

systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C, below 1.25 or flutter margins below V" must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special conditions must be met, including the provisions of paragraph (b), for the dispatched condition and paragraph (c) for subsequent failures. Expected operational limitations may be taken into account in establishing  $P_j$  as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing  $Q_j$  as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed, if the subsequent system failure rate is greater than  $1E-3$  per flight hour.

2. *Limit Pilot Forces.* In addition to the requirements of § 25.397(c) the following special condition applies.

The limit pilot forces are:

a. For all components between and including the handle and its control stops.

Pitch	Roll
Nose up 200 lbf. (pounds force).	Nose left 100 lbf.
Nose down 200 lbf ....	Nose right 100 lbf.

b. For all other components of the side stick control assembly, but excluding the internal components of the electrical sensor assemblies to avoid damage as a result of an in-flight jam.

Pitch	Roll
Nose up 125 lbf .....	Nose left 50 lbf.
Nose down 125 lbf ....	Nose right 50 lbf.

### 3. *High Intensity Radiated Fields (HIRF) Protection.*

a. *Protection from Unwanted Effects of High Intensity Radiated Fields.* Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

b. *For the purposes of this special condition, the following definition applies: Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 21, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

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## DEPARTMENT OF STATE

### 22 CFR Part 72

**[Public Notice 5702]**

**RIN 1400-AC24**

### Deaths and Estates

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is issuing a final rule to update and amend its regulations on deaths and estates in 22 CFR Part 72, after review of one public comment received in response to the Department's October 24, 2006, issuance of a proposed rule. The existing regulations were originally issued in 1957. They needed to be redrafted in plain language and changed to reflect changes in State Department statutory authority and current practice. Sections 234 and 235 of the James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 made some changes to consular officer and State Department responsibilities with respect to the deaths and personal estates of United States citizens and non-citizen nationals abroad that must be reflected in the regulations.

**DATES:** This rule becomes effective on March 30, 2007.

### FOR FURTHER INFORMATION CONTACT:

Edward A. Betancourt, Monica Gaw or Michael Meszaros, Overseas Citizens Services, Department of State, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037, 202-736-9110, fax number 202-736-9111. Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Legal Authority

Sections 234 and 235 of the James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Pub. L. 106-113), (hereinafter "the Act"), as codified in 22 U.S.C. 2715b and 2715c.

#### II. Introduction

The Department published a proposed rule, Public Notice 5582 at 71 FR 62219, on October 24, 2006, with a request for comments regarding the proposed changes in the Department's Death and Estate Regulations. This rule details the handling of deaths and estates of American citizens who die abroad. Legislation was passed in the year 2000 amending many of the statutes authorizing the State Department to perform this function. Many of the CFR provisions are unchanged since 1957. Some need revision because of the legislation; others are out of date.

This rule amends the existing regulations in 22 CFR Part 72 and implements sections 234 and 235 of the James W. Nancy and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (Pub. L. 106-113), (hereinafter "the Act"), as codified in 22 U.S.C. sections 2715(b), 2715b, and 2715c. The current Part 72 will be removed in its entirety, and replaced with the proposed rules.

#### Notifications and Reports of Death

Section 234 of the Act provides an explicit statutory mandate, codified as 22 U.S.C. 2715b(a), to a consular officer to endeavor to notify, or assist the Secretary of State in notifying, the next of kin or legal guardian as soon as possible when a United States citizen or non-citizen national dies abroad, with certain exceptions. 22 U.S.C. 2715b(a) essentially codifies existing practices concerning consular reporting and notification regarding deaths of United States citizens or non-citizen nationals as reflected in the existing 22 CFR 72.1 through 72.8, with some variations in the exceptions to normal notification procedures. 22 U.S.C. 4196, which provides for the consular officer to

notify the legal representative and the Secretary of State of the death of a United States citizen or national abroad, is unaffected by Section 234.

Under the amended regulations, when notifying next of kin of the death of a United States citizen or non-citizen national abroad, such notifications will be made by telephone and confirmed in writing, for example, through an e-mail or fax. The State Department previously used a commercial telegram service to make such notifications.

Section 234 of the Act also explicitly authorizes a consular officer to issue a report of death or of presumptive death in the case of a finding of death by the appropriate local authorities. In addition, it explicitly authorizes a consular officer to issue a report of presumptive death in the absence of a finding of death by the appropriate local authorities. This latter provision is intended to allow the consular officer to issue a report of presumptive death in exceptional circumstances where the evidence that the individual has died (e.g., he or she was listed as a passenger on an aircraft that crashed leaving no survivors) is persuasive, but local authorities have not issued and are not likely to issue a finding of death (because e.g., issuance of a local death certificate requires forensic evidence that is not available or there is no local authority that clearly has jurisdiction.) The Section 234 authorities to issue reports of death are codified at 22 U.S.C. 2715b(b).

