

§ 74.12

her eligibility refuses in writing within eighteen months of the notification to accept payment, the written record of refusal will be filed with the Office and the amount of payment as described in § 74.10 shall remain in the Fund and no payment may be made as described in § 74.12 to such individual or his or her survivors at any time after the date of receipt of the written refusal.

§ 74.12 Order of payment.

Payment will be made in the order of date of birth pursuant to section 105(b) of the Act. Therefore, when funds are appropriated, payment will be made to the oldest eligible individual living on the date of the enactment of the Act, August 10, 1988, (or his or her statutory heirs) who has been located by the Administrator at that time. Payments will continue to be made until all eligible individuals have received payment.

§ 74.13 Payment in the case of a deceased eligible individual.

In the case of an eligible individual as described in § 74.3 who is deceased, payment shall be made only as follows—

(a) If the eligible individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(b) If there is no surviving spouse as described in paragraph (a) of this subsection, such payment shall be made in equal shares to all children of the eligible individual who are living at the time of payment.

(c) If there is no surviving spouse described in paragraph (a) of this section, and if there are no surviving children as described in paragraph (b) of this section, such payment shall be made in equal shares to the parents of the deceased eligible individual who are living at the time of payment.

(d) If there are no surviving spouses, children or parents as described in paragraphs (a), (b), and (c) of this section, the amount of such payment shall remain in the Fund and may be used only for the purposes set forth in section 106(b) of the Act.

28 CFR Ch. I (7–1–10 Edition)

§ 74.14 Determination of the relationship of statutory heirs.

(a) A spouse of a deceased eligible individual must establish his or her marriage by one (or more) of the following:

(1) A copy of the public record of marriage, certified or attested;

(2) An abstract of the public record, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record;

(3) A certified copy of the religious record of marriage;

(4) The official report from a public agency as to a marriage which occurred while the deceased eligible individual was employed by such agency;

(5) An affidavit of the clergyman or magistrate who officiated;

(6) The original certificate of marriage accompanied by proof of its genuineness;

(7) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(8) In jurisdictions where “Common Law” marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(9) Any other evidence which would reasonably support a finding by the Administrator that a valid marriage actually existed.

(b) A child should establish that he or she is the child of a deceased eligible