

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. An environmental analysis checklist and a

categorical exclusion determination are not required for this rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new § 165.1324 is added to read as follows:

#### § 165.1324 Safety and Security Zone; Cruise Ship Protection, Elliott Bay and Pier-91, Seattle, Washington.

(a) *Safety and Security Zones.* (1) The following area is a safety and security zone: All waters within the following points: a rectangle, starting at 47°37'53" N/122°23'07" W, thence south to position 47°37'06" N/122°23'07" W, thence east to position 47°37'06" N/122°22'43" W, thence north to position 47°37'58" N/122°22'43" W. This zone will be enforced only during the arrival or departure of Large Passenger Cruise Vessels at Pier 91, Seattle, Washington.

(2) The following area is a safety and security zone: All waters within 100 yards of Pier 91, Seattle, Washington, at approximate position 47°37'35" N/122°23'00" W. This zone will be enforced only when a Large Passenger Cruise Vessel is moored at Pier 91.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart D, no person or vessel may enter or remain in either Safety and Security Zone except for vessels authorized by the Captain of the Port or Designated Representatives.

(c) *Definitions.* The following definitions apply to this section:

*Facility Security Officer* means the person designated as responsible for the development, implementation, revision and maintenance of the facility security plan and for liaison with the COTP and Company and Vessel Security Officers.

*Large Passenger Cruise Vessel* means any cruise ship over 100 feet in length carrying passengers for hire. Large Passenger Cruise Vessel does not include vessels inspected and certificated under 46 CFR, Chapter I, Subchapter T such as excursion vessels,

sight seeing vessels, dinner cruise vessels, and whale watching vessels.

*Official Patrol* means those persons designated by the Captain of the Port to monitor a Large Passenger Cruise Vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (e) to enforce this section are designated as the Official Patrol.

(d) *Authorization.* To request authorization to operate within 100 yards of a Large Passenger Cruise Vessel that is moored at Pier 91, contact the on-scene Official Patrol on VHF–FM channel 16 or 13 or the Facility Security Officer at (206) 728–3688.

(e) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a Large Passenger Cruise Vessel, any Federal or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other Federal, state or local agencies in enforcing this section.

(f) *Waiver.* The Captain of the Port Puget Sound may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: April 24, 2009.

**Suzanne E. Englebert,**

*Captain, U.S. Coast Guard Captain of the Port, Puget Sound.*

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### PRESIDIO TRUST

#### 36 CFR Part 1012

RIN 3212–AA–04

#### Legal Process: Testimony by Employees and Production of Records

**AGENCY:** Presidio Trust.

**ACTION:** Final rule.

**SUMMARY:** The Presidio Trust is publishing as a final rule a regulation,

limited to the Presidio Trust's organization and management, governing access to Presidio Trust information and records in connection with legal proceedings in which neither the United States nor the Presidio Trust is a party. This final rule establishes guidelines for use in determining whether Presidio Trust employees (as defined in the final rule) will provide testimony or records relating to their official duties. It also establishes procedures for requesters to follow when making demands on or requests to a Presidio Trust employee for official documents or to provide testimony. This final rule standardizes the Presidio Trust's practices, promotes uniformity in decisions, conserves the ability of the Presidio Trust to conduct official business, preserves its employee resources, protects confidential information, provides guidance to requestors, minimizes involvement in matters unrelated to the Presidio Trust's mission and programs, avoids wasteful allocation of agency resources and avoids spending public time and money for private purpose.

**DATES:** The effective date of the regulation is September 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Cook, General Counsel, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052. Telephone: 415.561.5300.

**SUPPLEMENTARY INFORMATION:**

The Presidio Trust, a wholly-owned federal government corporation, on occasion receives subpoenas and other requests for documents and requests for Presidio Trust employees (as defined in the final rule) to provide testimony or evidence in judicial, legislative or administrative proceedings in which the Presidio Trust is not a party. Sometimes these subpoenas or requests are for Presidio Trust records that are exempt from disclosure under the Freedom of Information Act. The Presidio Trust also receives requests for Presidio Trust employees to appear as witnesses and to provide testimony relating to materials contained in the Presidio Trust's official records or to provide testimony or information acquired during the performance of the employees' official duties.

