

SUPPORTING STATEMENT
United States Patent and Trademark Office
Native American Tribal Insignia Database
OMB CONTROL NUMBER 0651-0048
(February 2011)

A. JUSTIFICATION

1. Necessity of Information Collection

The Trademark Law Treaty Implementation Act of 1998 (Pub. L. 105-330, § 302, 112 Stat. 3071) required the United States Patent and Trademark Office (USPTO) to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999.

One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database. The USPTO published the final procedures for establishing and maintaining the tribal insignia database in the *Federal Register* on August 24, 2001 (66 Fed. Reg. 44603).

The USPTO database of official tribal insignias assists trademark attorneys in their examination of applications for trademark registration. Additionally, the database provides evidence of what a federally or state-recognized Native American tribe considers to be its official insignia. The database serves as a reference for examining attorneys when determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database is also available to the public on the USPTO Web site.

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. § 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a trademark pursuant to 15 U.S.C. § 1051 *et seq.*

Requests from federally recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) a depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an

official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally recognized tribes. Additionally, requests from state-recognized tribes must include either: (a) a document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (b) a citation to a state statute designating the entity as a Native American tribe.

The USPTO enters insignia that have been properly submitted by federally or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This collection includes the information needed by the USPTO to enter an official insignia for a federally or state-recognized Native American tribe into a database of such insignia. No forms are associated with this collection.

2. Needs and Uses

The database of official insignia of Native American tribes is included within the USPTO's database of material that is not registered but is searched to determine the registrability of marks. Inclusion of official insignia in this database will ensure that an examining attorney will consider these insignia before making a final determination of the registrability of a mark that may be similar. The insignia database is available to the public on the USPTO Web site.

The Information Quality Guidelines from Section 515 of Public Law 106-554, Treasury and General Government Appropriations Act for Fiscal Year 2001, apply to this information collection, and this information collection and its supporting statement comply with all applicable information quality guidelines, i.e., OMB and specific operating-unit guidelines.

This proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with all applicable OMB and USPTO Information Quality Guidelines.

Table 1 outlines how this collection of information is used by the public and the USPTO:

Table 1: Needs and Uses of Information Collected for the Native American Tribal Insignia Database

Information and Function	Form #	Needs and Uses
<p>Request to Record an Official Native American Tribal Insignia of a Federally Recognized Tribe, including:</p> <ul style="list-style-type: none"> • Depiction of the insignia. • Copy of the tribal resolution adopting the insignia as the official insignia of the tribe. • Statement confirming that the insignia is identical to the official insignia adopted by tribal resolution. 	<p>No Form Associated</p>	<ul style="list-style-type: none"> • Used by the tribal government to request entry of their official insignia into the USPTO database of official tribal insignias. • Used by the USPTO to determine whether a trademark for which registration is sought may falsely suggest a connection to an official insignia of a Native American tribe. • Used by the USPTO as evidence of what a Native American tribe considers to be its official insignia and its official address for correspondence. • Used by the USPTO to maintain a public search database.
<p>Request to Record an Official Native American Tribal Insignia of a State-Recognized Tribe, including:</p> <ul style="list-style-type: none"> • Depiction of the insignia. • Copy of the tribal resolution adopting the insignia as the official insignia of the tribe. • Statement confirming that the insignia is identical to the official insignia adopted by tribal resolution. • Document issued by a state official that evidences the state's determination that the entity is a Native American tribe or a citation to a state statute that designates the entity as a Native American tribe. 	<p>No Form Associated</p>	<ul style="list-style-type: none"> • Used by the tribal government to request entry of their official insignia into the USPTO database of official tribal insignias. • Used by the USPTO to determine whether a trademark for which registration is sought may falsely suggest a connection to an official insignia of a Native American tribe. • Used by the USPTO as evidence of what a Native American tribe considers to be its official insignia and its official address for correspondence. • Used by the USPTO to maintain a public search database.

3. Use of Information Technology

The USPTO accepts submissions for the Native American tribal insignia database by mail or facsimile. The USPTO does not collect these submissions electronically over the Internet.

However, the USPTO does use information technology to process these submissions. When the USPTO receives a request to record an official insignia for a Native American tribe, the image of the insignia, the tribe's name, and the correspondence address are electronically captured by a system that allows for the creation of flat files of textual data while also supporting the display of stored images. The images and associated information are either scanned or manually keyed into the system.

The data stored in this database is used to populate the automated trademark search system (X-Search), into which the database of tribal insignia is entered. This system uses sophisticated search functions to search the text and image data.