#### *Protection of Estates*

Section 234 of the Act further preserves and updates the authority of a consular officer to serve as provisional conservator of the portion of the personal estate of a deceased United States citizen or non-citizen national that is located abroad. It also preserves and updates the authority of a consular officer in "exceptional circumstances" to serve as the administrator of the estate. This authority is now codified at 22 U.S.C. 2715c. (The predecessor statute, 22 U.S.C. 4195, was repealed by Section 234.)

Pursuant to 22 U.S.C. 2715c, a consular officer may serve as provisional conservator or administrator of the personal estate of a United States citizen or non-citizen national only when this is authorized by treaty provisions, permitted by the laws and authorities of the foreign country where the death occurs, or the decedent is domiciled, or permitted by established usage in that foreign country. Serving as a provisional conservator or administrator with respect to the personal estate of a deceased United

States citizen or non-citizen national is, however, not authorized if the decedent has left or there is otherwise appointed in the foreign country where the death occurred or where the decedent was domiciled, a legal representative, partner in trade, or trustee appointed to take care of the personal estate. If such a legal representative, partner in trade or trustee appears at any time prior to the transmission of the property to the Secretary of State and demands the proceeds and effects held by the consular officer, the consular officer must deliver them after collecting any fees prescribed for the services performed under 22 U.S.C. 2715c. Consistent with previous statutory authority, 22 U.S.C. 2715c(a)(1) confirms that a consular officer, when serving as provisional conservator of an estate may (A) take possession of the personal effects of the decedent within the consular officer's jurisdiction, (B) inventory and appraise the personal effects, (C) when appropriate in the exercise of prudent administration, collect the debts due to the decedent in the officer's jurisdiction and pay from the estate obligations owed by the decedent, (D) sell or otherwise dispose of, as appropriate, in the exercise of prudent administration, all perishable items of property, (E) sell, after reasonable public notice and notice to such next of kin as can be ascertained with reasonable diligence, additional items of property as necessary to provide funds for the decedent's debts, local property taxes, funeral expenses and other expenses incident to the disposition of the estate; and (F) if no claimant has appeared within the one year period beginning on the date of death (or such reasonable additional period as may be required for final settlement of the estate), sell the residue of the personal estate in the same manner as United States Government-owned foreign excess property, after reasonable public notice and notice to such next of kin as can be ascertained with reasonable diligence.

#### *Transmittal of Estates to Department of State*

Prior to enactment of the Legislative Appropriations Act of 1996 (Pub. L. 104-53), the General Accounting Office (GAO) (now the Government Accountability Office) had responsibility for receiving the final statement of account and the personal effects of deceased United States citizens and non-citizen nationals that had been held by consular officers for over one year. Pub. L. 104-53 divested GAO of some of its "operational responsibilities," including accepting

the personal estates of United States citizens and non-citizen nationals who die abroad, and gave such responsibilities to the Executive Branch. Pursuant to Section 234 of the Act, the Department of State now has explicit responsibility for estates formerly transmitted to the GAO. 22 U.S.C. 2715c(a)(1)(G) provides that any proceeds from sale of the residue of the estate shall be transmitted to the Secretary of State, who will have the authority to seek payment of debts to the estate and may take other action that is reasonably necessary for the conservation of the estate. 22 U.S.C. 2715c(b)(1) conveys title of the residue of the estate to the United States if no legal claimant appears within five fiscal years beginning on October 1 after the date on which a consular officer took possession of the personal estate, and gives the Secretary of State the authority to dispose of the estate as surplus United States Government-owned property or such other means as may be appropriate in light of the nature and value of the property involved. The net cash estate after disposition goes to the miscellaneous receipts account of the Treasury.

#### *Conveyance of Real Property to United States Government*

Another new statutory authority conferred by Section 234 of the Act, and codified in 22 U.S.C. 2715c(a)(1)(H) and 22 U.S.C. 2715c(b)(2), addresses the situation where real property belonging to a deceased United States citizen or non-citizen national lays dormant for lack of a claimant while taxes and other assessments accrue, with the possibility, therefore, that ownership of the property will be transferred to a foreign government authority. In that situation, if local law so provides, the consular officer may provide for title to the property to be conveyed to the United States Government unless the Secretary of State declines to accept the conveyance. Real property conveyed to the Secretary of State may be treated as foreign excess property, or, if the Department of State wants the property for its own use, may be treated as an unconditional gift.

#### *Compensation for Loss, Theft or Destruction*

Finally, Section 234 of the Act provides a new authority, codified in 22 U.S.C. 2715c(c), for the Secretary of State to compensate the estate of any United States citizen or non-citizen national who has died overseas for property that was lost, stolen or destroyed while in the custody of officers or employees of the State

Department and with respect to which a consular officer was exercising the role of provisional conservator pursuant to 22 U.S.C. 2715 (relating to major disasters and incidents abroad affecting United States citizens) or 22 U.S.C. 2715c(a). Any compensation provided under this provision is in lieu of personal liability of the State Department's officers and employees. State Department officers and employees may be liable to the State Department for any such compensation provided, however, and liability determinations are to be made pursuant to the State Department's procedures for determining accountability for United States Government property. The proposed regulations provide procedures for an estate to claim compensation by reference to Department of State regulations on overseas tort claims under 22 U.S.C. 2669(f).