Although many other federal agencies currently have regulations in place to address these types of requests and the Presidio Trust itself has rules governing requests for information under the Freedom of Information Act, the Presidio Trust has not previously adopted regulations governing subpoenas and other information requests for document production and

testimony of Presidio Trust employees in judicial, legislative or administrative proceedings in which the Presidio Trust is not a party. Issues about such requests that have arisen in recent years warrant adoption of regulations governing their submission, evaluation and processing. Responding to these requests is not only burdensome, but may also result in a significant disruption of a Presidio Trust employee's work schedule, may involve the Presidio Trust in issues unrelated to its responsibilities and may impede the Presidio Trust's accomplishment of its budgetary goals. In order to resolve these issues, many agencies have issued regulations, similar to this regulation, governing the circumstances and manner for responding to demands for testimony or for the production of documents. Establishing uniform procedures for submission, evaluation and response to such demands will ensure timely notice and will promote centralized decision making. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Briefly summarized, the final rule prohibits disclosure of official records or testimony by the Presidio Trust's employees unless there is compliance with the rule. The final rule sets out the information that requesters must provide and the factors that the Presidio Trust will consider in making determinations in response to requests for testimony or the production of documents.

This final rule ensures a more efficient use of the Presidio Trust's resources, minimizes the possibility of involving the Presidio Trust in issues unrelated to its mission or responsibilities, promotes uniformity in responding to such subpoenas and similar requests, and maintains the impartiality of the Presidio Trust in matters that are in dispute between other parties. It also serves the Presidio Trust's interest in protecting sensitive, confidential and privileged information and records that are generated in fulfillment of the Presidio Trust's responsibilities.

The final rule is internal and procedural rather than substantive. It does not create a right to obtain official records or the official testimony of a Presidio Trust employee; nor does it create any additional right or privilege not already available to the Presidio Trust to deny any demand or request for testimony or documents. Failure to comply with the procedures set out in these regulations would be a basis for denying a demand or request submitted to the Presidio Trust.

This rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and follows a 30-day comment period. During this period the Presidio Trust received and considered one comment. This comment proposed that the scope of the regulation in Section 1012.1 be amended to exempt suits in which Presidio Trust board members are sued in their official capacity. The commenter believed that some such suits would not qualify for treatment under these regulations pursuant to *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951) and that the determination of whether the Presidio Trust has a direct and substantial interest in such suits against Presidio Trust board members should not be made by the Presidio Trust. The Presidio Trust considered this comment and believes that because the applicability of these regulations in any particular proceeding or circumstance is subject to judicial review, there is adequate assurance that the requirements set by the *Touhy* decision or other applicable law will be applied. The Presidio Trust will continue to review these regulations in the future, and if it becomes apparent that they should be modified based on changes in the law or experience with their implementation, then the Presidio Trust will do so through the rulemaking process.

**Executive Order 12866—Regulatory Planning and Review**

This final rule, because it is limited to the Presidio Trust's organization and management, does not fall within the definition of a "Rule" under Executive Order 12866 issued September 30, 1993 on Regulatory Planning and Review. Moreover, this final rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will neither interfere with an action taken or planned by another agency nor raise new legal or policy issues. This final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Therefore, it has been determined that this is not an economically significant rule.

**Executive Order 12988—Civil Justice Reform**

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. This final rule has been

written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities. Additionally, the Presidio Trust has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this final rule. Nonetheless, in the event that such a conflict was to be identified, the final rule would preempt State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this final rule; and (2) the final rule does not require the use of administration proceedings before parties may file suit in court challenging its provisions.

#### **Executive Order 13132—Federalism**

This final rule conforms with the Federalism principles set out in Executive Order 13132 and would not impose any compliance costs on the States; and would not have 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. Therefore, it has been determined that this final rule does not have federalism implications.

#### **Unfunded Mandates**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) as well as Executive Order 12875, the Presidio Trust has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more in any one year by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### **Executive Order 13175—Consultation With Indian Tribal Governments**

Pursuant to Executive Order 13175 of November 6, 2000, the Presidio Trust has assessed the impact of this final rule on Indian Tribal governments and has determined that the final rule does not significantly or uniquely affect communities of Indian Tribal governments. The Presidio Trust has also determined that this final rule does not impose substantial direct compliance costs or Tribal implications on Indian tribal governments, and therefore advance consultation with Tribes is not required.

#### **Regulatory Flexibility Act and Executive Order 13272—Consideration of Small Entities**

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) and Executive Order 13272 of August 13, 2002. This final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act and Executive Order 13272, because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity or ability to remain in the market.

