

**Installation**

(a) Within 3 years after the effective date of this AD, install a baulking device for the pintle pin in the NLG by accomplishing the actions specified in the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ATP-32-105, dated April 9, 2002. The actions must be done per the service bulletin.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The actions shall be done in accordance with BAE Systems (Operations) Limited Service Bulletin ATP-32-105, dated April 9, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 004-04-2002.

**Effective Date**

(e) This amendment becomes effective on July 17, 2003.

Issued in Renton, Washington, on June 4, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**DEPARTMENT OF THE INTERIOR****Indian Arts and Crafts Board****25 CFR Part 309**

**RIN 1076-AE16**

**Protection of Products of Indian Art and Craftsmanship**

**AGENCY:** Indian Arts and Crafts Board (IACB), Department of the Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Indian Arts and Crafts Enforcement Act of 2000, an amendment to the Indian Arts and Crafts Act of 1990. The rule provides guidance to persons who produce, market, or purchase arts and crafts marketed as Indian products. The rule clarifies the regulatory definition of "Indian product," as defined under the Indian Arts and Crafts Act of 1990, by including specific examples of "Indian product," as well as examples of what is not an "Indian product."

**EFFECTIVE DATE:** September 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Meridith Z. Stanton, Director, Indian Arts and Crafts Board, Room 4004-MIB, 1849 C Street, NW., Washington, DC 20240, telephone 202-208-3773 (not a toll-free call), fax 202-208-5196, or e-mail [iacb@os.doi.gov](mailto:iacb@os.doi.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The Indian Arts and Crafts Board (IACB) was created by Congress pursuant to the Act of August 27, 1935 (49 Stat. 891; 25 U.S.C. 305 *et seq.*; 18 U.S.C. 1158-59) ("1935 Act"). The IACB is responsible for carrying out the Indian Arts and Crafts Act of 1990, promoting the development of American Indian and Alaska Native arts and crafts, improving the economic status of members of federally recognized Tribes, and helping to establish and expand marketing opportunities for arts and crafts produced by American Indians and Alaska Natives.

The Indian Arts and Crafts Act of 1990, Public Law 101-644, 104 Stat. 4662 (hereinafter the "1990 Act") is essentially a truth-in-marketing law designed to prevent, through both civil and criminal sanctions, marketing of products in a manner that falsely suggests such products are produced by Indians when the products are not, in fact, made by an Indian as defined by the 1990 Act. As used herein, "marketing" occurs when a person offers or displays for sale or sells a good. Under section 104(a) of the 1990 Act (18

U.S.C. 1159(c)(2)), "the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' have the meaning given such term in regulations which may be promulgated by the Secretary of the Interior."

Under the Secretary's implementing regulations for the 1990 Act, at 25 CFR part 309, prior to these amendments, the term "Indian product" was defined as:

"(1) *In general.* "Indian product" means any art or craft product made by an Indian.

"(2) *Illustrations.* The term Indian product includes, but is not limited to:

"(i) Art works that are in a traditional or non-traditional Indian style or medium;

"(ii) Crafts that are in a traditional or non-traditional Indian style or medium;

"(iii) Handcrafts, *i.e.* objects 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.

"(3) *Exclusion for products made before 1935.* The provisions of this part shall not apply to any art or craft products made before 1935."

This definition reflects the IACB's determination that "Indian product" under the 1990 Act applies to Indian arts and crafts, and not all products generally. This determination is consistent with the IACB's organic legislation enacted in 1935, the IACB's primary mission as established by Congress, and the Congressional intent of the 1990 Act. The 1935 cut-off date for products regulated by the 1990 Act is in keeping with the Congressional intent of the 1990 Act and the legislated mission of the IACB—economic growth through the development and promotion of contemporary Indian arts and crafts.

