

**ATTENTION**  
**INDIAN ARTISTS AND CRAFTSPEOPLE, ART BUSINESSES, AND TRIBAL AND CULTURAL LEADERS,**

**WHAT: Proposed Re-Write of Current Regulations Under the Indian Arts and Crafts Act, a Truth-in-Marketing Law That Currently Protects Authentic Indian Artists, Craftspeople, Artwork, Economies, and Cultures**

**WHY IT IS IMPORTANT TO YOU: Proposed Revisions to the Current Indian Arts and Crafts Act Regulations Would Undermine Protections for Indian Artists and Craftspeople from the Sale of Fake Indian Art**

- **Background –**
  - The U.S Department of the Interior’s Office of Assistant Secretary for Indian Affairs is leading a wide-ranging effort to re-write the current regulations under the Indian Arts and Crafts Act, [www.bia.gov/service/tribal-consultations/indian-arts-and-crafts-board-25-cfr-chapter-ii](http://www.bia.gov/service/tribal-consultations/indian-arts-and-crafts-board-25-cfr-chapter-ii).
  - The Act is a truth-in-marketing law that prohibits the offer or display for sale, or sale, of art and craft products as Indian made when those products were not made by Indians as defined by the Act. Indian labor makes it an Indian product. The Act is intended to rid the Indian arts and crafts marketplace of fakes and counterfeits, thereby protecting the economic likelihoods and cultural heritage of Indian artists and craftspeople and their Tribes, as well as the buying public.

- **Key Concerns –**

**Non-Indian Labor Could Now Be Used to Mass Produce Arts and Crafts Products Sold as “Indian” –**

The pending draft of the proposed re-write of the Indian Arts and Crafts Act regulations would permit a 50-percent Indian owned business to produce Indian arts and crafts products using **non-Indian labor**. This is exactly contrary to the language and intent of the Indian Arts and Crafts Act and could severely undermine current enforcement of the Act. The fear is this will lead to the mass production of Indian arts and crafts products by non-Indians working for 50-percent owned Indian businesses, flooding the market to crowd out individual Indian artists and craftspeople who make their own artwork, and deceiving the consumer. This would all be done with a new Interior Department seal of approval as a certified authentic Indian product.

**Twisting the Indian Arts and Crafts Act to Cover a Broad Range of Non-Arts and Crafts Products –**

Even though the IACB’s statutory authority under the Indian Arts and Crafts Act is limited to the promotion of art and craftwork, the new proposed regulations would twist the Act’s definition of Indian Product to now include a broad range of non-arts and crafts products. For example, these non-arts and crafts products would include beer, wine, agricultural and food products such as hot dogs, prepared food delivery services, restaurants, and TV shows. Thus, traditional and contemporary Indian art and craftwork as we know it would be equated with hot dogs and beef jerky, as all being Indian art and crafts products. The Indian Arts and Crafts Board would be required to register and provide a certification trademark to vouch for the Indian authenticity of these non-arts and crafts products.

**Tribal consultations began in early April and will continue to August.** This includes a [Listening Session in Santa Fe on Friday, August 18, from 1:00pm to 4:00pm MT at the IAIA Museum](#) of Contemporary Native Arts Institute of American Indian Arts 108 Cathedral Place, Santa Fe, NM 87501. Opening with a closed Nation-to-Nation Tribal Consultation. At conclusion of Consultation, will proceed immediately to Listening Session [open to all](#). Held in conjunction with 2023 Santa Fe Indian Market.

**TIMING/ACTION:** [WRITTEN COMMENTS SHOULD BE EMAILED AS SOON AS POSSIBLE TO consultation@bia.gov](mailto:consultation@bia.gov). [COMMENTS WILL NOT BE ACCEPTED AFTER CLOSE OF BUSINESS ON FRIDAY, SEPTEMBER 1, 2023.](#)

These proposed draft revised Indian Arts and Crafts Act regulations are convoluted and difficult to decipher.

Therefore, it might be best to view the way the draft regulations were written as containing two buckets.

**Bucket one** covers those Indian arts and crafts products covered and protected under the current Indian Arts and Crafts Act regulations which are art and craftwork that is made by an Indian.

**Bucket two** covers those products referred to as “certified Indian products” on pages 4, 5, 6 and 7 which are art and craft products and other products made by a 50% owned Indian business that can use non-Indian labor to make the product that will bear the official government certification trademark of an “Indian product” by the “Indian Arts and Crafts Board.”

Page 4 -

“(2) Certified as an Indian Product by the Board under the criteria at Section 301.3 of this part.”

Pages 5 – 7

Under the new proposed regulations, the “certified Indian product” must be (1) a “qualifying product” and (2) that is made by an “Indian business.”

“Otherwise, the Board will use the following criteria in deciding whether to certify an Indian Product under Section 301.2(f)(2) of this part.