#### **Certification**

The Presidio Trust certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

#### **Congressional Review Act**

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Because this final rule is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties it is not a “Rule” as defined by the Congressional Review Act (5 U.S.C. 804(3)(C)) and is not subject to it.

#### **Executive Order 13211—Energy Effects**

This final rule is not a “significant energy action” as defined in Executive Order 13211 of May 22, 2001, because it is not likely to have a significant adverse affect on the supply, distribution or use of energy. The Presidio Trust has determined that this final rule is not likely to have any adverse energy effects.

#### **The Paperwork Reduction Act of 1995**

This final rule contains no paperwork burdens or information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Analysis of Environmental Impact**

The Presidio Trust has analyzed this final rule in accordance with the criteria of the National Environmental Policy

Act of 1969 and determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### **Government Paperwork Elimination Act**

The Presidio Trust is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This final rule contains no paperwork burdens or information collection requirements, and is thus in compliance with the GPEA.

#### **Executive Order 12630—No Takings Implication**

This final rule has been analyzed in accordance with the principles of and criteria contained in Executive Order 12630 issued March 15, 1988, and it has been determined that the final rule does not pose a risk of a taking of constitutionally protected private property.

- For the reasons set forth in the preamble, the Presidio Trust amends chapter X of title 36 of the Code of Federal Regulations as follows:
- A new part 1012, consisting of § 1012.1 through § 1012.11, is added to chapter X to read as follows:

#### **PART 1012—LEGAL PROCESS: TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS**

##### **General Information**

Sec.

- 1012.1 What does this part cover?
- 1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

##### **Responsibilities of Requesters**

- 1012.3 How can I obtain employee testimony or Presidio Trust records?
- 1012.4 If I serve a subpoena duces tecum, must I also submit a *Touhy* Request?
- 1012.5 What information must I put in my *Touhy* Request?
- 1012.6 How much will I be charged?
- 1012.7 Can I get an authenticated copy of a Presidio Trust record?

##### **Responsibilities of the Presidio Trust**

- 1012.8 How will the Presidio Trust process my *Touhy* Request?
- 1012.9 What criteria will the Presidio Trust consider in responding to my *Touhy* Request?

##### **Responsibilities of Employees**

- 1012.10 What must I, as an employee, do upon receiving a request?

1012.11 Must I get approval before testifying as an expert witness other than on behalf of the United States in a Federal proceeding in which the United States is a party or has a direct and substantial interest?

**Authority:** 16 U.S.C. 460bb appendix; 40 U.S.C. 102; 44 U.S.C. 2901 and 3102.

## General Information

### § 1012.1 What does this part cover?

(a) This part describes how the Presidio Trust responds to requests or subpoenas for:

(1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employee's official status;

(2) Testimony by employees in Federal court civil proceedings in which the United States or the Presidio Trust is not a party concerning information acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States or the Presidio Trust, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this part, "employee" means a current or former Presidio Trust employee, or Board member, including a contractor or special government employee, except as the Presidio Trust may otherwise determine in a particular case.

(c) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States or the Presidio Trust is a party;

(3) Federal administrative proceedings;

(4) Federal, State and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Presidio Trust. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the Presidio Trust. See 5 CFR 2635.702(b), 2635.807(b).

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by § 1012.11.

(d) This part does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Presidio Trust FOIA and Privacy Act regulations are found at parts 1007 and 1008 of this chapter.

(e) Nothing in this part is intended to impede the appropriate disclosure under applicable laws of Presidio Trust information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This part only provides guidance for the internal operations of the Presidio Trust, and neither creates nor is intended to create any enforceable right or benefit against the United States or the Presidio Trust.

### § 1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

(a) Except for proceedings covered by § 1012.1(c) and (d), it is the Presidio Trust's general policy not to allow its employees to testify or to produce Presidio Trust records either upon request or by subpoena. However, if the party seeking such testimony or records requests in writing, the Presidio Trust will consider whether to allow testimony or production of records under this part. The Presidio Trust's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Presidio Trust employee may testify or produce records in any proceeding to which this part applies unless authorized by the Presidio Trust under §§ 1012.1 through 1012.11.

*United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

## Responsibilities of Requesters

### § 1012.3 How can I obtain employee testimony or Presidio Trust records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "Touhy Request;" see § 1012.5 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a valid check for costs to the Presidio Trust, in accordance with § 1012.6, if your Touhy Request is granted.