The "Indian product" definition under the 1990 Act's implementing regulations, at 25 CFR part 309, focused on the nature and Indian origin of products covered by the 1990 Act, and did not provide specific arts and crafts examples. The Indian Arts and Crafts Enforcement Act of 2000, (hereinafter the "2000 Act"), an amendment to the 1990 Act, was enacted on November 9, 2000. Under this amendment, Congress sought to strengthen the cause of action for misrepresentation of Indian arts and crafts. Section 2 of the 2000 Act directed the IACB to "promulgate regulations to include in the definition of the term 'Indian product' specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act."

This final rule carries out the 2000 Act by clarifying the definition of "Indian product." It also provides specific examples of items that may be marketed as Indian products and those that may not, thereby informing the public as to when an individual may be subject to civil or criminal penalties for falsely marketing a good as an "Indian product."

#### *Public Participation*

Prior to drafting regulations for the 2000 Act, in early January, 2001, the IACB sent out individual letters to the Tribal leaders of all federally recognized Tribes informing them of the 2000 Act and providing them with copies of the legislation. The letters invited the Tribal leaders to designate a member of their staff or Tribal member from their arts and crafts community with whom the IACB could discuss their Tribe's interest in specific language for consideration in the further clarification of "Indian product." This Tribal involvement was intended to ensure that the amended definition properly encompasses Indian art and craft products that should be protected by the 1990 Act.

Following written and telephone communications and subsequent teleconference consultations with designated representatives from a broad range of interested Tribes, the IACB published the proposed rulemaking for the 2000 Act on May 21, 2001. 66 Fed. Reg. 27915-27920. In addition to publication, several thousand copies of the proposed rulemaking were distributed to interested parties, including every federally recognized Tribe, members of the Indian arts and crafts industry, key offices within the Department of Justice, including U.S. Attorneys and the Federal Bureau of Investigation, State Governors, State Attorneys General, and State Arts Councils.

The IACB received 25 public comments on the proposed rulemaking, and each was carefully reviewed, analyzed, and considered. These comments are grouped in the following summary.

#### *Summary and Analysis of Public Comments*

A broad range of Tribal, federal, State, and Indian arts and crafts industry comments were received in response to the proposed rulemaking for the 2000 Act. The respondents provided a variety of comments, including concern for the protection of Indian artists and artisans' economic livelihood, suggestions for changes to the proposed product categories, product items, and descriptions, as well as requests to

further clarify that the labor component of the Indian art or craft product must be entirely Indian.

#### *Overall Comments*

##### Definition of "Indian"

One respondent requested that a working definition of "Indian" be developed to assist in the definition of "Indian product," while another respondent questioned whether State-recognized Tribes met the definition of "Indian." One comment proposed that, under the "Background" section's definition of "Indian product," the terms "American Indian or Alaska Native" be substituted for "Indian." Another respondent requested that the definition of Indian be expanded to permit people of Indian descent, yet who are not enrolled in State or federally recognized Tribes, to sell their work as Indian art.

The final rule has not adopted these comments. The term "Indian" and the interrelated term "Indian Tribe" are defined by Congress by statute in the 1990 Act and may not be changed by regulation. As defined by the 1990 Act, however, the terms "Indian" and "Indian Tribe" already include, for purposes of sections 104, 105, and 107 of the 1990 Act, members of State-recognized Tribes and Alaska Natives, as well as members of federally recognized Tribes.

Sections 104 and 105 of the 1990 Act define "Indian" and "Indian Tribe" as follows:

"The term 'Indian' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;"

"The term 'Indian tribe' means—

"Any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"Any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority."

In response to the comment regarding the sale of art by individuals who are not members of federally or State-recognized Tribes, but are of Indian descent, it should be noted that such individuals may market their goods as an Indian, provided they are certified as an "Indian artisan" by an Indian Tribe. Certification is at the option of the Tribe. Certification by a Tribe, under 25

CFR 309.4, requires that the individual be of the Indian lineage of one or more members of that Tribe. As a result, it is not necessary to adopt this comment. Furthermore, neither the 1990 Act nor the 2000 Act prohibit any statements about a person's Indian heritage in the marketing of his or her art or craft work that are truthful and that do not falsely suggest the individual is a member of an Indian Tribe, as defined by the 1990 Act.