- (a) The applicant must submit documents demonstrating that the product is a qualifying product described below:” [See product list (1) to (17)] These products range from jewelry, pottery, weaving, sculpture, etc., to bean soup mix, beer, agricultural goods and food delivery services.

Page 7-

- (b) “The business making the Indian Product must be an Indian Business:”

This section states the Indian business should be at least 50% Indian owned, at least 50% Indian managed, and at least 50% of the profits go to the Indian portion of the business. These Bucket two products are not restricted to produced by Indian labor and can be mass produced with non-Indian labor and sold as authentic Indian products/authentic Indian art.

Page 8 –

“The following are examples of products that do not qualify as “Indian Products” under Section 301.2(f)(1) of this part.

- (a) A product in the style of an Indian Product made by **non-Indian labor;**
- (b) A product in the style of an Indian Product that is designed by an Indian but produced by **non-Indian labor;”**

However, this section on Page 8 then states –

"These restrictions [*listed above*] do not apply to Indian Products under Section 301.2(f)(2) of this part."

The comment tab I attached to the above statement in the document notes -

**"The restriction against use of non-Indian labor does not apply to Indian style arts and crafts produced by a 50% owned Indian business using non-Indian labor."**

Thus, the 50% Indian owned business can use non-Indian labor to produce "authentic" Indian products. Furthermore, these non-Indian made mass produced items would carry a certification mark supplied by the Indian Arts and Crafts Board guaranteeing they were authentic Indian art/authentic Indian products certified by the Indian Arts and Crafts Board. This loophole and the other loopholes created by these draft regulations raise very serious concerns because of the adverse impact on Indian artists and artisans and the overall viability and integrity of the Indian arts market nationwide.

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Thus, the 50% Indian owned business can use non-Indian labor to produce “authentic” Indian products. Furthermore, these non-Indian made mass produced items would carry a certification mark supplied by the Indian Arts and Crafts Board guaranteeing they were authentic Indian art/authentic Indian products certified by the Indian Arts and Crafts Board. This loophole and the other loopholes created by these draft regulations raise very serious concerns because of the adverse impact on Indian artists and artisans and the overall viability and integrity of the Indian arts market nationwide.

Knowing how controversial it is, the draft regulations essentially try to sneak through the fact that a 50-percent owned Indian business can use non-Indian labor to mass produce products sold as authentic Indian arts and crafts. You have to parse the language very closely to reveal its secrets. In pool, this would be a three corner bank shot. Basically, the prohibition against using non-Indian labor to make Indian art or craftwork does not apply to a 50-percent owned Indian business. Thus, the draft regulations do not come right out and say that a 50-percent Indian-owned business can use non-Indian labor to produce products sold as authentic Indian arts and crafts. Rather, the draft regulations get to that result by providing that the prohibition against using non-Indian labor does not apply to "Indian" arts and crafts products produced by a 50-percent Indian business that are sold as authentic Indian art or craftwork.

Start with 25 CFR section 301.4 which begins at the top of p. 8 of 18 of the regs. It gives examples of products that do not qualify as Indian Products "under Section 301.2(f)(1) of this part." "Section 301.2(f)(1) of this part" is Bucket One consisting of "Artistic or craftwork *made entirely* by an Indian or Indians". It makes sense then that section 301.4(a) at the top of p. 8 would give as an example of a product "that does not qualify as an Indian Product under Section 301.2(f)(1) of this part" [i.e., the Bucket One that applies to art or craftwork made entirely by an Indian]: "(a) A product in the style of an Indian Product made by non-Indian labor".

Bucket Two is Indian art or craftwork produced by the 50-percent owned Indian business covered under Section 301.2(f)(2). More specifically, Section 301.2(f)(2) provides that, in addition to art or craftwork actually made by an Indian, the term Indian Product also includes art or craftwork "certified as an Indian Product by the Board under the criteria at Section 301.3 of this part." In turn, to get such certification, Section 301.3(b) provides that the business making the product must be an Indian Business, which is defined as a business that is 50-percent owned by an Indian. Now we turn back to Section 301.4 at the top of p. 8 and the examples of products that do not qualify as Indian Products. An example of a non-qualifying product under Section 301.4(a) is: "A product in the style of an Indian Product made by non-Indian labor." Then read the last sentence of Section 301.4 in the middle of p. 8, which says: "These restrictions do not apply to Indian Products under Section 301.2(f)(2) of this part." That is, the restriction in Section 301.4(a) against using non-Indian labor to produce Indian art or craftwork does not apply to the 50-percent owned Indian Business covered under Section 301.2(f)(2).

In sum, the draft regulations do not come right out and say that a 50-percent Indian-owned business can use non-Indian labor to produce products sold as authentic Indian arts and crafts. Rather, the draft regulations get to that result by providing that the prohibition against using non-Indian labor does not apply to arts and crafts products produced by a 50-percent Indian business that are sold as authentic Indian art or craftwork.