Existing statutory provisions, 22 U.S.C. 4197 and 22 U.S.C. 4198, prescribe the posting of bond by a consular officer who is appointed by a foreign state as an administrator, guardian or other office of trust for an estate and providing penalties for failure to post bond or for embezzlement, remain in force.

#### *Broader Definition of "Consular Officer"*

Section 235 of the Act amended 22 U.S.C. 2715 (Procedures regarding major disasters and incidents abroad affecting United States citizens) by, *inter alia*, defining "consular officer" for the purpose of 22 U.S.C. 2715 and Section 234 of the Act to include any United States citizen employee of the Department of State who is designated by the Secretary of State to perform consular services pursuant to such regulations as the Secretary may prescribe. Accordingly, such designated United States citizen employees now may make notifications of deaths, issue reports of death and presumptive death, and act as provisional conservators of estates.

#### *Analysis of Comments*

As stated above, the proposed rule was published on October 24, 2006. The Department received one comment regarding the proposed rule. There were no comments that objected to the proposed changes or the substance of the changes.

The one comment received was intended to improve the language of the proposed rule by making the rule more easily understood. The commenter suggested that Section 72.2 should not begin with an exception and stated that section would read clear if the

exception were placed at the end of the rule. The comment is well taken and we have adopted this suggestion, along with additional suggestions by the commenter to make the rule clearer and the language less bureaucratic.

#### **III. Regulatory Findings**

##### *Administrative Procedure Act*

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by Federal agencies that affect the public (5 U.S.C. 533), the State Department is publishing this proposed rule and inviting public comment. All comments received before the close of business on the comment closing date indicated above will be considered.

##### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act 5 U.S.C. 605(b), the Department of State has evaluated the effects of this proposed action on small entities, and has determined, and hereby certifies, pursuant to 5 U.S.C. 605(b), that it would not have a significant economic impact on a substantial number of small entities.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. This rule would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

##### *The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104-4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the

UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

#### *Executive Order 13132: Federalism*

A rule has federalism implications under Executive Order 13132 if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

#### *Executive Order 12866: Regulatory Review*

The Department of State does not consider this rule to be a "significant regulatory action" within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the State Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

#### *Executive Order 12988: Civil Justice Reform*

The State Department has reviewed this rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The State Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

#### *Paperwork Reduction Act of 1995*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### **List of Subjects in 22 CFR Part 72**

Estates.

■ For reasons set forth in the preamble, Title 22, Chapter I, Subchapter H, part 72 of the Code of Federal Regulations is revised to read as follows:

#### **PART 72—DEATHS AND ESTATES**

##### **Reporting Deaths of United States Nationals**

Sec.

- 72.1 Definitions.
- 72.2 Consular responsibility.
- 72.3 Exceptions.
- 72.4 Notifications of death.
- 72.5 Final report of death.
- 72.6 Report of presumptive death.

**Disposition of Remains**

- 72.7 Consular responsibility.
- Personal Estates of Deceased United States Citizens and Nationals.**
- 72.8 Regulatory responsibility of consular officer.
- 72.9 Responsibility if legal representative is present.
- 72.10 Responsibility if a will intended to operate locally exists.
- 72.11 Responsibility if a will intended to operate in the United States exists.
- 72.12 Bank deposits in foreign countries.
- 72.13 Effects to be taken into physical possession.
- 72.14 Nominal possession; property not normally taken into physical possession.
- 72.15 Action when possession is impractical.
- 72.16 Procedure for inventorying and appraising effects.
- 72.17 Final statement of account.
- 72.18 Payment of debts owed by decedent.
- 72.19 Consular officer ordinarily not to act as administrator of estate.
- 72.20 Prohibition against performing legal services or employing counsel.
- 72.21 Consular officer not to assume financial responsibility for the estate.
- 72.22 Release of personal estate to legal representative.
- 72.23 Affidavit of next of kin.
- 72.24 Conflicting claims.
- 72.25 Transfer of personal estate to Department of State.
- 72.26 Vesting of personal estate in United States.
- 72.27 Export of cultural property; handling other property when export, possession, or import may be illegal.
- 72.28 Claims for lost, stolen, or destroyed personal estate.

**Real Property Overseas Belonging to a Deceased United States Citizen or National.**

- 72.29 Real property overseas belonging to deceased United States citizen or national.
- 72.30 Provisions in a will or advanced directive regarding disposition of remains.

**Fees**

- 72.31 Fees for consular death and estate services.