The USPTO also utilizes information technology by posting the insignia database on its Web site. However, the USPTO currently does not plan on collecting this information electronically. The expected number of submissions is relatively small, and each submission includes only a small number of data elements. Therefore, the USPTO

believes that the development of an electronic form to collect the insignia information is impractical and not cost effective at this time.

4. Efforts to Identify Duplication

This information is collected only when a Native American tribe submits an official insignia to be entered into the USPTO database. This information is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing Burden to Small Entities

This collection does impact small entities, since the respondents are tribal governments. However, the USPTO does not believe that this collection will have a significant economic impact on small entities. The same information is required from every respondent, and this information is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only when a Native American tribe submits its official insignia for inclusion in the database of Native American tribal insignia. These submissions could not be collected less frequently. If the collection of information were not conducted, the USPTO could not comply with the Congressional directive to create a database containing the official insignia of federally and state-recognized Native American tribes.

7. Special Circumstances in the Conduct of Information Collection

There are no special circumstances associated with this collection of information.

8. Consultations Outside the Agency

The 60-Day Notice was published in the *Federal Register* on October 26, 2010 (75 Fed. Reg. 65611). The comment period ended on December 27, 2010. No public comments were received.

The USPTO has previously received input from several groups regarding the establishment of this database, including Native American tribal governments, associations, corporations, universities, trademark holders, and private citizens. Before the creation of the database, the USPTO conducted a seven-month study to consider how to better protect the official insignia of Native American tribes under trademark law. The USPTO also published notices in the *Federal Register* requesting public comments and held public hearings.

Large and well-organized bar associations frequently communicate their views to the USPTO. Also, the Trademark Public Advisory Committee (T-PAC) was created by the American Inventors Protection Act of 1999 to advise the Director of the USPTO on the

agency's operations, including its goals, performance, budget, and user fees. The T-PAC has nine voting members who are appointed by and serve at the pleasure of the Secretary of Commerce. The statute also provides non-voting membership on the Committee for the agency's three recognized unions. The appointments include inventors, lawyers, corporate executives, entrepreneurs, and academicians with significant experience in management, finance, science, technology, labor relations, and intellectual property issues. The members of the T-PAC reflect the broad array of USPTO's stakeholders and embrace the USPTO's e-government initiative.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent.

10. Assurance of Confidentiality

Confidentiality is not required in the processing of official insignias for the USPTO database. The tribal insignia database is open to public inspection.

11. Justification for Sensitive Questions

None of the required information in this collection is considered to be sensitive.

12. Estimate of Hour and Cost Burden to Respondents

Table 2 calculates the burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**
The USPTO estimates that approximately 8 total responses will be received annually.
- **Burden Hour Calculation Factors**
The USPTO estimates that a federally or state-recognized Native American tribe will require an average of 30 minutes (0.5 hours) to complete a request to record an official insignia, including time to prepare the appropriate documents and submit the completed request to the USPTO.
- **Cost Burden Calculation Factors**
The USPTO expects that the information in this collection will be prepared by both paraprofessionals and administrative staff. The paraprofessional/paralegal rate of \$122 is the average/typical rate for paralegals/legal assistants, as shown in the 2010 National Utilization and Compensation Survey published by the National Association of Legal Assistants (NALA) in October 2010. The estimated rate of \$76 per hour used in this submission is an average of the paraprofessional rate of \$122 per hour

and the administrative rate of \$30 per hour. Using this rate of \$76 per hour, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be \$380 per year. These estimates are fully loaded hourly rates.

Table 2: Burden Hour/Cost to Respondents for the Native American Tribal Insignia Database

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
Request to Record an Official Insignia of a Federally Recognized Tribe	0.50	5	3	\$76.00	\$228.00
Request to Record an Official Insignia of a State-Recognized Tribe	0.50	3	2	\$76.00	\$152.00
Totals	.....	8	5	.....	\$380.00

13. Total Annualized (Non-hour) Cost Burden

There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. There are also no filing fees for submitting a tribal insignia for recording. However, this collection does have annual (non-hour) costs in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a submission mailed through the U.S. Postal Service will be \$1.05 (based on the rate for a large envelope weighing 2 ounces) and that up to 8 submissions will be mailed to the USPTO per year. **Therefore, the total annual (non-hour) cost burden for this collection in the form of postage costs is approximately \$8 per year.**

14. Annual Cost to the Federal Government

The USPTO estimates that it takes approximately 1 hour for USPTO staff to process a request to record an official insignia of a federally or state-recognized Native American tribe in the USPTO database. This process includes 30 minutes for a GS-15, step 3 employee and 30 minutes for a GS-7, step 5 employee.