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**25 CFR Part 301 Policy Statement; Definitions; Indian Product**

**25 CFR § 301.1 How do the regulations in this part carry out the Indian Arts and Crafts Act of 1935, as amended?**

These regulations define the nature and origin of Indian Products protected by the Indian Arts and Crafts Act of 1935, as amended, (18 U.S.C. § 1159, 25 U.S.C. § 305 *et seq.*) from false representations, and specify how the Indian Arts and Crafts Board will interpret certain conduct for promotion and enforcement purposes. The Act makes it unlawful to offer or display for sale or sell any good 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.

**25 CFR § 301.2 What key terms do I need to know?**

(a) *IACB Certification Trademark* means the certification mark (as that term is defined in 15 U.S.C. § 1127) that the IACB may license to Indian artists listed in the Source Directory to identify their work as an Indian Product (as set forth in 25 U.S.C. § 305a).

(b) *Indian* means an individual who—

(1) is a member of an Indian Tribe; or

(2) is certified as an Indian artisan by an Indian Tribe. Any such certification must —

(i) be in a letter signed by the tribal leader or a duly adopted tribal resolution, tribal ordinance, or other, similar act of the tribal government;

(ii) be of an individual who is of direct Indian lineage of one or more members of such Indian Tribe and must contain the name of the tribal member of whom the artisan is a direct lineal descendant;

(iii) contain an expiration date at which time it must be re-certified; and

(iv) be provided to the Board at the time of certification for reference purposes; or

(3) for purposes of Section 301.2(f)(1) of this part, is a member of a State-recognized Indian Tribe that has been formally recognized as a State tribe by a State legislature or by a State commission, or similar organization legislatively vested with State tribal recognition authority.

(c) *Indian Arts and Crafts Board* or *IACB* or *Board* means the Indian Arts and Crafts Board established under the Indian Arts and Crafts Act of 1935, 25 U.S.C. § 305, *et seq.*, as amended.

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- (d) *Indian Arts and Crafts Organization* means any legally established arts and crafts marketing organization composed of members of Indian tribes.
- (e) *Indian Business* means a business that is qualified for a certification that its product is an Indian Product under Section 301.3(b) of this part.
- (f) *Indian Product* means any product marketed or sold as “Indian,” “Alaska Native,” “Native American,” “Indian Product,” “Alaska Native Product,” “Native American Product,” “Made by a Indian,” “Made by an Alaska Native,” “Made by a Native American,” “Indian Made,” “Alaska Native Made,” “Native American Made,” “[Indian Tribe’s name] made,” “made by [Indian Tribe’s name],” or other, similar description that markets a product explicitly or implicitly, to be a Product of an Indian or Indian Tribe. The specific examples of “Indian Product” that 25 U.S.C. § 305e(f) requires are those in Section 301.3(1)-(19) of this part. To be an “Indian Product,” the product must be:
- (1) Artistic or craftwork made entirely by an Indian or Indians, as defined in Section 301.2(b) of this part, including the labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work. The list at Section 301.3 also includes, only for purposes of this subsection:
    - (i) Art made by an Indian that is in a traditional or non-traditional style or medium;
    - (ii) Craft work made by an Indian that is in a traditional or non-traditional style or medium;
    - (iii) Handcraft made by an Indian, i.e., an object created with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product;
    - (iv) The product also cannot be a product listed under Section 301.4 of this part; or
  - (2) Certified as an Indian Product by the Board under the criteria at Section 301.3 of this part.
- (g) *Indian Tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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(h) *Source Directory* means the *Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses* on the IACB website, which is maintained by the Board as part of its program to promote artists, merchants, and makers of Indian Products.

### **25 CFR § 301.3 What are the criteria the Board will use to certify an Indian Product under Section 301.2(f)(2) of this part?**

If an Indian Product meets the definition under Section 301.2(f)(1) of this part, no certification is required.

Otherwise, the Board will use the following criteria in deciding whether to certify an Indian Product under Section 301.2(f)(2) of this part.

(a) The applicant must submit documents demonstrating that the product is a qualifying product described below:

- (1) Jewelry and related accessories using any media, including, but not limited to, silver, gold, turquoise, coral, lapis, jet, nickel silver, glass bead, copper, wood, abalone or other shell, walrus ivory, whale baleen, bone, antler, horn, horsehair, porcupine quill, teeth, hoof, fur including but not limited to, mink, otter, seal and polar bear, seed, and berry;
- (2) Basketry and related weavings using any media, including, but not limited to, birchbark, black ash, brown ash, red cedar, yellow cedar, alder, vine maple, willow, palmetto, honeysuckle, river cane, oak, buck brush, sumac, dogwood, cattail, reed, raffia, horsehair, pine needle, spruce root, rye grass, sweet grass, yucca, bear grass, beach grass, rabbit brush, fiber, maidenhair fern, whale baleen, seal gut, feathers, shell, devil's claw, and porcupine quill;
- (3) Weavings and textiles using any media, including, but not limited to, cornhusk, raffia, tule, horsehair, cotton, wool, fiber, linen, seal and rabbit skin, feather, bison fur, and qiviut (musk ox) wool;
- (4) Beadwork, quillwork, and fur or moose hair tufting applied to decorate a wide variety of materials, including, but not limited to, bottles, baskets, bags, pouches, and other containers; belts, buckles, jewelry, hatbands, hair clips, barrettes, bolos, and other accessories; moccasins, vests, jackets, and other articles of clothing; dolls, and toys and collectibles;
- (5) Apparel, including, but not limited to, parkas, jackets, coats, hats, moccasins, boots, slippers, mukluks, mittens, gloves, belts, gauntlets, dresses, and shirts;
- (6) Regalia and ceremonial clothing, modern items with a traditional theme, and accessories with historical significance made or significantly decorated, including,