**Authority:** 22 U.S.C. 2715, 2715b, 2715c, 4196, 4197, 4198, 4199.

**Reporting Deaths of United States Nationals****§ 72.1 Definitions.**

For purposes of this part:

(a) *Consular officer* includes any United States citizen employee of the Department of State who is designated by the Department of State to perform consular services relating to the deaths and estates abroad of United States nationals.

(b) *Legal representative* means—

(1) An executor designated by will intended to operate in the country where the death occurred or in the

country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate;

(2) An administrator appointed by a court of law in intestate proceedings in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate;

(3) The next of kin, if authorized in the country where the death occurred or in the country where the deceased was residing at the time of death to take possession and dispose of the decedent's personal estate; or

(4) An authorized agent of the individuals described in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(c) *Department* means the United States Department of State

**§ 72.2 Consular responsibility.**

When a consular officer learns that a United States citizen or non-citizen national has died in the officer's consular district, the officer must—

(a) Report the death to the Department; and

(b) The officer must also try to notify, or assist the Secretary of State in notifying, the next of kin (or legal guardian) and the legal representative, if different from the next of kin, as soon as possible. See § 72.3 for exceptions to this paragraph.

**§ 72.3 Exceptions.**

If a consular office learns that a United States citizen or non-citizen national employee or dependent of an employee of a member of the United States Armed Forces, or a United States citizen or non-citizen national employee of another department or agency or a dependent of such an employee, or a Peace Corps volunteer as defined in 22 U.S.C. 1504(a) or dependent of a Peace Corps volunteer has died while in the officer's consular district while the employee or volunteer is on assignment abroad, the officer should notify the Department. The consular officer should not attempt to notify the next of kin (or legal guardian) and legal representative of the death, but rather should assist, as needed, the appropriate military, other department of agency or Peace Corps authorities in making notifications of death with respect to such individual.

**§ 72.4 Notifications of death.**

The consular officer should make best efforts to notify the next of kin (or legal guardian), if any, and the legal representative (if any, and if different from the next of kin), of the death of a United States citizen or non-citizen

national by telephone as soon as possible, and then should follow up with a written notification of death.

**§ 72.5 Final report of death.**

(a) *Preparation.* Except in the case of the death of an active duty member of the United States Armed Forces, when there is a local death certificate or finding of death by a competent local authority, the consular officer should prepare a consular report of death ("CROD") on the form prescribed by the Department. The CROD will list the cause of death that is specified on the local death certificate or finding of death. The consular officer must prepare an original Report of Death, which will be filed with the Vital Records Section of Passport Services at the Department of State. The consular officer will provide a certified copy of the Report of Death to the next of kin or other person with a valid need for the Report within six months of the time of death. The next of kin or other person with a valid need for the Report may obtain additional certified copies after six months by contacting the Department of State, Vital Records, Passport Services, 1111 19th St., NW., Rm. 510, Washington, DC 20036.

(b) *Provision to Department.* The consular officer must send the original of the CROD to the Department, with one additional copy for each agency concerned, if the deceased was:

(1) A recipient of continuing payments other than salary from the Federal Government; or

(2) An officer or employee of the Federal Government (other than a member of the United States Armed Services); or

(3) A Selective Service registrant of inductable age.

(c) *Provision to next of kin/legal representative.* The consular officer must provide a copy of the CROD to the next of kin (or legal guardian) or to each of the next of kin, in the event there is more than one (e.g. more than one surviving child) and to any known legal representative who is not the next of kin.

(d) *Transmission of form to other consular districts.* If the consular officer knows that a part of the personal estate of the deceased is in a consular district other than that in which the death occurred, the officer should send a copy of the CROD to the consular officer in the other district.

(e) The Department may revoke a CROD if it determines in its sole discretion that the CROD was issued in error.

**§ 72.6 Report of presumptive death.**

(a) *Local finding.* When there is a local finding of presumptive death by a competent local authority, a consular officer should prepare a consular report of presumptive death on the form prescribed by the Department.

(b) *No local finding.* (1) A United States citizen or non-citizen national may disappear or be missing in circumstances where it appears likely that the individual has died, but there is no local authority able or willing to issue a death certificate or a judicial finding of death. This may include, for example, death in a plane crash where there are no identifiable remains, death in a plane crash beyond the territory of any country, death in an avalanche, disappearance/death at sea, or other sudden disaster where the body is not immediately (or perhaps ever) recoverable.

(2) *Authorization of issuance.* The Department may authorize the issuance of a consular report of presumptive death in such circumstances. A consular report of presumptive death may not be issued without the Department's authorization.

