

**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 a final rule, without change, the amendments which were published in the *Federal Register* as a proposed rule on March 4, 2008. The amendments 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 indemnification of exhibitions with domestic or foreign-owned objects.

**DATES:** This rule is effective April 18, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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(Phone: (202) 606-8322, facsimile (202) 606-8600, or e-mail to [gencounsel@neh.gov](mailto:gencounsel@neh.gov)) Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:**

**I. Background on Domestic Indemnity Program Technical Amendments**

In 1975, the United States Congress enacted the Arts and Artifacts Indemnity Act, 20 U.S.C. 971-977, as amended, which established the Arts and Artifacts Indemnity Program administered by the Federal Council on the Arts and the Humanities (Federal Council). Under the Arts and Artifacts Indemnity Program, the United States Government guarantees to pay claims for loss or damage, subject to certain limitations, arising from exhibitions of foreign and domestic-owned objects determined by the Federal Council to be of educational, cultural, historical or scientific value. The Arts and Artifacts Indemnity Program is administered by the Museum Program at the National Endowment for the Arts, on behalf of the Federal Council, per "Indemnities Under the Arts and Artifacts Act" regulations (hereinafter "the Regulations"), which are set forth at 45

CFR part 1160.

Since 1975, the Regulations have been promulgated and amended by the Federal Council pursuant to the express and implied rulemaking authorities granted by Congress to make and amend rules needed for the effective administration of the Indemnity Program. On December 26, 2007, through section 426 of The Consolidated Appropriations Act of 2008, Public Law 110-161, the Arts and Artifacts Indemnity Act was amended in part to expand coverage of the Arts and Artifacts Indemnity program to up to \$5,000,000,000 at any one time for domestic exhibitions. (20 U.S.C. 974(b).)

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 the 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, 2008. 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 on the Arts and the Humanities 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 entitlements, 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 Enforcement**

**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:

- Does not have an annual effect on the economy of \$100 million or more.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- 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 been, or will be, taken. A takings implication 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. Dated: April 11, 2008.

**Heather C. Gottry,**

*Counsel to the Federal Council on the Arts and the Humanities.*

— 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**

— 1. The authority citation for 45 CFR Part 1160 continues to read as follows:  
**Authority:** 20 U.S.C. 971–977.

— 2. Revise § 1160.4 to read as follows:

#### **§ 1160.4 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 1.* 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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