

SUPPORTING STATEMENT
United States Patent and Trademark Office
Native American Tribal Insignia Database
OMB CONTROL NUMBER 0651-0048
(March 2017)

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 provides evidence of what a federally or state-recognized Native American tribe considers to be its official insignia. The database thereby assists trademark examining attorneys in their examination of applications for trademark registration by serving as a reference for 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 at <http://www.uspto.gov>.

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 collected, maintained, and used in this collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act (44 U.S.C. Chapter 35), in OMB Circular A-130, and in the USPTO information quality guidelines.

Table 1 lists the specific statutes and regulations authorizing the USPTO to collect this information and outlines how this information is used by the public and the USPTO:

Table 1: Information Requirements and Needs and Uses of Information Collected

Item	Requirement	Statute	Rule	Form #	Needs and Uses
1	Request to Record an Official Native American Tribal Insignia of a Federally Recognized Tribe, including: <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.L. 105-330, Sec. 302	N/A	No Form Associated	<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.
2	Request to Record an Official Native American Tribal Insignia of a State-Recognized Tribe, including: <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.L. 105-330, Sec. 302	N/A	No Form Associated	<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 and stored in a database. The database is used to populate the automated trademark search system (X-Search), which employs sophisticated functions to search the text and image data to aid trademark examiners in reviewing submissions.

The USPTO also utilizes information technology by posting the insignia database on its Web site, available through the trademark electronic search system (TESS).

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 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 expect 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. This collection has no associated fees.

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 December 5, 2016 (81 Fed. Reg. 87550). The comment period ended on February 3, 2017. 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.

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 it will receive approximately 4 total responses per year. None of these responses will be submitted electronically.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Burden Hour Calculation Factors**

The USPTO estimates that a federally or state-recognized Native American tribe will require an average of 1 hour to complete a request to record an official insignia, including time to prepare the appropriate documents and submit the completed request to the USPTO.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.

- **Cost Burden Calculation Factors**

The USPTO expects that the information in this collection will be prepared by both paraprofessionals and administrative staff. The estimated rate of \$85.50 per hour used in this submission is an average of the paraprofessional rate of \$141 per hour and the administrative rate of \$30 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately \$342 per year.

Table 2: Burden Hour/Cost to Respondents

Item #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
1	Request to Record an Official Insignia of a Federally Recognized Tribe	1	3	3	\$85.50	\$256.50
2	Request to Record an Official Insignia of a State-Recognized Tribe	1	1	1	\$85.50	\$85.50
	Totals	.....	4	4	.....	\$342.00

13. Total Annual (Non-hour) Cost Burden

The total annual (non-hour) cost burden for this collection is calculated in Table 3 below. This collection has no capital start-up, maintenance, or recordkeeping costs. There are no filing fees for submitting a tribal insignia for recording.

Postage

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 (USPS) will be \$1.20 (based on a flat 9" by 12" envelope weighing 2 ounces), and that up to 3 submissions will be mailed to the USPTO per year.

Table 3: Annual (Non-hour) Costs to Respondents

Item #	Item	Estimated annual responses	Postage amount	Totals
1	Request to Record an Official Insignia of a Federally Recognized Tribe	3	\$1.20	\$3.60
2	Request to Record an Official Insignia of a State-Recognized Tribe	1	\$1.20	\$1.20
	Totals	4	---	\$4.80

Therefore, the USPTO estimates a total of \$4.80 in non-hourly cost burden.

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 20 minutes for a GS-15, step 6 employee and 30 minutes for a GS-12, step 8 employee.

The estimated hourly cost of a GS-15, step 6 employee is \$95.76 (GS-15/6 hourly rate of \$73.66 with 30% (\$22.10) added for benefits and overhead), and the hourly cost of a GS-12, step 8 employee is \$61.24 (GS-12/8 hourly rate of \$47.11 with 30% (\$14.13) added for benefits and overhead), for a weighted average hourly rate of \$62.54.

Table 4 calculates the burden hours and costs to the Federal Government for processing this information collection:

Table 4: Burden Hour/Cost to the Federal Government

Item #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
1	Request to Record an Official Insignia of a Federally Recognized Tribe	1	3	3	\$62.54	\$187.62
2	Request to Record an Official Insignia of a State-Recognized Tribe	1	1	1	\$62.54	\$62.54
	Totals	.....	4	4	.....	\$250.16

15. Reason for Changes in Burden from the Current Inventory

A) Changes in collection since previous renewal in 2014

OMB previously approved the renewal of this information collection March 2014. The approval resulted in a collection containing:

- 3 responses
- 3 burden hours
- \$228.00 in respondent hourly cost burden
- \$3.00 in annual (non-hour) costs

Changes since the 60-day notice

Since the 60-day notice there has been an adjustment made to the amount of time needed to complete the Requests to Record and Official Insignia. The previous amount of time was 45 minutes (0.75 hours), and this has been updated to 1 hour per response.

This increase also impacts the burden hours per year and respondent cost. The increase of 1 burden hour and \$85.50 in respondent costs are due to administrative adjustments.

B) Changes in responses and burden hours from the current inventory

The proposed collection, as outlined in the tables above, seeks to modify the existing collection. The new proposed collection contains an estimated:

- 4 respondents
- 4 burden hours
- \$342.00 in respondent hourly cost burden
- \$4.80 in annual (non-hour) costs

The USPTO estimates 4 total annual responses and 4 total annual burden hours, which is an increase of 1 response and 1 burden hour from the currently approved burden for this collection. These changes are due to administrative adjustments from updated estimates for annual responses.

C) Changes in annual (non-hour) costs from the current inventory

The total annual (non-hour) cost burden for this renewal submission of \$4.80 is an increase of \$1.80 from the currently approved total of \$3.00. This increase is due to the addition of one response for this collection, and an increase in the estimated postage cost per response from \$1.19 to \$1.20 for submitting the information in this collection to the USPTO by mail. Furthermore, this estimate has not been rounded down to the nearest whole number, as was done in the previous renewal.

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.