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## **NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

### **National Endowment for the Arts**

### **National Endowment for the Humanities**

### **Institute of Museum and Library Services**

45 CFR Part 1100

RIN 3135-AA26; 3136-AA31; 3137-AA23

Statement for the Guidance of the Public – Organization, Procedure and Availability of Information

**AGENCY:** National Endowment for the Arts, National Endowment for the Humanities, and Institute of Museum and Library Services.

**ACTION:** Final rule.

**SUMMARY:** The National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH), and the Institute of Museum and Library Services (IMLS) are amending their joint Freedom of Information Act (FOIA) regulations, to remove any reference to the NEH, the Federal Council on the Arts and the Humanities (FCAH), an agency for which the NEH provides legal counsel, and the IMLS. The NEA, the NEH and the IMLS are amending these joint regulations because each agency has adopted or plans to adopt its own separate FOIA regulations.

**DATES:** Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Andrew Christopher, Assistant General Counsel, Institute of Museum and Library Services, 202-653-4712.

**SUPPLEMENTARY INFORMATION:** The NEA, the NEH, the IMLS, and the FCAH make up the National Foundation on the Arts and Humanities (Foundation). The Foundation was established by the National Foundation on the Arts and Humanities Act of 1965, 20 U.S.C. 951 et seq. The NEA, the NEH (for itself and on behalf of the FCAH), and the former Institute of Museum Services (now, the IMLS) last revised the joint regulations on December 21, 1987. Each of these agencies has decided to issue separate FOIA regulations or plans to adopt its own separate FOIA regulations; therefore, they are amending 45 CFR part 1100. Concurrently with this amendment, NEH has adopted new FOIA regulations for itself and the FCAH in 45 CFR part 1171, and IMLS has adopted new FOIA regulations for itself in 45 CFR part 1184. NEA intends to propose new FOIA regulations for itself in 45 CFR part 1160. On July 8, 2013, the Foundation published a proposed rule in the Federal Register (78 FR 40664) and requested public comments on the proposed rule. The Foundation received one public comment, which was taken into consideration before adopting the final rule.

E.O. 12866, Regulatory Review

This rule is not a “significant regulatory action” under Executive Order 12866 and therefore is not subject to Office of Management and Budget (OMB) review.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), NEA, NEH, and IMLS have certified that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the

direct costs of searching for, reviewing, and duplicating the records that agencies process for requesters. Thus, fees assessed for processing FOIA requests are nominal.

#### Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, the rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments.

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

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, as amended. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### Paperwork Reduction Act

NEA, NEH, and IMLS have determined that the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., does not apply to the rule because the rule does not contain information collection requirements that require OMB approval.

#### List of Subjects in 45 CFR Part 1100

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, the NEA, the NEH (for itself and on behalf of the FCAH), and the IMLS amend 45 CFR part 1100 as follows:

PART 1100 – STATEMENT FOR THE GUIDANCE OF THE PUBLIC –  
ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

1. The authority citation for part 1100 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 99–570, 100 Stat. 3207.

2. In § 1100.1 revise paragraph (a) to read as follows:

§ 1100.1 Definitions.

(a) Agency means the National Endowment for the Arts.

\* \* \* \* \*

3. Revise § 1100.2 to read as follows:

§ 1100.2 Organization.

The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 951 et seq. The Foundation is composed of the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum and Library Services, and the Federal Council on the Arts and the Humanities. The Institute of Museum and Library Services became a part of the National Foundation on the Arts and the Humanities pursuant to the Museum and Library Services Act, as amended (20 U.S.C. 9102). Each Endowment is headed by a Chairman and has an advisory national council composed of 26 presidential appointees. The Institute of Museum and Library Services is headed by a Director and has a National Museum and Library Services Board composed of 20 presidential appointees, the Director, and IMLS’s Deputy Directors for the Offices of Library Services, and Museum Services. The Federal Council on the Arts and the Humanities, comprised of Executive branch officials and appointees of the legislative

branch, is authorized to make agreements to indemnify against loss or damage for certain exhibitions and advise on arts and humanities matters. The National Endowment for the Humanities, the Federal Council on the Arts and Humanities, and the Institute of Museum and Library Services no longer follow the regulations under this part. The procedures for disclosing records of the National Endowment for the Humanities and the Federal Council on the Arts and the Humanities are available at 45 CFR part 1171. The procedures for disclosing records of the Institute of Museum and Library Services are available at 45 CFR part 1184.

4. Revise § 1100.3 to read as follows:

§ 1100.3 Availability of information to the public.

(a) Descriptive brochures of the organization, programs, and function of the National Endowment for the Arts are available upon request. Inquiries involving work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506. The telephone number of the National Endowment for the Arts is (202) 682-5400.

(b) The head of the National Endowment for the Arts is responsible for the effective administration of the Freedom of Information Act. The head of the National Endowment for the Arts pursuant to this responsibility hereby directs that every effort be expended to facilitate service to the public with respect to the obtaining of information and records.

(c) Requests for access to records of the National Endowment for the Arts may be filed by mail with the General Counsel of the National Endowment for the Arts or by email at FOIA@arts.gov. All requests should reasonably describe the record or records

sought. Requests submitted should be clearly identified as being made pursuant to the Freedom of Information Act.

5. Revise § 1100.4 to read as follows:

§ 1100.4 Current index.

The National Endowment for the Arts shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication and distribution of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices will be provided upon request at a cost not to exceed the direct cost of the duplication.

6. In § 1100.5 revise paragraphs (a), (b)(1), and the first sentence in the introductory text of paragraph (c) to read as follows:

§ 1100.5 Agency procedures for handling requests for documents.

(a) Upon receiving a request for documents in accordance with the rules of this part, the General Counsel or respective Assistant General Counsel serving as the Freedom of Information Act Officer of the National Endowment for the Arts shall determine whether or not the request shall be granted in whole or in part.

\* \* \* \* \*

(b)(1) Any party whose request for documents has been denied in whole or in part may file an appeal no later than ten (10) working days following receipt of the notification of denial. Appeals must be addressed to the Chairman, National Endowment for the Arts, Washington, DC 20506.

\* \* \* \* \*

(c) In unusual circumstances, the time limits prescribed to determine a request for documents with respect to initial actions or actions on appeal may be extended by written notice from the General Counsel or respective Assistant General Counsel serving as the Freedom of Information Act Officer of the National Endowment for the Arts. \* \* \*

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7. Revise § 1100.7 introductory text and paragraph (a) to read as follows:

§ 1100.7 Foundation report of actions.

On or before March 1 of each calendar year, the National Endowment for the Arts shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by National Endowment for the Arts not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination;

\* \* \* \* \*

India Pinkney

General Counsel.

National Endowment for the Arts.

Michael P. McDonald

General Counsel.

National Endowment for the Humanities.

Nancy E. Weiss

General Counsel.

Institute of Museum and Library Services.

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