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but not limited to, those worn to perform traditional dances, participate in traditional socials, used for dance competitions, and worn on special occasions of tribal significance;

- (7) Woodwork, including, but not limited to, sculpture, drums, furniture, containers, hats, masks, and figurines;
- (8) Hide, leatherwork, and fur made or significantly decorated, including, but not limited to, parfleches, tipis, horse trappings and tack, pouches, bags, belts, and hide paintings;
- (9) Pottery, ceramics, and related items made or significantly decorated, including, but not limited to, a broad spectrum of clays and ceramic material;
- (10) Sculpture, carving, fetish, and pipes, including, but not limited to, wood, soapstone, alabaster, pipestone, argillite, turquoise, ivory, baleen, bone, antler, horn, and shell;
- (11) Dolls, toys, and related items, including, but not limited to, no face dolls, corn husk dolls, patchwork and palmetto dolls, reindeer horn dolls, lacrosse sticks, stick game articles, gambling sticks, gaming dice, miniature cradle boards, and yo-yos;
- (12) Painting and other fine art forms including, but not limited to, works on canvas, photography, sand painting, mural, computer generated art, graphic art, video art work, printmaking, drawing, bronze casting, glasswork, and art forms to be developed in the future;
- (13) Formerly commercial products, where embellishments have added art or craft work to those objects sufficient to substantially transform the qualities and appearance of the original commercial item, such as handbags, wallets, or shoes to which beadwork has been applied, or a denim jackets to which a ribbon appliqué has been applied;
- (14) Artisanal or craft agricultural products, including, but not limited to, any commodity or product for human consumption, such as jerky, dried meats, pemmican, dried beans, bean soup mix, olive oil, fruit preserves, jams and jellies, chocolate, maple syrup, hominy, salsa, vinaigrette, spices, teas, and frybread mix; raw agricultural products, including, but not limited to, any commodity or product for human consumption, such as fruits and vegetables including coffee beans, legumes, nuts, berries, grapes, or wild rice, corn, or aromatic herbs, such as sweet grass, and plants, such as sage; meat, poultry, game, and fish products, including fresh meat, and processed meat products, such as beef, buffalo, bison, pork, lamb

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and poultry meat products, and fresh, frozen, canned or smoked fish and seafood, provided that the product cannot contain any ingredient that a controlled substance under Federal law;

(15) Artisanal or craft food products including, but not limited to, raw, cooked, or processed edible substances for human consumption, food that is edible without further washing, cooking, or additional preparation and that is reasonably expected to be consumed in that form, and meal service that stores, prepares, or packages food for sale for human consumption to consumers directly to indirectly through a delivery service, whether such food is consumed at the site of service, provided that the product cannot contain any ingredient that is a controlled substance under Federal law;

(16) Artisanal or craft beverage products such as coffee, tea, wine, and beer, provided that the product cannot contain any controlled substance under Federal law; or

(17) Digital, written, and electronic media including, but not limited to, movies, TV shows, radio shows, podcasts, news, music, newspapers, magazines, and books, including written and cartoon or comic materials.

(b) The business making the Indian Product must be an Indian Business:

(1) The business must be incorporated or formed under Federal, State, or Tribal law as demonstrated by its articles of incorporation or other formation document filed with the appropriate Governmental agency;

(2) The business must be at least 50% owned by an Indian or Indians or by an Indian Tribe;

(3) An Indian or Indians or Indian Tribe must receive at least 50% of earnings from the business;

(4) Management and daily operations of the business must be controlled by one or more Indians.

(c) Final assembly or processing of the product must occur in the United States, any significant processing that goes into the product must occur in the United States, and all or virtually all ingredients or components of the product must be made and sourced in the United States, as this term is defined in 16 C.F.R. § 323.1.

**25 CFR § 301.4 What are examples of products that do not qualify as “Indian Products” under Section 301.2(f)(1) of this part?**

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The following are examples of products that do not qualify as “Indian Products” under Section 301.2(f)(1) of this part.

