NATIONAL FOUNDATION ON THE 
ARTS AND THE HUMANITIES 
45 CFR Part 1160 
RIN 3134-AA01 
Technical Amendments To Reflect 
the 
New Authorization for a Domestic 
Indemnity Program 
AGENCY: Federal Council on the Arts 
and the Humanities. 
ACTION: Final rule. 
SUMMARY: The Federal Council on 
the Arts and the Humanities is adopting 
as a final rule, without change, the 
amendments which were published in the 
Federal Register as a proposed rule 
that reflect Congress’s authorization of a 
Domestic Indemnity Program under 
section 426 of The Consolidated 
Appropriations Act of 2008, Public Law 
110–161 (December 26, 2007), and 
provide examples to guide applicants 
considering applying for 
indemnities under the Domestic Indemnity Program. 
On March 4, 2008, a proposed rule was 
published by the Federal Council in the 
Federal Register (73 FR 11577) and 
public comment was solicited on 
technical amendments to the 
Regulations to reflect authorization of a Domestic Indemnity Program. 
II. Public Comments on the Proposed 
Rule 
The Federal Council’s March 4, 2008 
proposed rule in the Federal Register at 
73 FR 11577 provided a 30-day public 
comment period which ended on April 
3, 2009. No comments were submitted 
in response to the proposed rulemaking. 
III. Matters of Regulatory Procedure 
Regulatory Planning and Review (E.O. 
12866) 
Under Executive Order 12866, the 
Federal Council must determine whether the 
regulatory action is “significant” and 
therefore subject to OMB review and the 
requirements of the Executive Order. 
The Order defines a “significant regulatory action” as one that is likely 
to result in a rule that may: (1) Have an 
annual effect on the economy of $100 
million or more or adversely affect in 
a material way the economy, a sector of 
the economy, productivity, competition, 
jobs, the environment, public health or 
safety, or State, local, or tribal governments or communities; (2) create 
a serious inconsistency or otherwise 
interfere with an action taken or 
planned by another agency; (3) materially alter the budgetary impact of 
etitlements, grants, user fees, or loan 
programs or the rights and obligations of 
recipients thereof; or (4) raise novel 
legal or policy issues arising out of legal 
mandates, the President’s priorities, or 
the principles set forth in the Executive 
Order. 
The final rule makes technical 
amendments to reflect Congress’ 
authorization of a Domestic Indemnity Program. 
Under section 426 of The 
 Consolidated Appropriations Act of 
2008, Public Law 110–161 (December 
26, 2007). As such, it does not impose 
a compliance burden on the economy 
generally or on any person or entity. 
Accordingly, this final rule is not a “significant regulatory action” from an 
economic standpoint, and it does not 
otherwise create any inconsistencies or 
budgetary impacts to any other agency 
or Federal Program. 
Regulatory Flexibility Act 
Because this final rule makes certain 
technical amendments, the Federal 
Council has determined in Regulatory 
Flexibility Act (5 U.S.C. 601 et seq.) 
review that this final rule will not have a 
significant economic impact on a 
substantial number of small entities. 
Paperwork Reduction Act 
This final rule is exempt from the 
requirements of the Paperwork 
Reduction Act, since it makes only 
technical amendments to reflect 
Congress’ authorization of a Domestic 
Indemnity Program under Section 426 of 
The Consolidated Appropriations Act 
of 2008, Public Law 110–161 (December 
26, 2007). An OMB form 83–1 is not 
required. 
Unfunded Mandates Reform Act 
For purposes of the Unfunded 
Mandates Reform Act of 1995 (2 U.S.C. 
chapter 25, subchapter II), this final rule 
will not significantly or uniquely affect 
State, local, and tribal governments and 
will not result in increased expenditures 
by State, local, and tribal governments, 
or by the private sector, of $100 million 
or more as adjusted for inflation in any 
one year. 
Small Business Regulatory 
Fairness Act (SBREFA) 
This final rule is not a major rule 
under 5 U.S.C. 804(2), the Small 
Business Regulatory Enforcement 
Fairness Act. This final rule is not: 
a. Does not have an annual effect on 
the economy of $100 million or more. 
b. Will not cause a major increase in 
costs or prices for consumers, 
individual industries, Federal, State, 
or local government agencies, or 
geographic regions. 
c. Does not have significant adverse 
effects on competition, employment, 
investment, productivity, innovation, or 
the ability of U.S.-based enterprises to 
compete with foreign-based enterprises. 
Takings (E.O. 12630) 
In accordance with Executive Order 
12630, the final rule does not have 
significant takings implications. 
No rights, property or compensation 
has, or will be, taken. A takings 
iplication assessment is not required. 
Federalism (E.O. 13132) 
In accordance with Executive Order 
13132, this final rule does not have 
federalism implications that warrant the 
preparation of a federalism assessment.
Civil Justice Reform (E.O. 12988)
In accordance with Executive Order 12988, the Federal Council has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation With Indian Tribes
(E.O. 13175)
In accordance with Executive Order 13175, the Federal Council has evaluated this final rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act
This final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 45 CFR Part 1160
Administrative practice and procedure, Art, Indemnity payments, Museums, Nonprofit organizations.

