

(1) An evaluation by a private physician, prison doctor, or other host country medical authority reveals that the prison diet does not meet the minimum requirements to sustain adequate health; or

(2) If the evaluation in paragraph (a)(1) of this section is not available, an evaluation by either a regional medical officer or Departmental medical officer reveals that the prison diet does not provide the minimum requirements to sustain adequate health.

(b) *Consular responsibility.* (1) When the consular officer is aware that the U.S. prisoner's diet does not provide the minimum requirements to sustain adequate health, the consular officer shall obtain the necessary dietary supplements and distribute them to the prisoner on a regular basis.

(2) As soon as the consular officer believes that dietary supplements are being misused, the consular officer shall suspend provision of the dietary supplements and report the incident in full to the Department.

PART 72—DEATHS AND ESTATES

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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

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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.

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(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

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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.

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§ 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) Convertibles 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 instru-

ment 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 take 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

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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 safe-keeping; 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 na-

tional, 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,

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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 for-

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ward 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

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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.

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(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 DECEASED 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.