- (a) A product in the style of an Indian Product made by non-Indian labor;
- (b) A product in the style of an Indian Product that is designed by an Indian but produced by non-Indian labor;
- (c) A product in the style of an Indian Product that is assembled from a kit;
- (d) A product in the style of an Indian Product originating from a commercial product, without substantial transformation provided by Indian artistic or artisan labor;
- (e) A product in the style of an Indian Product that is produced in an assembly line or related production line process using multiple workers, not all whom are Indians, for example, if twenty people make up the labor to create the product, and one person is not Indian.

These restrictions do not apply to Indian Products under Section 301.2(f)(2) of this part.

### **25 CFR § 301.5 How will the Board certify an Indian Product?**

- (a) The Indian Business must submit:
  - (1) an Indian Product Certification Application to the Board;
  - (2) Tribal enrollment documentation of the owner(s) and the manager(s) of the day-to-day business operations;
  - (3) Articles of Incorporation or other formation document filed with the appropriate Governmental agency;
  - (4) Statement from applicant describing the role played by the Indian(s) in the day-to-day business operations.
  - (5) Any other documents required in the Indian Product Certification Application.
- (b) Once approved, the Board will issue a unique certification number for the Indian Product.
- (c) If the Board denies the application for certification as an Indian Product and the applicant wishes to appeal that denial, the applicant must follow the appeals process in Part 304 of this Chapter.

### **25 CFR § 301.6 What must the Indian Business do after it receives a certification from the Board?**

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- (a) The Indian Business must apply for recertification of its Indian Product every 3 years after the initial certification, using the same process as the initial certification in Section 301.3 of this part.
- (b) If the Indian Business does not apply for recertification or the Board denies its recertification application or it no longer qualifies as an Indian Business under Section 301.3(b) of this part, the certification is revoked, the business cannot advertise that their product is an Indian Product as defined by this regulation, and the Board will remove the business from the Source Directory. An Indian Business that offers or displays for sale or sells an Indian Product, including advertising the Indian Product for sale without valid certification may be subject to penalties referenced in Section 303.6 of this Part.

### **25 CFR Part 302 Promotion of Indian Arts and Crafts**

#### **Subpart A Source Directory**

#### **25 CFR § 302.1 Who may apply for listing in the Source Directory?**

- (a) An artist or merchant may request inclusion in the Source Directory if he/she is:
  - (1) An Indian;
  - (2) An Indian Tribe;
  - (3) An Indian Arts and Crafts Organization (including Indian arts and crafts cooperatives and Tribal arts and crafts enterprises);
  - (4) A not-for-profit organization managed by members of an Indian Tribe;
  - (5) A gallery or other retail or wholesale business owned and operated by an Indian Tribe or members of an Indian Tribe that certifies that a majority of the art and craftwork it sells is Indian Products; or
  - (6) An Indian Business as defined in Section 301.3(b) of this chapter making a product certified by the Board as an Indian Product; and
- (b) Such artist or merchant must make or sell an Indian Product as defined in Sections 301.2(f)(1) or (f)(2).
- (c) Any artist or merchant listed in the Source Directory as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] will continue to be listed in the Source Directory and need not re-apply for listing.

#### **25 CFR § 302.2 What information is required to apply for listing in the Source Directory?**

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(a) An individual or an enterprise described in subsections 302.1(a)(1)-(5) of this part must provide:

- (1) Name of artist or business/enterprise;
- (2) Mailing address, city, zip code (highway location, Indian reservation, etc.);
- (3) Telephone number;
- (4) Email address and website address, if applicable;
- (5) Best way to be contacted;
- (6) Business hours;
- (7) Description of types of Indian Products sold;
- (8) Manner of sales, such as retail shop, open studio, by appointment, mail order, or via the Internet;
- (9) Official written documentation of the enrollment of the individual artist or owners, operators, and managers of the business/enterprise in an Indian Tribe; and
- (10) In the case of a gallery or other retail or wholesale business under subsection 302.1(a)(5) of this part, the written certification that a majority of the art and craftwork it sells is Indian Products.

(b) An Indian Business described in subsections 302.1(a)(6), and as defined in Section 301.4(b) of this chapter, making a product certified by the Board as an Indian Product must provide:

- (1) Name of the Indian Business;
- (2) Mailing address, city, zip code (highway location, Indian reservation, etc.);
- (3) Telephone number;
- (4) Email address and website, if any;
- (5) Business hours;
- (6) Description of types of Indian Products sold;



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- (7) Manner of sales, such as retail shop, mail order, or via the Internet;
  - (8) A written copy of the certification issued by the Indian Arts and Crafts Board under Section 301.5 of this chapter of the Indian Products made by the Indian Business.
- (c) If the Board denies the application for listing in the Source Directory and the applicant wishes to appeal that denial, the applicant must follow the appeals process in Part 304 of this Chapter.

