheritance laws described in § 404.355, to determine whether you are the insured's legally adopted child.

[FR Doc. 97-2315 Filed 1-29-97; 8:45 am]

BILLING CODE 4190-29-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 286**

**RIN 1076-AD70**

**Indian Business Development Program**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is proposing to revise the regulations governing Indian Business Development Program (IBDP) grants. The rule has been abbreviated and rewritten in plain English as a part of the President's initiative to make rules easier to understand.

**DATES:** Comments must be received on or before March 31, 1997.

**ADDRESSES:** Mail comments to Nancy Jemison, Director, Office of Economic Development, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 2061-MIB, Washington, DC 20240; OR, hand deliver them to Room 2061 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately 2 weeks after publication of this document in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Woody Sneed, Financial Analyst, Office of Economic Development, Bureau of Indian Affairs at telephone (202) 208-4796.

**SUPPLEMENTARY INFORMATION:**

**Background**

The IBDP grant program has been discontinued but grantees having already received grants must report on the financial status of their businesses for five years after date of receipt of the grants. The new rule deletes references to applications and their required contents but retains reporting requirements.

**Supplementary Information**

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

**Executive Order 12778**

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

**Executive Order 12866**

This proposed rule is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.