

recommendation regarding consistent use of “falsely suggests” has been adopted to mirror the use of these terms in the 1990 Act.

Section-by-Section Comments

Section 309.2 What Are the Key Definitions for Purposes of the Act?

Definition of “Indian Product,” § 309.2(d)

In light of comments to §§ 309.6 and 309.7, the final rule contains additional clarification that “made by an Indian” includes products in which the Indian has provided the labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work. The labor component of the product must be entirely Indian and is what makes the Indian art or craft object an “Indian product.”

One comment requested that the requirement in § 309.7(h) note 2—that the labor component of an “Indian product” must be entirely Indian—be stated boldly in a prominent location at the beginning of the final rule to emphasize its paramount importance. This comment has been adopted and incorporated in the key definitions of Indian product under § 309.2(d).

Several respondents requested that a range of items, such as food and agricultural products, music, poetry, and stories, be included as examples of Indian products. Two of these respondents also requested that “Indian product” be defined in the broadest way possible. One respondent stated that “Indian product” includes any “typically Indian product” designed and produced by Indians. One respondent requested that “Indian product” be defined as any product made by an Indian, while another respondent requested that the definition of “Indian product” be narrowed.

The final rule has not adopted these comments. As explained in the “Section-by-Section Comments—Definition of Indian Product, § 309.2” of the preamble to the 1990 Act’s regulations, the “Supplementary Information; Background” for the 2000 Act’s Notice of Proposed Rulemaking, and the Background section of this document, the IACB has determined that the 1990 and 2000 Acts apply to Indian arts and crafts and not all products generally. This determination is based upon the IACB’s 1935 organic legislation, IACB’s primary mission as established by Congress, and the language and Congressional intent of the 1990 and 2000 Acts.

One respondent requested that the final rule add sacred and traditional

Indian cultural symbols, patterns, and designs used in traditional Indian weavings under the definition of “Indian product” to protect against imported products that appropriate Indian cultural symbols.

Under the 1990 Act, the IACB oversees the receipt, analysis, and referral of complaints of art and craft work offered or displayed for sale or sold within the United States in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe, or Indian arts and crafts organization resident within the United States. While the IACB acknowledges the significant concerns cited by the respondent, the protection of Indian cultural symbols, patterns, and designs, and related cultural property of an Indian Tribe, clan, or moiety is a matter of cultural patrimony and beyond the scope of the 1990 Act, unless misrepresentation is involved. Therefore, the final rule has not incorporated this request. Of course, if the art or craft work depicting the Indian cultural symbols is marketed in the United States in a manner that falsely suggests that it is the product of a particular Tribe or as Indian made, then a violation of the 1990 Act would occur.

Illustration of “Handcrafts,” § 309.2(d)(1)(iii)

Two respondents requested that, under § 309.2(d)(1)(iii), the terms “Indian handmade arts and crafts” be substituted for ‘handcrafts’ made by an Indian.” This request has not been adopted as it does not improve the understanding of § 309.2(d)(1).

Exclusions From Definition of Indian Product, § 309.2(d)(2)(iii)

Two comments expressed concern that, under § 309.2(d)(2)(iii), bronze castings reproduced from an original Indian stone sculpture in a commercial foundry by non-Indians would be prohibited from being sold as an Indian product. The respondents requested clarification regarding limited editions of original Indian art works. The final rule has not incorporated these comments. Under the regulations, a product in the style of Indian arts and crafts that is designed by an Indian but produced by non-Indian labor is not an Indian product under the 1990 Act. The original stone sculpture is an Indian product. The limited edition bronze casting by non-Indian labor is a non-Indian reproduction of an original Indian stone sculpture.

Exclusions, § 309.2(d)(2)(v)

One respondent requested clarification regarding the use of the term “without a ‘substantial handcraft element’ provided by Indian labor” under § 309.2(d)(2)(v), to describe a product in the style of Indian arts and crafts that does not meet the definition of Indian product. The respondent viewed this definition in conflict with the definition of ‘handcrafts’ made by an Indian” under § 309.2(d)(1)(iii), “objects created with the help of such devices as allow the manual skill * * *” For clarification, the term “substantial transformation” has been substituted for “substantial handcraft element” under § 309.2(d)(2)(v).

Exclusions, § 309.2(d)(2)(vi)

One comment requested that § 309.2(d)(2)(vi), excluding industrial products from the definition of Indian products, be removed from the final rule. This request has not been adopted because it is inconsistent with the scope and intent of the 1990 Act.

Exclusions, § 309.2(d)(2)(vii)

One respondent requested that § 309.2(d)(2)(vii) regarding assembly line production of a product in the style of Indian arts and crafts be further clarified. It was suggested the example provided as “not an Indian product,” a pipe in the style of an Indian product, be changed to another example that focused more on the requirement of entirely Indian labor for Indian products. While the previous example remains valid, the final rule has adopted the respondent’s recommended language to eliminate potential confusion.

Section 309.6 When Does a Commercial Product Become an Indian Product?

One commenter requested that beadwork on commercially available items, such as medicine bottles and combs, not be considered authentic “Indian products.” The subject of transforming commercial products into Indian art or craft products is addressed in §§ 309.6, 309.7, and 309.14. By adding sufficient art and craft work to a commercial product through Indian labor, the qualities and appearance of the commercial product can be substantially transformed into an art or craft work. Therefore, this request has not been adopted in the final rule.

One respondent expressed concern that the provisions provided under § 309.6 exhibited a lack of support for non-traditional art forms. To the contrary, the proposed rulemaking and the final rule state, in § 302.2(d)(1)(ii),