**Subpart B Identification of Indian Products**

**25 CFR § 302.3 How may an artist or Indian business label an Indian Product?**

An Indian Product, as described in Section § 301.2(d)(1) of this chapter, may display on the principal display panel, information panel, and any other panel of the package and on any labeling or market information concerning the product the following term, “Indian,” “Alaska Native,” “Native American,” “Indian Product,” “Alaska Native Product,” “Native American Product,” “Made by an Indian,” “Made by an Alaska Native,” “Made by a Native American,” “Indian Made,” “Alaska Native Made,” “Native American Made,” “[Indian Tribe’s name] made,” “made by [Indian Tribe’s name],” or other, similar description, as applicable, to modify the name of the product.

**25 CFR § 302.4 Does the Indian Arts and Crafts Board have a certification trademark that an Indian, Indian Tribe, Indian Business, or Indian Arts and Crafts Organization can use to identify an Indian Product?**

Yes. The Board has created and registered a certification trademark under 15 U.S.C. § 1127 to assure consumers of the genuineness and quality of Indian Products and the products of an individual Indian or particular Indian Tribe or Indian arts and crafts organization.

**25 CFR § 302.5 What are the requirements for licensing the IACB certification trademark to an Indian, Indian Tribe, Indian Business, or Indian arts and crafts organization?**

The Board may, upon written request, license the IACB certification trademark to any Indian, Indian Tribe, Indian arts and crafts organization, or Indian Business that is listed in the Source Directory under Section 302.1 of this part.

**25 CFR § 302.6 How may an Indian, Indian Tribe, Indian Business, or Indian Arts and Crafts Organization use the certification trademark?**

- (a) Persons described in Section 302.5 of this part wishing to use the certification trademark must first certify its Indian Product with the Board pursuant to Part 301 of this chapter and must be listed in the Source Directory pursuant to Subpart A of this part.

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- (b) Upon inclusion in the Source Directory, the Person must agree to the terms of a nonexclusive, nontransferable, royalty-free, revocable trademark license agreement provided by the Board (the “Agreement”). The Agreement at a minimum shall:
- (1) provide the certification trademark identity and style guide;
  - (2) provide that the Person may affix the certification trademark on all Indian Products sold in the United States, and/or in the package inserts, labels and packaging and, to the extent appropriate, promotion and marketing materials, used in connection with the sale thereof, and each such package insert, label and packaging and promotion and marketing materials that uses the trademark shall state: “[t]he Indian Arts and Crafts Board certification trademark is a registered certification trademark of the Indian Arts and Crafts Board, licensed to [the Person]. Certification may be confirmed at <https://www.doi.gov/iacb/state-and-country-listings>. Report any uncertified products at <https://www.doi.gov/iacb/should-i-report-potential-violation>; and
  - (3) immediately terminate upon the Person’s removal from the Source Directory.
- (c) provide that in addition to the penalties pursuant to Section 303.6 of this chapter, the Person shall be removed from the Source Directory, and the Agreement shall automatically terminate if the Person offers or displays for sale or sells the Indian Product, or advertises the Indian Product for sale, with or without the certification trademark under this subpart, 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.
- (d) The Agreement shall automatically terminate, and the Person shall be removed from the Source Directory if the Person breaches any provision of the Agreement and fails to cure such breach after the Board’s written notice thereof.
- (e) If the Person wishes to appeal the termination of the Agreement and removal from the Source Directory, the Person must follow the appeals process in Part 304 of this Chapter.

**25 CFR Part 303 Protection of Indian Arts and Crafts**

**25 CFR § 303.1 How does this Chapter apply to Indian Arts and Crafts Act Enforcement?**

Part 301 of this Chapter includes the definition of Indian Product as protected by the Indian Arts and Crafts Act (18 U.S.C. 1159, 25 U.S.C. 305 et seq.).

This Part specifies how the Indian Arts and Crafts Board will interpret certain conduct for enforcement purposes.

**25 CFR § 303.2 How does the Indian Arts and Crafts Act apply to disclosure of an Indian Product?**

The Indian Arts and Crafts Act is a truth-in-marketing law. Those who produce and market art and craft work should honestly represent and clarify the degree of Indian involvement in the production of the art and craft work when it is sold, displayed, or offered for sale.

**25 CFR § 303.3 May a Non-Indian sell products in the style of Indian Products?**

A non-Indian can make and sell arts and craft products in the style of Indian Products, as defined by this Chapter, only if the non-Indian or other seller does not falsely suggest to consumers that the products have been made by an Indian.

**25 CFR § 303.4 Does the Indian Arts and Crafts Act apply to Indian Products made before 1935?**

This Chapter does not apply to any art or craft products made before 1935.