#### *Materials Used To Make Indian Arts and Crafts*

One respondent expressed concerns regarding the use and representation of stabilized turquoise in Indian jewelry, as well as the need for information regarding the 1990 Act to reach markets and businesses violating the 1990 Act. Issues regarding the use and representation of stabilized turquoise in Indian jewelry are beyond the scope of the 1990 Act, which focuses on Indian labor, not on art and craft base materials. While the IACB welcomes any suggestions to improve its efforts to educate the industry and public about the 1990 Act, as well as any information regarding potential violations of the 1990 Act, these comments have not been adopted in the final rule as they do not address the 2000 Act's statutory mandate to further clarify the definition of "Indian product."

One respondent recommended that the Lanham Act language, 15 U.S.C. 1125(a), which addresses strict liability for misleading words and markings, be adopted to further clarify what kind of conduct the IACB will interpret as "falsely suggests" that products are Indian for purposes of civil action. Another comment requested that the statutory language "In a manner that 'falsely suggests' it is Indian produced," 18 U.S.C. 1159(a), be changed to "In a manner that 'falsely states' it is Indian produced," to narrow the gap in the proof of criminal intent. Another respondent recommended that the term "falsely suggests" be used consistently throughout the regulations, rather than the word "misrepresented" to avoid confusion.

The final rule has not incorporated the first comment recommending adoption of the Lanham Act's strict liability language to clarify conduct that "falsely suggests" an art or craft is an Indian product or the second comment regarding a change in statutory language. Both of these recommendations are beyond the scope of IACB's Congressional mandate under the 2000 Act to promulgate regulations to further clarify the definition of Indian product. However, the third

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),

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.

### *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?*

One 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."

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule, the further clarification of an existing regulatory definition of "Indian product," does not involve another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not involve any budgetary or entitlements issues.

(4) This rule does not raise novel legal or policy issues. Again, it is simply the further clarification of an existing regulatory definition of "Indian product."

## 2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) A number of individuals, small businesses, and tribal governments may be affected in some way. As this rule simply clarifies an existing regulatory definition, however, it will not have a significant economic effect on any of these small entities, either through increasing compliance costs or otherwise.

## 3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The annual effect is insignificant.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Clarification of the term "Indian product" and guidance on how to represent Indian products in the marketplace will not cause any significant increase in the costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. Through the clarification of the term "Indian product," the ability of U.S.-based enterprises to compete with foreign-based enterprises will not be significantly affected. In fact, it should assist U.S. Indian arts and crafts producers to compete with counterfeit

Indian arts and crafts produced overseas.

## 4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. It simply clarifies an existing regulatory definition of "Indian product." A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

## 5. Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule does not involve government action or interference with Constitutionally protected rights.

## 6. Federalism (Executive Order 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not affect the relationship between State and federal governments. A Federalism Assessment is not required.

## 7. Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

## 8. Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

## 9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

## List of Subjects in 25 CFR 309

Indians—arts and crafts, Penalties, Trademarks.

■ For the reasons set out in the preamble, part 309 of 25 CFR Chapter II is amended as follows:

## PART 309—PROTECTION OF INDIAN ARTS AND CRAFTS PRODUCTS

■ 1. The authority citation for part 309 continues to read as follows:

**Authority:** 18 U.S.C. 1159; 25 U.S.C. 305 *et seq.*

■ 2. In § 309.2, paragraph (d) is revised to read as follows:

### § 309.2 What are the key definitions for purposes of the Act?

\* \* \* \* \*

(d) *Indian product*—(1) *In general.* The term "Indian product" means any art or craft product made by an Indian. For this purpose, the term "made by an Indian" means that an Indian has provided the artistic or craft work labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work. This may include more than one Indian working together. The labor component of the product, however, must be entirely Indian for the Indian art or craft object to be an "Indian product."

(2) *Illustrations.* The term "Indian product" includes, but is not limited to:

(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.