(3) *Considerations in determining whether the Department will authorize issuance of a Report of Presumptive Death.* The Department's decision whether to issue a Report of Presumptive Death is discretionary, and will be based on the totality of circumstances in each particular case. Although no one factor is conclusive or determinative, the Department will consider the factors cited below, among other relevant considerations, when deciding whether to authorize issuance in a particular case:

(i) Whether the death is believed to have occurred within a geographic area where no sovereign government exercises jurisdiction;

(ii) Whether the government exercising jurisdiction over the place where the death is believed to have occurred lacks laws or procedures for making findings of presumptive death;

(iii) Whether the government exercising jurisdiction over the place where the death is believed to have occurred requires a waiting period exceeding five years before findings of presumptive death may be made;

(iv) Whether the person who is believed to have died was seen to be in imminent peril by credible witnesses;

(v) Whether the person who is believed to have died is reliably known to have been in a place which experienced a natural disaster, or catastrophic event, that was capable of causing death;

(vi) Whether the person believed to have died was listed on the certified manifest of, and was confirmed to have boarded, an aircraft, or vessel, which was destroyed and, despite diligent search by competent authorities, some or all of the remains were not recovered or could not be identified;

(vii) Whether there is evidence of fraud, deception, or malicious intent.

(c) Consular reports of presumptive death should be processed and issued in accordance with § 72.5.

(d) The Department may revoke a report of presumptive death if it determines in its sole discretion that the report was issued in error.

**Disposition of Remains****§ 72.7 Consular responsibility.**

(a) A consular officer has no authority to create Department or personal financial obligations in connection with the disposition of the remains of a United States citizen or non-citizen national who dies abroad. Responsibility for the disposition of the remains and all related costs (including but not limited to costs of embalming or cremation, burial expenses, cost of a burial plot or receptacle for ashes, markers, and grave upkeep), rests with the legal representative of the deceased. In the absence of a legal representative (including when the next of kin is not a legal representative), the consular officer should ask the next of kin to provide funds and instructions for disposition of remains. If the consular officer cannot locate a legal representative or next of kin, the consular officer may ask friends or other interested parties to provide the funds and instructions.

(b) Arrangements for the disposition of remains must be consistent with the law and regulations of the host country and any relevant United States laws and regulations. Local law may, for example, require an autopsy, forbid cremation, require burial within a certain period of time, or specify who has the legal authority to make arrangements for the disposition of remains.

(c) If funds are not available for the disposition of the remains within the period provided by local law for the interment or preservation of dead bodies, the remains must be disposed of by the local authorities in accordance with local law or regulations.

**Personal Estates of Deceased United States Citizens and Nationals****§ 72.8 Regulatory responsibility of consular officer.**

(a) A consular officer should act as provisional conservator of the personal

estate of a United States citizen or non-citizen national who dies abroad in accordance with, and subject to, the provisions of §§ 72.9 through 72.27. The consular officer may act as provisional conservator only with respect to the portion of the personal estate located within the consular officer's district.

(b) A consular officer may act as provisional conservator only to the extent that doing so is:

- (1) Authorized by treaty provisions;
- (2) Not prohibited by the laws or authorities of the country where the personal estate is located; or
- (3) Permitted by established usage in that country.

**§ 72.9 Responsibility if legal representative is present.**

(a) A consular officer should not act as provisional conservator if the consular officer knows that a legal representative is present in the foreign country.

(b) If the consular officer learns that a legal representative is present after the consular officer has taken possession and/or disposed of the personal estate but prior to transmission of the proceeds and effects to the Secretary of State pursuant to § 72.25, the consular officer should follow the procedures specified in § 72.22.

**§ 72.10 Responsibility if a will intended to operate locally exists.**

(a) If a will that is intended to operate in the foreign country is discovered and the legal representative named in the will qualifies promptly and takes charge of the personal estate in the foreign country, the consular officer should assume no responsibility for the estate, and should not take possession, inventory and dispose of the personal property and effects or in any way serve as agent for the legal representative.

(b) If the legal representative does not qualify promptly and if the laws of the country where the personal estate is located permit, however, the consular officer should take appropriate protective measures such as—

(1) Requesting local authorities to provide protection for the property under local procedures; and/or

(2) Placing the consular officer's seal on the personal property of the decedent, such seal to be broken or removed only at the request of the legal representative.

(c) If prolonged delays are encountered by the local or domiciliary legal representative in qualifying and/or making arrangements to take charge of the personal estate, the consular officer should consult the Department concerning whether the will should be offered for probate.

**§ 72.11 Responsibility if a will intended to operate in the United States exists.**

The consular officer immediately should forward any will that is intended to operate in the United States and that is among the effects taken into possession to the person or persons designated as executor(s). When the executor(s) cannot be located, the consular officer should send the will to the appropriate court in the State of the decedent's domicile. Until the consular officer knows that a legal representative is present in the foreign country and has qualified or made arrangements to take charge of the personal estate, the consular officer should act as provisional conservator in accordance with § 72.8.

**§ 72.12 Bank deposits in foreign countries.**

(a) A consular officer is not authorized to withdraw or otherwise dispose of bank accounts and other assets deposited in financial institutions left by a deceased United States citizen or non-citizen national in a foreign country. Such deposits or other assets are not considered part of the personal estate of a decedent.