The hourly rate for a GS-15, step 3 employee is currently \$63.25, and the rate for a GS-7, step 5 employee is currently \$22.92, for an average rate of \$43.09 for the 1 hour of processing time. When 30% is added to account for a fully loaded hourly rate (benefits and overhead), the estimated hourly rate for processing the information in this collection is \$56.02 (\$43.09 + \$12.93).

Table 3 calculates the burden hours and costs to the Federal Government for processing this information collection:

Table 3: Burden Hour/Cost to the Federal Government for the Native American Tribal Insignia Database

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
Request to Record an Official Insignia of a Federally Recognized Tribe	1.00	5	5	\$56.02	\$280.00
Request to Record an Official Insignia of a State-Recognized Tribe	1.00	3	3	\$56.02	\$168.00
Totals	.....	8	8	.....	\$448.00

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

This information collection was previously approved by OMB in June 2008 with a total of 15 responses and 3 burden hours per year.

For this renewal, the USPTO estimates that the total annual responses will be 8 and the total annual burden hours will be 5, which is a decrease of 7 responses but an increase of 2 hours from the currently approved burden for this collection. These changes in responses and burden hours are due to administrative adjustments.

The total annual (non-hour) cost burden for this renewal of \$8 is a decrease of \$6 from the currently approved total of \$14 in annual costs for this collection. This decrease in annual costs is due to administrative adjustments.

Changes from the 60-Day Notice

Since the 60-Day Notice for this renewal was published, the USPTO has revised the estimated hourly rate for paraprofessionals from \$100 to \$122 based on the most recent National Utilization and Compensation Survey published by the National Association of Legal Assistants (NALA) in October 2010. Consequently, this increase in the estimated rate for paraprofessionals increased the average hourly rate for respondents from \$65 to \$76 and the total respondent cost burden from \$325 to \$380 per year.

Change in Respondent Cost Burden

When this collection was previously approved in June 2008, the estimated rate for the public respondents to this collection was \$53 per hour, which was an average of an estimated paraprofessional rate of \$90 per hour and an estimated clerical rate of \$15 per hour based on the level of effort being evenly split between paraprofessionals and clerical staff. For this renewal, the USPTO expects the level of effort to be evenly split between paraprofessionals and administrative staff, but the updated paraprofessional rate of \$122

per hour and the administrative rate of \$30 per hour yield an updated average rate of \$76 per hour for respondents. This increased hourly rate along with the increase in total burden hours for this renewal result in an increase in total respondent cost burden from \$159 to \$380.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the total annual responses for this collection will decrease by 7 and the total annual burden hours will increase by 2 due to administrative adjustments, as follows:

- The USPTO is adjusting the estimated annual responses for the Request to Record an Official Insignia of a Federally Recognized Tribe to 5, which is a decrease of 5 from the previous estimate of 10. However, the USPTO has also revised the time estimate for preparing this request, increasing the estimate from 10 minutes (0.17 hours) to 30 minutes (0.5 hours) per response, which results in an increase in burden hours for this item from 2 to 3. **Therefore, this collection takes a burden increase of 1 hour as an administrative adjustment.**
- The USPTO is adjusting the estimated annual responses for the Request to Record an Official Insignia of a State-Recognized Tribe to 3, which is a decrease of 2 from the previous estimate of 5. However, the USPTO has also revised the time estimate for preparing this request, increasing the estimate from 12 minutes (0.20 hours) to 30 minutes (0.5 hours) per response, which results in an increase in burden hours for this item from 1 to 2. **Therefore, this collection takes a burden increase of 1 hour as an administrative adjustment.**

In sum, this information collection has a total burden increase of 2 hours due to administrative adjustments.

Changes in Annual (Non-hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will decrease by \$6, from \$14 to \$8 per year. This decrease is due to the reduction in the number of estimated responses for this collection, but is partially offset by an increase in the estimated postage cost per response from 92 cents to \$1.05 for submitting the information in this collection to the USPTO by mail. **Therefore, this collection has a decrease in annual (non-hour) cost burden of \$6 due to administrative adjustments.**

16. Project Schedule

The USPTO does not plan to publish this information for statistical use. The tribal insignia database is available to the public on the USPTO Web site.

17. Display of Expiration Date of OMB Approval

There are no forms associated with this collection. Therefore, the display of the expiration date is not applicable.

18. Exceptions to the Certificate Statement

This collection of information does not include any exceptions to the certificate statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.

REFERENCES

- A. Notice entitled "Establishment of a Database Containing the Official Insignia of Federally and State Recognized Native American Tribes" published in the *Federal Register* on August 24, 2001 (66 Fed. Reg. 44603)
- B. The USPTO Information Quality Guidelines
- C. 60-Day Notice published in the *Federal Register* on October 26, 2010 (75 Fed. Reg. 65611)