(3) *Examples of non-qualifying products.* An "Indian product" under the Act does not include any of the following, for example:

(i) A product in the style of an Indian art or craft product made by non-Indian labor;

(ii) A product in the style of an Indian art or craft product that is designed by an Indian but produced by non-Indian labor;

(iii) A product in the style of an Indian art or craft product that is assembled from a kit;

(iv) A product in the style of an Indian art or craft product originating from a commercial product, without substantial transformation provided by Indian artistic or craft work labor;

(v) Industrial products, which for this purpose are defined as 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.

(vi) A product in the style of an Indian art or craft 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(s), and one person is not Indian, the product is not an "Indian product."

\* \* \* \* \*

**§§ 309.3–309.6 [Redesignated as §§ 309.24–309.27]**

- 3. Sections 309.3 through 309.6 are redesignated as §§ 309.24 through 309.27
- 4. Sections 309.6 through 309.23 are added to read as follows:

**§ 309.6 When does a commercial product become an Indian product?**

In addressing Indian embellishments to originally commercial products, the Indian labor expended to add art or craft

work to those objects must be sufficient to substantially transform the qualities and appearance of the original commercial item. "Commercial products," under this part, are consumer goods designed for profit and mass distribution that lend themselves to Indian embellishment, for example clothing and accessories. Through substantial transformation due to Indian labor, a product changes from a commercial product to an Indian product. Examples of formerly commercial products that become Indian products include tennis shoes to which an Indian applies beadwork and denim jackets to which an Indian applies ribbon appliqués.

**§ 309.7 How should a seller disclose the nature and degree of Indian labor when selling, offering, or displaying art and craft work for sale?**

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. The following guidelines illustrate the way in which art and craft work may be characterized for marketing purposes and gives examples of products that may be marketed as Indian products.

If . . .	then . . .
(a) An Indian conceives, designs, and makes the art or craft work . . . . .	it is an "Indian product."
(b) An Indian produces a product that is "handcrafted," as explained in 309.3(d)(iii).	it can be marketed as such and it meets the definition of "Indian product."
(c) An Indian makes an art or craft work using some machine made parts.	it is "Indian made" and meets the definition of "Indian product."
(d) An Indian designs a product, such as a bracelet, which is then produced by non-Indians.	it does not meet the definition of "Indian product" under the Act.
(e) A product, such as jewelry, is made with non-artistic Indian labor, from assembled or "fit together parts".	it does not meet the definition of "Indian product" under the Act. <sup>1</sup>
(f) A product in the style of an Indian product is assembled by non-Indian labor from a kit.	it does not meet the definition of "Indian product" under the Act.
(g) A product is in the style of an Indian art or craft product, but not made by an Indian.	it does not meet the definition of "Indian product" under the Act.
(h) An Indian and a non-Indian jointly undertake the art or craft work to produce an art or craft product, for example a concho belt.	less than all of the labor is Indian and hence it does not meet the definition of "Indian product" under the Act. <sup>2</sup>

<sup>1</sup> For example, a necklace strung with overseas manufactured fetishes or heshi. If an Indian assembled the necklace, in keeping with the truth-in-marketing focus of the Act, it can be marketed as "Indian assembled." It does not meet the definition of "Indian product" under the Act. Similarly, if a product, such as a dream catcher is assembled by an Indian from a kit, it can be marketed as "Indian assembled." It does not meet the definition of "Indian product" under the Act.

<sup>2</sup> In order to be an "Indian product," the labor component of the product must be entirely Indian. In keeping with this truth-in-marketing law, a collaborative work should be marketed as such. Therefore, it should be marketed as produced by "X" (name of artist or artisan), "Y" (Tribe of individual's enrollment) or (name of Tribe providing official written certification the individual is a non-member Indian artisan and date upon which such certification was issued by the Tribe), and "Z" (name of artist or artisan with no Tribe listed) to avoid providing false suggestions to consumers.

