

### *Section 309.8 Identifying Authentic Indian Products*

A respondent asked that an individual's enrollment number be incorporated in the recommended method of identifying authentic Indian products, under § 309.8. The final rule has incorporated this recommendation. The addition of an Indian artist's or artisan's enrollment number under the recommended methods of identifying authentic Indian products, along with the name of the artist or artisan and the name of his or her Tribe, will assist consumers in identifying authentic Indian products, contribute to consumer confidence, and help raise consumer appreciation of authentic Indian arts and crafts.

### *Sections 309.8 and 309.9 Marketing Products by "Certified Indian Artisans"*

A respondent requested that § 309.8, regarding identifying authentic Indian products, include reference to how a "certified Indian artisan" should identify his or her art work. The respondent also requested that § 309.9, regarding how non-Indians can market products in the style of Indian arts and crafts, take the "certified Indian artisan" issue into consideration. The request to address how a "certified Indian artisan" should identify his or her art work has been adopted in the text of § 309.8. The request to include the "certified Indian artisan" issue under § 309.9, regarding non-Indian products, has not been adopted. The 1990 Act's definition of "Indian," under Sections 104 and 105, includes any individual certified as an Indian artisan by an Indian Tribe. As the art and craft work of certified Indian artisans meet the definition of Indian product, it would be inappropriate to include their art and craft work under non-Indian products.

### *Section 309.9 Is it Illegal for a Non-Indian to Make and Sell Indian Style Art and Craft Products?*

Two respondents recommended that the heading of § 309.9 be changed to the format of the related sections. The final rule has adopted one of the two recommendations. The former heading for § 309.9, "Is it illegal . . .," is replaced with the current heading "When can non-Indians make and sell products in the style of Indian art and craft products?"

One respondent commented that, under § 309.9, products in the style of Indian art and craft products that are not Indian made should be offered for sale as "non-Indian made" only, and not "Indian inspired." The request has been adopted in part. In response to this

comment, and a previously addressed comment, "Indian inspired" has been struck from the last sentence of § 309.9, as well as the entire text of the final rule, to reduce or alleviate consumer confusion.

### *Section 309.11 What Are Examples of Jewelry That Are Indian Products?*

One respondent suggested adding seashells and abalone as descriptive jewelry examples under § 309.11. These two examples have not been adopted, as shell jewelry is listed under Indian jewelry products.

### *Section 309.12 What Are Examples of Basketry That Are Indian Products?*

One respondent suggested a variety of descriptive terms be added to this section on basketry, including cedar capes and dresses. A number of the recommended descriptive terms have been adopted in § 309.12 of the final rule.

### *Sections 309.12 and 309.13 What Are Examples of Basketry, Weaving, and Textile Indian Products?*

One comment requested that all references to hemp be removed from the final rule, which occurred under §§ 309.12 and 309.13. In line with federal law (the Controlled Substances Act, 21 U.S.C. 801 *et seq.*) the final rule has adopted this request by substituting fiber for hemp under §§ 309.12 and 309.13.

### *Section 309.15 What Are Examples of Apparel That Are Indian Products?*

One respondent requested that wording be added under § 309.15 to include the specific reference to apparel items made from both traditional materials and designs and from modern textiles. The final rules have not adopted this comment. The key definitions of Indian product, under § 309.2, describe art works and crafts as "made by an Indian that are in a traditional or non-traditional style or medium." Therefore, it is understood that traditional and modern apparel, as well as other traditional and modern art and craft works, are included in the range of Indian products provided as examples.

### *Section 309.17 What Are Examples of Woodwork That Are Indian Products?*

One comment requested additional descriptive terms be incorporated under § 309.17, including red and yellow cedar seagoing canoe paddles and broad leaf maple ladles, spoons, and soup bowls. This request has been adopted in part.

One comment requested that traditional ceremonial Indian structures be included under § 309.17. The final rule has not adopted this request. While what constitutes an Indian art or craft product is potentially very broad, the range of examples of woodwork products currently listed under § 309.17 is sufficient.

### *Section 309.21 What Are Examples of Dolls and Toys That Are Indian Products?*

A respondent requested that kachina dolls be removed from § 309.21, listing examples of dolls, and moved to § 309.20, listing examples of carvings. This request has been adopted.

### *Section 309.22 What Are Examples of Painting and Other Fine Art Forms That Are Indian Products?*

One respondent requested a new section, § 309.23, be added to the final rule to give "art forms to be developed in the future" its own section, rather than included in § 309.22. The request has not been adopted, as a separate category for work yet to be defined is unwarranted. The current categories of art and craft work are sufficiently broad to reflect evolution of art forms.

### *Section 309.23 Does This Part Apply to Products Made Before 1935?*

On comment suggested adding a new § 309.23 for other Indian products, such as pouches, animal fetishes, and pipes, and moving § 309.23 on pre-1935 products to § 309.24. The final rule has not adopted this suggestion as the other Indian products are sufficiently covered in §§ 309.11–309.22.

## **Drafting Information**

This final rule was prepared by Meridith Z. Stanton (Director, Indian Arts and Crafts Board).

## **Compliance With Other Laws and Directives**

### **1. Regulatory Planning and Review (Executive Order 12866)**

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or tribal governments or communities. The rule is simply a Congressionally mandated further clarification of an existing regulatory definition of "Indian product."