(b) The consular officer should report the existence of bank accounts and other assets deposited in financial institutions of which the officer becomes aware to the legal representative, if any. The consular officer should inform the legal representative of the procedures required by local law and the financial institution to withdraw such deposits, and should provide a list of local attorneys in the event counsel is necessary to assist in withdrawing the funds.

(c) A consular officer must not under any circumstances withdraw funds left by a deceased United States citizen or non-citizen national in a bank or financial institution in a foreign country without express approval and specific instructions from the Department.

**§ 72.13 Effects to be taken into physical possession.**

(a) A consular officer normally should take physical possession of articles such as the following:

(1) Convertible assets, such as currency, unused transportation tickets, negotiable evidence of debts due and payable in the consular district, and any other instruments that are negotiable by the consular officer;

(2) Luggage;

(3) Wearing apparel;

(4) Jewelry, heirlooms, and articles generally by sentimental value (such as family photographs);

(5) Non-negotiable instruments, which include any document or

instrument not negotiable by the consular officer because it requires either the signatures of the decedent or action by, or endorsement of, the decedent's legal representative.

Nonnegotiable instruments include, but are not limited to, transportation tickets not redeemable by the consular officer, traveler's checks, promissory notes, stocks, bonds or similar instruments, bank books, and books showing deposits in building and loan associations, and

(6) Personal documents and papers.

(b) All articles taken into physical possession by a consular officer should be kept in a locked storage area on post premises. If access to storage facilities on the post premises cannot be adequately restricted, the consular officer may explore the possibility of renting a safe deposit box if there are funds available in the estate or from other sources (such as the next of kin).

**§ 72.14 Nominal possession; property not normally taken into physical possession.**

(a) When a consular officer takes articles of a decedent's personal property from a foreign official or other persons for the explicit purpose of immediate release to the legal representative such action is not a taking of physical possession by the officer. Before releasing the property, the consular officer must require the legal representative to provide a release on the form prescribed by the Department discharging the consular officer of any responsibility for the articles transferred.

(b) A consular officer is not normally expected to take physical possession of items of personal property such as:

(1) Items of personal property found in residences and places of storage such as furniture, household effects and furnishings, works of art, and book and wine collections, unless such items are of such nature and quantity that they can readily be taken into physical possession with the rest of the personal effects;

(2) Motor vehicles, airplanes or watercraft;

(3) Toiletries, such as toothpaste or razors;

(4) Perishable items.

(c) The consular officer should in his or her discretion take appropriate steps permitted under the laws of the country where the personal property is located to safeguard property in the personal estate that is not taken into the officer's physical possession including such actions as:

(1) Placing the consular officer's seal on the premises or on the property (whichever is appropriate);

(2) Placing such property in safe storage such as a bonded warehouse, if the personal estate contains sufficient funds to cover the costs of such safekeeping; and/or

(3) If property that normally would be sealed by the consular officer is not immediately accessible, requesting local authorities to seal the premises or the property or otherwise ensure that the property remains intact until consular seals can be placed thereon, the property can be placed in safe storage, or the legal representative can assume responsibility for the property.

(d) the consular officer may decide in his or her discretion to discard toiletries and perishable items.

**§ 72.15 Action when possession is impractical.**

(a) A consular officer should not take physical possession of the personal estate of a deceased United States citizen or non-citizen national in his or her consular district when the consular officer determines in his or her discretion that it would be impractical to do so.

(b) In such cases, the consular officer must take action that he or she determines in his or her discretion would be appropriate to protect the personal estate such as:

(1) Requesting the persons, officials or organizations having custody of the personal estate to ship the property to the consular officer, if the personal estate contains sufficient funds to cover the costs of such shipment; or

(2) Requesting local authorities to safeguard the property until a legal representative can take physical possession.

**§ 72.16 Procedure for inventorying and appraising effects.**

(a) After taking physical possession of the personal estate of a deceased United States citizen or non-citizen national, the consular officer should promptly inventory the personal effects.

(b) If the personal estate taken into physical possession includes apparently valuable items, the consular officer may, in his or her discretion, seek a professional appraisal for such items, but only to the extent that there are funds available in the estate or from other sources (such as the next of kin) to cover the cost of appraisal.

(c) The consular officer must also prepare a list of articles not taken into physical possession, with an indication of any measures taken by the consular office to safeguard such items for submission with the inventory of effects.

**§ 72.17 Final statement of account.**

The consular officer may have to account directly to the parties in interest and to the courts of law in estate matters. Consequently, the officer must keep an account of receipts and expenditures for the personal estate of the deceased, and must prepare a final statement of account when turning over the estate to the legal representative, a claimant, or the Department.

**§ 72.18 Payment of debts owed by decedent.**

The consular officer may pay debts of the decedent which the consular officer believes in his or her discretion are legitimately owed in the country in which the death occurred, or in the country in which the decedent was residing at the time of death, including expenses incident to the disposition of the remains and the personal effects, out of the convertible assets of the personal estate taken into possession by the consular officer.