**§ 309.8 For marketing purposes, what is the recommended method of identifying authentic Indian products?**

(a) The recommended method of marketing authentic Indian products is to include the name of the artist or artisan, the name of the Tribe in which the artist or artisan is enrolled, and the individual's Tribal enrollment number. If the individual is a certified non-member Indian artisan, rather than an enrolled Tribal member, the product identification should include the name of the Tribe providing official written certification that the individual is a non-member Indian artisan and the date upon which such certification was issued by the Tribe. In order for an individual to be certified by an Indian Tribe as a non-member Indian artisan, the individual must be of Indian lineage of one or more members of such Indian Tribe and the certification must be issued in writing by the governing body

of an Indian Tribe or by a certifying body delegated this function by the governing body of the Indian Tribe.

(b) For example, the Indian product should include a label, hangtag, provenance card, or similar identification that includes W (name of the artist or artisan), and X (name of the Tribe in which the individual is enrolled) and Y (individual's Tribal enrollment number), or a statement that the individual is a certified non-member Indian artisan of Z (name of the Tribe providing certification and the date upon which the certification was issued by the Tribe).

**§ 309.9 When can non-Indians make and sell products in the style of Indian arts and crafts?**

A non-Indian can make and sell products in the style of Indian art or craft products only if the non-Indian or other seller does not falsely suggest to

consumers that the products have been made by an Indian.

**§ 309.10 What are some sample categories and examples of Indian products?**

What constitutes an Indian product is potentially very broad. However, to provide guidance to persons who produce, market, or purchase items marketed as Indian products, §§ 309.11 through 309.22 contain a sample listing of "specific examples" of objects that meet the definition of Indian products. There is some repetition, due to the interrelated nature of many Indian products when made by Indian artistic labor. The lists in these sections contain examples and are not intended to be all-inclusive. Additionally, although the Indian Arts and Crafts Act of 1990 and the Indian Arts and Crafts Enforcement Act of 2000 do not address materials used in Indian products, some materials are included for their descriptive nature only. This is not intended to restrict

materials used or to exclude materials not listed.

**§ 309.11 What are examples of jewelry that are Indian products?**

(a) Jewelry and related accessories made by an Indian using a wide variety of media, including, but not limited to, silver, gold, turquoise, coral, lapis, jet, nickel silver, glass bead, copper, wood, shell, walrus ivory, whale baleen, bone, horn, horsehair, quill, seed, and berry, are Indian products.

(b) Specific examples include, but are not limited to: ivory and baleen scrimshaw bracelets, abalone shell necklaces, nickel silver scissortail pendants, silver sand cast bracelets, silver overlay bolos, turquoise channel inlay gold rings, cut glass bead rosette earrings, wooden horse stick pins, and medicine wheel quilled medallions.

**§ 309.12 What are examples of basketry that are Indian products?**

(a) Basketry and related weavings made by an Indian using a wide variety of 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, are Indian products.

(b) Specific examples include, but are not limited to: double weave river cane baskets, yucca winnowing trays, willow burden baskets, honeysuckle sewing baskets, black ash picnic baskets, cedar capes and dresses, pine needle/raffia effigy baskets, oak splint and braided sweet grass fancy baskets, birchbark containers, baleen baskets, rye grass dance fans, brown ash strawberry baskets, sumac wedding baskets, cedar hats, fiber basket hats, yucca wicker basketry plaques, and spruce root tobacco pouches.

**§ 309.13 What are examples of other weaving and textiles that are Indian products?**

(a) Weavings and textiles made by an Indian using a wide variety of media, including, but not limited to, cornhusk, raffia, tule, horsehair, cotton, wool, fiber, linen, rabbit skin, feather, bison fur, and qiviut (musk ox) wool, are Indian products.

(b) Specific examples include, but are not limited to: corn husk bags, twined yarn bags, cotton mantas, willow cradle boards, horsehair hatbands, Chiefs Blankets, Two Grey Hills rugs, horse blankets, finger woven sashes, brocade

table runners, star quilts, pictorial appliqué wall hangings, fiber woven bags, embroidered dance shawls, rabbit skin blankets, and feather blankets.