**25 CFR § 303.5 How will the Board interpret statements about Indian origins of Indian Products?**

(a) In general. The unqualified use of the term “Indian,” “Alaska Native,” “Native American,” “Indian Product,” “Alaska Native Product,” “Native American Product,” “Made by an Indian,” “Made by an Alaska Native,” “Made by a Native American,” “Indian Made,” “Alaska Native Made,” “Native American Made,” “[Indian Tribe’s name] made,” “made by [Indian Tribe’s name],” or other, similar description, or the unqualified use of the name of an Indian tribe, in connection with an art or craft product, is interpreted to mean for purposes of this Chapter that the maker is a member of an Indian tribe, is certified as an Indian artisan by an Indian tribe, or is a member of the particular Indian tribe named, and the art or craft product is an Indian Product as defined in Part 301.2(f)(1).

(b) Products of Indians of foreign tribes -

(1) In general. The unqualified use of the term “Indian,” “Alaska Native,” “Native American,” “Indian Product,” “Alaska Native Product,” “Native American Product,” “Made by a Indian,” “Made by an Alaska Native,” “Made by a Native American,” “Indian Made,” “Alaska Native Made,” “Native American Made,”

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“[Indian Tribe’s name] made,” “made by [Indian Tribe’s name],” or other, similar description, or the unqualified use of the name of a foreign tribe, in connection with an art or craft product, regardless of where it is produced and regardless of any country-of-origin marking on the product, is interpreted to mean for purposes of this part that

- (i) The tribe is resident in the United States; and
- (ii) The art or craft product is an Indian Product as defined in Part 301.

(2) Exception where country of origin is disclosed. Paragraph (b) of this section does not apply to any art or craft for which the name of the foreign country of tribal ancestry is clearly disclosed in conjunction with marketing of the product.

### **25 C.F.R. § 303.6 What civil and criminal penalties apply?**

A person who offers or displays for sale or sells a good, with or without the certification trademark under Part 302, subpart B of this Chapter, 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:

- (a) Is subject to the criminal penalties specified in 18 U.S.C. § 1159; and, if displayed with the IACB certification trademark, the criminal penalties specified in 18 U.S.C. § 1158, and
- (b) Is subject to the civil penalties specified in 25 U.S.C. § 305e, and, if displayed with the IACB certification trademark, the civil penalties specified at 15 U.S.C. § 1114.

### **25 CFR § 303.7 How does someone file a complaint for investigation?**

Complaints about protected products alleged to be offered or displayed for sale or sold in a manner that falsely suggests that they are produced by an Indian, an Indian Product, or the product of a particular Indian, Indian Tribe, or Indian Arts and Crafts Organization may be submitted to the Indian Arts and Crafts Board by one of the following means: (1) online through the IACB’s online complaint form on its website, [www.doi.gov/iacb/should-i-report-potential-violation](http://www.doi.gov/iacb/should-i-report-potential-violation); (2) by email at [IACB@doi.ios.gov](mailto:IACB@doi.ios.gov); (3) by phone at the IACB’s toll-free phone number 1-888-ART-FAKE; (4) by fax to the IACB at 202-208-5196; or (5) by mail, addressed to Director, Indian Arts and Crafts Board, 1849 C Street, NW, Room 2528-MIB, U.S. Department of the Interior, Washington, D.C. 20240.

### **25 CFR § 303.8 Who may initiative a criminal investigation?**

Any Federal law enforcement officer may exercise statutory authority to conduct an investigation relating to an alleged violation of this Act occurring within the jurisdiction of the United States.

**25 CFR § 303.9 Who may bring a civil action under the Act?**

- (a) An Indian Tribe, individual Indian, or Indian arts and crafts organization, or the United States acting on their behalf, may bring a civil action under 25 U.S.C. § 305e against a person who, directly or indirectly, offers or displays for sale or sells a good, with or without the certification trademark under Part 302, subpart B of this chapter, 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 under this Chapter.
  
- (b) In a civil action under paragraph (a) of this section, the Indian Tribe, individual Indian, Indian arts and crafts organization, or United States may request that the court order the relief specified in 25 U.S.C. § 305e, including actual damages, punitive damages, and/or forfeiture of proceeds.

**25 CFR Part 304 Appeals**

**25 CFR § 304.1 How does an artist or merchant appeal an adverse decision of the Board?**

If an artist or merchant wishes to appeal an adverse decision of the Board denying an application for certification under Section 301.5 of this chapter or an application for inclusion in the Source Directory under Section 302.2 of this chapter or revoking use of the Certification Mark under Section 302.6 of this chapter, the artist or merchant must follow the provisions of this part.

**25 CFR § 304.2 Does an artist or merchant need a lawyer to file an appeal?**

No. An artist or merchant does not need a lawyer to file an appeal. If the artist or merchant is represented by someone else, the representative must meet the standards established in 43 C.F.R. Part 1 and must provide documentation of his or her authority to act on the artist or merchant's behalf.

**25 CFR § 304.3 How long does an artist or merchant have to file a Notice of Appeal?**

An artist or merchant has 30 business days after receiving a copy of the Board's decision to file the Notice of Appeal. The Assistant Secretary will presume that the artist or merchant has received the decision 10 days after the decision was mailed or otherwise transmitted. No extensions of time to file a Notice of Appeal will be granted. The Board's decision will be effective when the appeal period ends without a Notice of Appeal being filed.