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For the reasons stated in the preamble and under the authority of section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007), the Federal Council on the Arts and the Humanities amends 45 CFR Part 1160 as follows:

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

§ 1160.5 Eligibility for international exhibitions.
An indemnity agreement for an international exhibition made under these regulations shall cover:
(a) Eligible items from outside the United States while on exhibition in the United States;
(b) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; and
(c) Eligible items from the United States while on exhibition in the United States, in connection with other eligible items from outside the United States which are integral to the exhibition as a whole.

(d)(1) Example. An American art museum is organizing a retrospective exhibition which will include more than 150 works of art by Impressionist painter Auguste Renoir. Museums in Paris and London have agreed to lend 125 works of art, covering every aspect of his career, many of which have not been seen together since the artist’s death in 1919. The organizer is planning to include 25 masterpieces by Renoir from American public and private collections. The show will open in Chicago and travel to San Francisco and Washington.

(2) Discussion. This example is a common application for coverage of both foreign- and domestic-owned objects in an international exhibition. The foreign-owned objects are eligible for indemnity coverage under paragraph (a) of this section, and the domestic owned objects may be eligible for indemnity coverage under paragraph (c) of this section if the foreign-owned objects are integral to the purposes of the exhibition as a whole. In reviewing this application, the Federal Council would evaluate the exhibition as a whole and determine whether the loans of 125 foreign-owned objects are integral to the educational, cultural, historical, or scientific significance of the exhibition on Renoir. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

§§ 1160.5 through 1160.12 (Redesignated as §§ 1160.6 through 1160.13)
_ 3. Sections 1160.5 through 1160.12 are redesignated as §§ 1160.6 through 1160.13._

_ 4. A new § 1160.5 is added to read as follows: _

§ 1160.5 Eligibility for domestic exhibitions.
An indemnity agreement for a domestic exhibition made under these regulations shall cover eligible items from the United States while on exhibition in the United States.

(a)(1) Example. An American museum is undergoing renovation and will be closed to the public for one year. During that time, masterpieces from the collection will go on tour to three other museums in the United States. Many of these works have never been lent for travel, and this will be a unique and the last opportunity for museum visitors in other parts of the country to see them exhibited together. Once the new building opens, they will be permanently installed and dispersed throughout the museum’s galleries.

(2) Discussion. (i) This is a straightforward example of a domestic exhibition which would be eligible for consideration for indemnity coverage. Under the previous regulations, eligibility was limited to:
(A) Exhibitions in the United States of entirely foreign-owned objects;
(B) Exhibitions outside of the United States of domestic-owned objects; or
(C) Exhibitions in the United States of both foreign- and domestic-owned objects, with the foreign-owned objects having integral importance to the exhibition.

(ii) In this example, the Federal Council will consider the educational, cultural, historical, or scientific significance of the proposed domestic exhibition of the domestic-owned objects. It would not be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

(b)(1) Example 2. An American museum is organizing an exhibition of works by 20th century American artists, which will travel to one other U.S. museum. There are more than 100 objects in the exhibition. The majority of the paintings, drawings and sculpture, valued at more than $500,000,000, are from galleries, museums and private collections in the United States. The organizing curator has selected ten works of art, mostly drawings and preparatory sketches relating to paintings in the exhibition, valued at less than $5,000,000, which will be borrowed from foreign lenders.

(2) Discussion. (i) This example raises the question of whether this applicant should submit an application for indemnity coverage for a domestic exhibition or an international exhibition. If the applicant submitted an application for an international exhibition requesting coverage for only the foreign-owned objects eligible under Section 1160.4(a), the Federal Council would evaluate whether the ten foreign owned objects further the exhibition’s educational, cultural, historical, or scientific purposes. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest. In this case, the applicant would have to insure the loans of the domestic owned objects by other means.

(ii) In the case of an application for an international exhibition requesting coverage for both domestic-owned and foreign-owned objects eligible under section 1160.4(a) and (c), the Federal Council would evaluate the exhibition as a whole to determine if the ten foreign-owned objects are integral to achieving the exhibition’s educational, cultural, historical, or scientific purposes. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

(iii) If the applicant submitted an application for a domestic exhibition, however, only the loans of domestic owned objects, the highest valued part of the exhibition, would be eligible for coverage. The Federal Council would consider if the U.S. loans were of
educational, cultural or historic interest. It would not be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest. In this case, the applicant would have to insure the loans of the foreign-owned objects by other means.

§ 1160.6 [Amended]
_5._ Amend paragraph (j)(2) of newly redesignated § 1160.6 by removing “Director of the United States Information Agency that the exhibition” and adding in its place “Secretary of State or his designee that the international exhibition with eligible items under § 1160.4.”

§ 1160.7 [Amended]
_6._ Amend newly redesignated § 1160.7 by removing “the application will be submitted to the Director of the United States Information Agency” and adding in its place “applications for international exhibitions with eligible items under § 1160.4 will be submitted to the Secretary of State or his designee.”

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