**§ 72.19 Consular officer is ordinarily not to act as administrator of estate.**

(a) A consular officer is not authorized to accept appointment from any foreign state or from a court in the United States and/or to act as administrator or to assist (except as provided in §§ 72.8 to 72.30) in administration of the personal estate of a United States citizen or non-citizen national who has died, or was residing at the time of death, in his or her consular district, unless the Department has expressly authorized the appointment. The Department will authorize such an appointment only in exceptional circumstances and will require the consular officer to execute bond consistent with 22 U.S.C. 4198 and 4199.

(b) The Department will not authorize a consular officer to serve as an administrator unless:

(1) Exercise of such responsibilities is:

(i) Authorized by treaty provisions or permitted by the laws or authorities of the country where the United States citizen or national died or was domiciled at the time of death; or

(ii) Permitted by established usage in that country; and

(2) The decedent does not have a legal representative in the consular district.

**§ 72.20 Prohibition against performing legal services or employing counsel.**

A consular officer may not act as an attorney or agent for the estate of a deceased United States citizen or non-citizen national overseas or employ counsel at the expense of the United States Government in taking possession

and disposing of the personal estate of a United States citizen or non-citizen national who dies abroad, unless specifically authorized in writing by the Department. If the legal representative or other interested person wishes to obtain legal counsel, the consular officer may furnish a list of attorneys.

**§ 72.21 Consular officer may not assume financial responsibility for the estate.**

A consular officer is not authorized to assume any financial responsibility or to incur any expense on behalf of the United States Government in collecting and disposing of the personal estate of a United States citizen or national who dies abroad.

A consular officer may incur expenses on behalf of the estate only to the extent that there are funds available in the estate or from other sources (such as the next of kin).

**§ 72.22 Release of personal estate to legal representative.**

(a) If a person or entity claiming to be a legal representative comes forward at any time prior to transmission of the decedent's personal estate to the Secretary of State under 22 CFR 72.25, the consular officer may release the personal estate in his or her custody to the legal representative provided that:

(1) The legal representative presents satisfactory evidence of the legal representative's right to receive the estate;

(2) The legal representative pays any fees prescribed for consular services provided in connection with the disposition of remains or protection of the estate (see 22 CFR 22.1);

(3) The legal representative executes a release in the form prescribed by the Department; and

(4) The Department approves the release of the personal estate.

(b) Satisfactory evidence of the right to receive the estate may include:

(1) In the case of an executor, a certified copy of letters testamentary or other evidence of legal capacity to act as executor;

(2) In the case of an administrator, a certified copy of letters of administration or other evidence of legal capacity to act as administrator;

(3) In the case of the agent of an executor or administrator, a power of attorney or other document evidencing agency (in addition to evidence of the executor's or administrator's legal capacity to act).

**§ 72.23 Affidavit of next of kin.**

If the United States citizen or non-citizen national who has died abroad did not leave a will that applies locally,

and the personal estate in the consular district consists only of clothing and other personal effects that the consular officer concludes in his or her discretion is worth less than \$2000 and/or cash of a value equal to or less than \$2000, the consular officer may decide in his or her discretion to accept an affidavit from the decedent's next of kin as satisfactory evidence of the next of kin's right to take possession of the personal estate. The Department must approve any release based on an affidavit of next of kin where the consular officer concludes that the personal estate effects are worth more than \$2000 and/or the cash involved is of a value more than \$2000 and generally will consider approving such releases only in cases where state law prohibits the appointment of executors or administrators for estates that are valued at less than a specified amount and the law of the foreign country where the personal property is located would not prohibit such a release.

**§ 72.24 Conflicting claims.**

Neither the consular officer nor the Department of State has the authority or responsibility to mediate or determine the validity or order of contending claims to the personal estate of a deceased United States citizen or non-citizen national. If rival claimants, executors or administrators demand the personal estate in the consular officer's possession, the officer should not release the estate to any claimant until a legally binding agreement in writing has been reached or until the dispute is settled by a court of competent jurisdiction, and/or the Department has approved the release.

**§ 72.25 Transfer of personal estate to Department of State.**

(a) If no claimant with a legal right to the personal estate comes forward, or if conflicting claims are not resolved, within one year of the date of death, the consular officer should sell or dispose of the personal estate (except for financial instruments, jewelry, heirlooms, and other articles of obvious sentimental value) in the same manner as United States Government-owned foreign excess property under Title IV of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 511 *et seq.*). If, however, a reasonable amount of additional time is likely to permit final settlement of the estate, the consular officer may in his or her discretion postpone the sale for that period of additional time.

(b) The consular officer should send to the custody of the Department the proceeds of any sale, together with all

financial instruments (including bonds, shares of stock and notes of indebtedness), jewelry, heirlooms and other articles of obvious sentimental value, to be held in trust for the legal claimant(s).

