

that the key definitions of Indian product include “crafts made by an Indian that are in a traditional or non-traditional style or medium.” Furthermore, § 309.22 clarifies that the definition of Indian product includes “art forms to be developed in the future.” The final rule therefore has not incorporated this comment regarding non-traditional art forms.

One respondent requested clarification about when a commercial product becomes an Indian product. For example, if an Indian artisan were to use industrial steel, bottles, and cans in a sculpture, at what point does it change from an industrial or commercial product into an Indian product? The final rule clarifies that once commercial items, such as cups and bottles, kitchen utensils, or marble components, are substantially transformed entirely by Indian labor into an art or craft object, such as a sculpture, the result is an Indian product.

One comment requested clarification between the definition of commercial and industrial products. This comment has been adopted in part by adding explanatory language to § 309.6 of the final rule. The rule now states that commercial products are goods designed for profit and mass distribution that lend themselves to Indian embellishment, for example clothing and accessories. For purposes of the final rule, industrial products, on the other hand, are goods that have an exclusively functional purpose, do not serve as a traditional artistic medium, and that do not lend themselves to Indian embellishment, such as appliances and vehicles. An industrial product may not become an Indian product. This comment has been adopted in part by adding descriptive language to § 309.6 of the final rule.

*Section 309.7 How Should a Seller Disclose the Nature and Degree of Indian Labor When Selling, Offering, or Displaying Art or Craft Work for Sale?*

A comment requested that the terms “Indian style,” “Indian design,” “Indian inspired,” and “Indian assembled” be removed from § 309.7 and throughout the final rule to avoid confusion among consumers and to avoid substantial interpretive problems. The final rule makes various revisions to § 309.7(d), which incorporate the comments in part.

*Section 309.7(a) Indian Production of an Indian Product*

Two respondents expressed concern that § 309.7 may lead people to believe that in order for an Indian product to be marketed as such, it must be conceived

and designed by an Indian. We believe, however, that § 309.6 makes it clear that when an item is “substantially transformed” by Indian artistic or craft work labor, it becomes an Indian product. Design or conception by an Indian alone is insufficient to constitute substantial transformation. The Indian labor must substantially transform the materials, such as beads, precious metals, and other base materials, into an Indian product. Thus, even commercial products featuring Indian arts and crafts embellishments done by Indian labor that sufficiently transform the nature, qualities, and appearance of the original commercial item are considered “Indian products.” The final rule has not incorporated the comment.

*Section 309.7(d) Indian Designed and Non-Indian Made Products*

One commenter requested that an Indian designed and non-Indian made product, and therefore not an Indian product, be sold as “not an Indian product,” without the option to market it as “Indian designed.” This comment has not been adopted in the final rule because dictating how products that are not Indian products may be marketed is outside the scope of this rule. Also, we will retain the suggestion to market items as “Indian designed” because we believe that providing suggested alternatives to marketing products as Indian products will enhance compliance with the rule.

*Section 309.7(e) A Product Assembled From a Substantial Amount of Non-Indian Made Materials*

Several respondents requested clarification regarding guidelines for characterizing art and craft work when those products were made from a substantial amount of non-Indian made products, such as beads, gold, silver, and purchased basketry materials. Although §§ 309.11 through 309.22 address a vast range of “Indian products,” including beadwork, gold and silver jewelry and crafts, basketry, and textile products, the respondents point out that § 309.7(e) could create confusion.

A wide variety of Indian arts and crafts products may be made from non-Indian made materials, such as beads, precious metals, and other base materials, provided that Indian artistic creation and labor—as opposed to assembly line work—substantially transforms these materials into Indian products. For example, a piece of silver artistically designed, shaped, and finely engraved by an Indian becomes a handcrafted Indian bracelet. By contrast, the type of products under § 309.7(e) are

essentially those products that are simply assembled from “fit together parts” kits and related products. For example, assembled jewelry that requires non-artistic Indian labor, such as stringing overseas mass-produced fetishes or heshi and attaching a clasp, is not an Indian product. Conversely, for example, Indian artistically-crafted beadwork products, regardless of where the beads were manufactured and the amount of non-Indian materials, such as beaded medallion necklaces, pouches, and hair clips, as well as gold engraved bracelets, and silver and turquoise crafted rings, do not fall under the “assembled” category of § 309.7(e) and are Indian products.

The respondent’s requests for clarification have been adopted in the final rule. Section 309.7(e) has been revised to read “A product, such as jewelry, made with non-artistic Indian labor, from assembled or ‘fit together parts,’ does not meet the definition of Indian product.”

One comment recommended that § 309.7(e) note 1 eliminate the term “Indian assembled” as a marketing guideline and replace it with the phrase “not an Indian product.” The comment has not been adopted in the final rule. The product addressed in § 309.7(e) note 1 is not an Indian product under the 1990 Act, but it may be marketed as “Indian assembled” without violating the 1990 Act. Thus, rather than attempting to dictate affirmative marketing representations for the manner in which such a product should be marketed, the final rule only provides an example of how it may be marketed. (The 1990 Act only prohibits falsely suggesting that a product is an Indian product. It does not affect the marketing of non-Indian products.)

One respondent requested that “kachina” be removed, under § 309.7(e) note 1, and another product be substituted as an example of kit assembled products. The intent of this request was to prevent the generic use of a religious and culturally sensitive item in the rulemaking. This request has been adopted by removing the kachina example and inserting “dream catcher” under § 309.7(e) note 1.

*Section 309.7(f) A Product Assembled by Non-Indian Labor From Kits*

In keeping with the request for further clarification to § 309.7(f), the guidelines state that a product assembled by non-Indian labor from a kit, that is made in the style of an Indian product, is not an Indian product.