**25 CFR § 304.4 How does an artist or merchant file a Notice of Appeal?**

The artist or merchant must submit the Notice of Appeal to the Office of the Assistant Secretary for Policy, Management, and Budget, with a copy to the Board and the Division of Indian Affairs in the Office of the Solicitor. The Notice of Appeal may be personally delivered (by the artist or merchant or private mail carrier), mailed, or emailed. The Notice is considered to be filed when it is personally delivered, postmarked, or emailed. All of these offices are in the Main Interior Building at 1849 C Street, NW, Washington, DC 20240. Email addresses may be found on the Department of the Interior's website at [www.doi.gov](http://www.doi.gov).

**25 CFR § 304.5 What must an artist or merchant include in the Notice of Appeal?**

The artist or merchant must include contact information in the Notice of Appeal and proof that it was delivered to the Board and the Office of the Solicitor. The Notice of Appeal must also include a copy of the decision being appealed and a statement as to why the artist or merchant believes that the Board's decision is wrong, including relevant information or evidence the artist or merchant believes the Board failed to consider, with copies of any supporting documents.

**25 CFR § 304.6 What happens after an artist or merchant files a Notice of Appeal?**

- (a) Once the artist or merchant files a Notice of Appeal, neither the artist or merchant, the artist or merchant's representative, nor any relevant Indian Tribe may contact the Board; the Assistant Secretary for Policy, Management, and Budget; the Assistant Secretary—Indian Affairs; or any of their staff concerning the Board's decision or the appeal, except concerning the status of the review.

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- (b) The Office of the Solicitor may file a response to the Notice of Appeal on behalf of the Board 30 days after the Notice of Appeal is filed. The response must include proof that it was sent to the artist or merchant.
- (c) Any relevant Indian Tribe may file a response to the Notice of Appeal supporting the artist or merchant or supporting the Board's decision 30 days after the Notice of Appeal is filed. The response must include proof that it was sent to the artist or merchant and the Office of the Solicitor.
- (d) No further documents or responses may be filed (other than the Notice of Appeal, any response from the Office of the Solicitor or a relevant Indian Tribe), except at the request of the Assistant Secretary for Policy, Management, and Budget.

**25 CFR § 304.7 Who will make the final decision on an artist or merchant's appeal?**

The Assistant Secretary for Policy, Management, and Budget will decide the appeal, in consultation with the Assistant Secretary—Indian Affairs. The decision of the Assistant Secretary is a final agency action and is immediately effective when issued.

**25 CFR Part 305 Engagement Between This Part and Related Laws**

**25 CFR § 305.1 How does this Chapter relate to other federal regulations?**

The definitions set forth in this Chapter and related certification decisions and appeals do not modify related definitions elsewhere in federal regulation, including but not limited to Native American-style jewelry in Customs regulations (19 C.F.R. § 134.43) cultural items in NAGPRA regulations (43 C.F.R. § 10.2), articles of handicraft and clothing in Marine Mammal Protection Act regulations (50 C.F.R. Part 216), and Native Indian handicraft in Internal Revenue Service rulings (Rev. Rul. 86-61).

**25 CFR § 305.2 How does this Chapter relate to state laws?**

Nothing in this Chapter preempts State law on the same subject matter unless State law forms an obstacle to the accomplishment and execution of the full purposes and objectives of this Chapter so that the two cannot consistently stand together.

**25 CFR § 305.3 Are approvals under this Chapter effective for state programs?**

Nothing in this Chapter, including Certification or inclusion in the Source Directory, is intended to serve as an application for permit, authorization, or other approval necessary for use of a State program. Certification or inclusion in the Source Directory similarly does not authorize use of seals, terminology, or marketing rules set forth under state programs.

**25 CFR § 305.4 How does this Chapter relate to tribal laws?**

Nothing in this Chapter preempts Tribal law on the same subject matter unless Tribal law forms an obstacle to the accomplishment and execution of the full purposes and objectives of this Chapter so that the two cannot consistently stand together.

Where the regulations in this Chapter are inconsistent with a Tribal law, the Board may waive the regulations, so long as the waiver does not violate a federal statute or judicial decision and the waiver is in the best interest of the Indian artist or Indian Business.

**25 CFR § 305.5 How does this Chapter relate to International Agreements?**

Nothing in this Chapter preempts or affects any future International Agreement to expand the market for the products of Indian art and craftsmanship.

**25 CFR § 305.6 Are approvals under this Chapter effective for use of other Federal labels?**

Nothing in this Chapter authorizes the use of any other federal labeling program unless the Product in question complies fully with the operative regulations governing use of the other federal labeling program, including Made in the U.S.A. (16 C.F.R. Part 323) or the USDA national Organic Program (7 C.F.R. Part 205).