**§ 309.14 What are examples of beadwork, quillwork, and moose hair tufting that are Indian products?**

(a) Beadwork, quillwork, and moose hair tufting made by an Indian 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; and dolls and other toys and collectibles, are Indian products.

(b) Specific examples include, but are not limited to: quilled pipe stems, loom beaded belts, pictorial bags adorned with cut glass beads, deer skin moccasins decorated with moose hair tufting, beaded miniature dolls, and quilled and beaded amulets.

**§ 309.15 What are examples of apparel that are Indian products?**

(a) Apparel made or substantially decorated by an Indian, including, but not limited to, parkas, jackets, coats, moccasins, boots, slippers, mukluks, mittens, gloves, gauntlets, dresses, and shirts, are Indian products.

(b) Specific examples include, but are not limited to: seal skin parkas, ribbon appliqué dance shawls, smoked moose hide slippers, deer skin boots, patchwork jackets, calico ribbon shirts, wing dresses, and buckskin shirts.

**§ 309.16 What are examples of regalia that are Indian products?**

(a) Regalia are ceremonial clothing, modern items with a traditional theme, and accessories with historical significance made or significantly decorated by an Indian, including, but not limited to, that worn to perform traditional dances, participate in traditional socials, used for dance competitions, and worn on special occasions of tribal significance. If these items are made or significantly decorated by an Indian, they are Indian products.

(b) Specific examples include, but are not limited to: hide leggings, buckskin dresses, breech cloths, dance shawls, frontlets, shell dresses, button blankets, feather bustles, porcupine roaches, beaded pipe bags, nickel silver stamped armbands, quilled breast plates, coup sticks, horse sticks, shields, headdresses, dance fans, and rattles.

**§ 309.17 What are examples of woodwork that are Indian products?**

(a) Woodwork items made by an Indian, including, but not limited to, sculpture, drums, furniture, containers, hats, and masks, are Indian products.

(b) Specific examples include, but are not limited to: hand drums, totem poles, animal figurines, folk carvings, kachinas, embellished long house posts, clan house carved doors, chairs, relief panels, bentwood boxes, snow goggles, red and yellow cedar seagoing canoe paddles, hunting hats, spirit masks, bows and arrows, atlats, redwood dug out canoes, war clubs, flutes, dance sticks, talking sticks, shaman staffs, cradles, decoys, spiral pipe stems, violins, Native American Church boxes, and maple ladles, spoons, and soup bowls.

**§ 309.18 What are examples of hide, leatherwork, and fur that are Indian products?**

(a) Hide, leatherwork, and fur made or significantly decorated by an Indian, including, but not limited to, parfleches, tipis, horse trappings and tack, pouches, bags, and hide paintings, are Indian products.

(b) Specific examples include, but are not limited to: narrative painted hides, martingales, saddles, bonnet cases, drapes, quilts, forelocks, rosettes, horse masks, bridles, head stalls, cinches, saddle bags, side drops, harnesses, arm bands, belts, and other hand crafted items with studs and tooling.

**§ 309.19 What are examples of pottery and ceramics that are Indian products?**

(a) Pottery, ceramics, and related arts and crafts items made or significantly decorated by an Indian, including, but not limited to, a broad spectrum of clays and ceramic material, are Indian products.

(b) Specific examples include, but are not limited to: ollas, pitch vessels, pipes, raku bowls, pitchers, canteens, effigy pots, wedding vases, micaceous bean pots, seed pots, masks, incised bowls, blackware plates, redware bowls, polychrome vases, and storytellers and other figures.

**§ 309.20 What are examples of sculpture, carving, and pipes that are Indian products?**

(a) Sculpture, carving, and pipes made by an Indian, including, but not limited to, wood, soapstone, alabaster, pipestone, argillite, turquoise, ivory, baleen, bone, antler, and shell, are Indian products.