(c) After receipt of a personal estate, the Department may seek payment of all outstanding debts to the estate as they become due, may receive any balances due on such estate, may endorse all checks, bills of exchange, promissory notes, and other instruments of indebtedness payable to the estate for the benefit thereof, and may take such other action as is reasonably necessary for the conservation of the estate.

#### **§ 72.26 Vesting of personal estate in United States.**

(a) If no claimant with a legal right to the personal estate comes forward within the period of five fiscal years beginning on October 1 after the consular officer took possession of the personal estate, title to the personal estate shall be conveyed to the United States, the property in the estate shall be under the custody of the Department, and the Department may dispose of the estate under as if it were surplus United States Government-owned property under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 4811 *et seq.* or by such means as may be appropriate as determined by Department in its discretion in light of the nature and value of the property involved. The expenses of sales shall be paid from the estate, and any lawful claim received thereafter shall be payable to the extent of the value of the net proceeds of the estate as a refund from the appropriate Treasury appropriations account.

(b) The net cash estate shall be transferred to the miscellaneous receipts account of the Treasury of the United States.

#### **§ 72.27 Export of cultural property; handling other property when export, possession, or import may be illegal.**

(a) A consular officer should not ship, or assist in the shipping, of any archeological, ethnological, or cultural property, as defined in 19 U.S.C. 2601, that the consular officer is aware is part of the personal estate of a United States citizen or non-citizen national to the United States in order to avoid conflict with laws prohibiting or conditioning such export.

(b) A consular officer may refuse to ship, or assist in the shipping, of any property that is part of the personal estate of a United States citizen or non-citizen national if the consular officer has reason to believe that possession or

shipment of the property would be illegal.

#### **§ 72.28 Claims for lost, stolen, or destroyed personal estate.**

(a) The legal representative of the estate of a deceased United States citizen or national may submit a claim to the Secretary of State for any personal property of the estate with respect to which a consular officer acted as provisional conservator, and that was lost, stolen, or destroyed while in the custody of officers or employees of the Department of State. Any such claim should be submitted to the Office of Legal Adviser, Department of State, in the manner prescribed by 28 CFR part 14 and will be processed in the same manner as claims made pursuant to 22 U.S.C. 2669–1 and 2669 (f).

(b) Any compensation paid to the estate shall be in lieu of the personal liability of officers or employees of the Department to the estate.

(c) The Department nonetheless may hold an officer or employee of the Department liable to the Department to the extent of any compensation provided to the estate. The liability of the officer or employee shall be determined pursuant to the Department's procedures for determining accountability for United States government property.

#### **Real Property Overseas Belonging to a Decreased United States Citizen or National**

#### **§ 72.29 Real property overseas belonging to deceased United States citizen or national.**

(a) If a consular officer becomes aware that the estate of a deceased United States citizen or national includes an interest in real property located within the consular officer's district that will not pass to any person or entity under the applicable local laws of intestate succession or testamentary disposition, and if local law provides that title may be conveyed to the Government of the United States, the consular officer should notify the Department.

(b) If the Department decides that it wishes to retain the property for its use, the Department will instruct the consular officer to take steps necessary to provide for title to the property to be conveyed to the Government of the United States.

(c) If title to the real estate is conveyed to the Government of the United States and the property is of use to the Department of State, the Department may treat such property as if it were an unconditional gift accepted on behalf of the Department of State under section 25 of the State

Department Basic Authorities Act (22 U.S.C. 2697) and section 9(a)(3) of the Foreign Service Buildings Act of 1926 (22 U.S.C. 300(a)(3)).

(d) If the Department of State does not wish to retain such real property the Department may treat it as foreign excess property under title IV of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 511 *et seq.*).

#### **§ 72.30 Provisions in a will or advanced directive regarding disposition of remains.**

United States state law regarding advance directives, deaths and estates include provisions regarding a person's right to direct disposition of remains. Host country law may or may not accept such directions, particularly if the surviving spouse/next-of-kin disagree with the wishes of the testator/affiant.

#### **Fees**

#### **§ 72.31 Fees for consular death and estates services.**

(a) Fees for consular death and estates services are prescribed in the Schedule of Fees, 22 CFR 22.1.

(b) The personal estates of all officers and employees of the United States who die abroad while on official duty, including military and civilian personnel of the Department of Defense and the United States Coast Guard are exempt from the assessment of any fees proscribed by the Schedule of Fees.

Dated: January 26, 2007.

**Maura A. Harty,**

*Assistant Secretary Consular Affairs,  
Department of State.*

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## **DEPARTMENT OF JUSTICE**

### **28 CFR Part 72**

**[Docket No. OAG 117; A.G. Order No. 2868–2007]**

**RIN 1105–AB22**

#### **Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act**

**AGENCY:** Department of Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Department of Justice is publishing this interim rule to specify that the requirements of the Sex Offender Registration and Notification Act, title I of Public Law 109–248, apply to sex offenders convicted of the offense for which registration is required before the enactment of that Act. These