(b) To obtain official Presidio Trust records, you must submit:

(1) A Touhy Request; and

(2) A statement that you agree to pay the costs of search and/or duplication in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this

chapter, if your Touhy Request is granted.

(c) You must send your Touhy Request to both:

(1) The employee; and

(2) The General Counsel of the Presidio Trust.

(d) The address of Presidio Trust employees and the General Counsel is: Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052.

### § 1012.4 If I serve a subpoena duces tecum, must I also submit a Touhy request?

Yes. If you serve a subpoena for employee testimony or if you serve a subpoena duces tecum for records in the possession of the Presidio Trust, you also must submit a Touhy Request.

### § 1012.5 What information must I put in my Touhy Request?

Your Touhy Request must:

(a) Identify the employee or record;

(b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;

(c) Identify the parties to your proceeding and any known relationships they have with the Presidio Trust or to its mission or programs;

(d) Show that the desired testimony or records are not reasonably available from any other source;

(e) Show that no record could be provided and used in lieu of employee testimony;

(f) Provide the substance of the testimony expected of the employee; and

(g) Explain why you believe your Touhy Request meets the criteria specified in § 1012.9.

### § 1012.6 How much will I be charged?

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter. Estimated Costs must be paid in advance by check or money order payable to the Presidio Trust. Upon determination of the precise costs, the Presidio Trust will either reimburse you for any overpayment, or charge you for any underpayment, which charges must be paid within 10 business days by check or money order payable to the Presidio Trust.

**§ 1012.7 Can I get an authenticated copy of a Presidio Trust record?**

Yes. We may provide an authenticated copy of a Presidio Trust record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under parts 1007 or 1008 of this chapter, or this part.

**Responsibilities of the Presidio Trust****§ 1012.8 How will the Presidio Trust process my Touhy Request?**

(a) The Executive Director will decide whether to grant or deny your *Touhy* Request. The Presidio Trust's General Counsel, or his or her agent, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the General Counsel also will coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(b) We will limit the Presidio Trust's decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this part, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 1012.9.

**§ 1012.9 What criteria will the Presidio Trust consider in responding to my Touhy Request?**

In deciding whether to grant your *Touhy* Request, the Executive Director will consider:

(a) Your ability to obtain the testimony or records from another source;

(b) The appropriateness of the employee testimony and record

production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and

(c) The Presidio Trust's ability to:

(1) Conduct its official business unimpeded;

(2) Maintain impartiality in conducting its business;

(3) Minimize the possibility that the Presidio Trust will become involved in issues that are not related to its mission or programs;

(4) Avoid spending public employees' time for private purposes;

(5) Avoid any negative cumulative effect of granting similar requests;

(6) Ensure that privileged or protected matters remain confidential; and

(7) Avoid undue burden on the Presidio Trust.

**Responsibilities of Employees****§ 1012.10 What must I, as an employee, do upon receiving a request?**

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Presidio Trust's General Counsel for assistance in issuing the proper response.

(b) If you receive a *Touhy* Request, you must promptly notify your supervisor and forward the request to the General Counsel. After consulting with the General Counsel, the Executive Director will decide whether to grant the *Touhy* Request under § 1012.9.

(c) All decisions granting or denying a *Touhy* Request must be in writing. The Executive Director must ask the General Counsel for advice when preparing the decision.

(d) Under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44(a)(1), or comparable State or Tribal law, a request for an authenticated copy of a Presidio Trust record may be granted by

the person having the legal custody of the record. If you believe that you have custody of a record:

(1) Consult the General Counsel to determine if you can grant a request for authentication of records; and

(2) Consult the General Counsel concerning the proper form of the authentication (as authentication requirements may vary by jurisdiction).

**§ 1012.11 Must I get approval before testifying as an expert witness other than on behalf of the United States in a Federal proceeding in which the United States is a party or has a direct and substantial interest?**

(a) You must comply with 5 CFR 2635.805(c), which details the authorization procedure for an employee to testify as an expert witness, not on behalf of the United States, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest. This procedure means:

(1) You must obtain the written approval of the Presidio Trust's General Counsel;

(2) You must be in an approved leave status if you testify during duty hours; and

(3) You must state for the record that you are appearing as a private individual and that your testimony does not represent the official views of the Presidio Trust.

(b) If you testify as an expert witness on a matter outside the scope of your official duties, and which is not covered by paragraph (a) of this section, you must comply with 5 CFR 2635.802.

Dated: August 14, 2009.

**Karen A. Cook,**  
General Counsel.

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