(b) Specific examples include, but are not limited to: kachina dolls, fetishes, animal figurines, pipestone pipes, moose antler combs, argillite bowls,



ivory cribbage boards, whalebone masks, elk horn purses, and clamshell gorgets.

**§ 309.21 What are examples of dolls and toys that are Indian products?**

Dolls, toys, and related items made by an Indian, 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, are Indian products.

**§ 309.22 What are examples of painting and other fine art forms that are Indian products?**

Painting and other fine art forms made by an Indian 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, are Indian products.

**§ 309.23 Does this part apply to products made before 1935?**

The provisions of this part do not apply to any art or craft products made before 1935.

Dated: March 26, 2003.

**Lynn Scarlett,**

*Assistant Secretary—Policy, Management, and Budget.*

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**BILLING CODE 4310-84-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1926

[Docket No. S-030]

RIN 1218-AC01

#### Safety Standards for Cranes and Derricks

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of Establishment of Negotiated Rulemaking Advisory Committee.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is announcing its decision to establish a Crane and Derrick Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act (NRA), the Occupational Safety and Health Act (OSH Act) and the Federal Advisory Committee Act (FACA).

**DATES:** The Charter will be filed on June 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael Buchet, Office of Construction Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693-2345.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Advisory Committee Act (5 U.S.C. App. I), the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) and the Negotiated Rulemaking Act of 1990, (5 U.S.C. 561 *et seq.*) and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the establishment of the Crane and Derrick Negotiated Rulemaking Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act.

The Committee will function as a part of the Department's rulemaking on revising safety standards for cranes and derricks in construction. It will attempt, using face-to-face negotiations, to reach consensus on the coverage and the substance of these rules, which can be used as the basis of a Notice of Proposed Rulemaking. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, attempting to arrive at a consensus, and submitting to the Secretary of Labor proposed regulatory text for an occupational safety standard governing worker safety for crane and derrick work in construction.

Meetings shall be held as necessary, however, no fewer than eight meetings shall be held over a two-year period. The Committee will terminate two years from the date of this charter or upon the publication of a proposed crane and derricks in construction rule, whichever is earlier.

The committee will be composed of no more than 25 members and a facilitator, appointed by the Secretary of Labor. Members may represent the following interests in appropriate balance: Crane and derrick manufacturers, suppliers, and distributors; companies that repair and maintain cranes and derricks; crane and derrick leasing companies; owners of cranes and derricks; construction companies that use leased cranes and derricks; general contractors; labor organizations representing construction employees who operate cranes and derricks and who work in conjunction

with cranes and derricks; owners of electric power distribution lines; civil, structural and architectural engineering firms and engineering consultants involved with the use of cranes and derricks in construction; training organizations; crane and derrick operator testing organizations; insurance and safety organizations, and public interest groups; trade associations; government entities involved with construction safety and with construction operations involving cranes and derricks, and other companies, organizations, and trade associations whose interests are affected by an occupational safety standard governing worker safety for crane and derrick work in construction. Also, the Agency is a member of this committee.

The Committee will report to the Assistant Secretary for Occupational Safety and Health in compliance with the applicable provisions of the FACA and the NRA. Its Charter will be filed under the FACA fifteen (15) days from the date of this publication.

OSHA published a **Federal Register** Notice requesting comments on the advisability of establishing this Negotiated Rulemaking Committee (67 FR 46612, July 16, 2002). Virtually all commenters agreed with the need to establish this committee.

**Authority:** This document was prepared under the direction of Elaine L. Chao, Secretary of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to section 6 and 7 of the Occupational Safety and Health Act (29 U.S.C. 655 and 656); the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 *et seq.*); the Federal Advisory Committee Act (5 U.S.C. Appendix 1); 41 FR parts 101-6 and 102-3 and 29 CFR part 1911.

Signed at Washington, DC, this 6th day of June 2003.

**Elaine L. Chao,**

*Secretary of Labor.*

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**BILLING CODE 4510-26-U**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-02-099]

RIN 1625-AA11 (Formerly RIN 2115-AE84)

#### Regulated Navigation Area in Hampton Roads, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.