

SUPPORTING STATEMENT
United States Patent and Trademark Office
Native American Tribal Insignia Database
OMB CONTROL NUMBER 0651-0048
(May 2020)

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The [Trademark Law Treaty Implementation Act of 1998](#)¹ (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. Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), disallows the registration of marks that falsely suggest a connection with a non-sponsoring person or institution, including a Native American tribe. 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, included within Trademark Electronic Search System (TESS), is available to the public, on the USPTO website, and includes an online help program for using the system. More information about the program is available on the website at <https://www.uspto.gov/trademark/lawsregulations/native-american-tribalinsignia>.

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,

¹ <https://www.uspto.gov/trademark/laws-regulations/trademark-law-treaty-implementation-act>

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 information 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 information collection.

2. Indicate how, by whom, and for what purpose the information is to be used.
Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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 public can search for official tribal insignias included in the database by choosing the "Word and/or Design Mark Search (Structured)" search option in [Trademark Electronic Search System](#)² (TESS), entering "Native American" as the "Search Term," choosing "Other Data" as the "Field," and clicking on "Submit Query." Official tribal insignia are identified by serial numbers that begin with the code "89" in the list of records returned by the search.

² <https://www.uspto.gov/trademarks-application-process/search-trademark-database>

The information collected, maintained, and used in this information 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	Regulation	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	66 Fed. Reg. 44603 August 24, 2001	No Form	<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	66 Fed. Reg. 44603 August 24, 2001	No Form	<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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The USPTO accepts submissions for the Native American tribal insignia database by email, mail, facsimile, or hand delivery to the USPTO. Email submissions are accepted at NativeAmericanTribalInsigniaSubmissions@uspto.gov. The USPTO does not collect these submissions through electronic information systems. 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.

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 publicly available (TESS).

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection does impact small entities, since the respondents are tribal governments. However, the USPTO does not expect that this information 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 information collection has no associated fees.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

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 recommendation to create a database containing the official insignia of federally and state-recognized Native American tribes.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- **requiring respondents to report information to the agency more often than quarterly;**
 - **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
 - **requiring respondents to submit more than an original and two copies of any document;**
 - **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years; in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - **requiring the use of a statistical data classification that has not been reviewed and approved by OMB; that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
 - **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

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

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior**

periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The 60-Day Notice was published in the *Federal Register* on March 16, 2020 at 85 FR 14926. The comment period ended on May 15, 2020. No public comments were received.

The USPTO has 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. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

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

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

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

This information collection may contain information subject to the Privacy Act. This information is collected on registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use, or intend to use, such marks in commerce may file an application to register their marks with the USPTO. Trademark Application information collection activities are covered under the Statement of Records Notice (COMMERCE/USPTO-26 Trademark Application and Registration Records) at Federal Register /Vol. 85, No. 32 /Tuesday, February 18, 2020 /Notices. This SORN identifies the categories of records in the system containing applicants for trademark registration, include the name, citizenship, domicile, email address, postal address, and telephone number of the trademark applicant, registrant, and applicant's or registrant's legal or other authorized representative(s), an attorney's law firm or company affiliation and professional licensing information, and other information pertaining to an applicant's or registrant's activities in connection with the applied-for or registered mark. Records in this system include trademark applications, applicant and registrant declarations, office actions, registration certificates, and correspondence generated in the course of the prosecution of a trademark application or maintenance of a trademark registration.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

None of the required information in this collection is considered to be sensitive. USPTO follows OMB guidance for the Federal Standards for [Standards for the Classification of Federal Data on Race and Ethnicity](https://www.federalregister.gov/documents/2013/07/16/2013-14076/standards-for-the-classification-of-federal-data-on-race-and-ethnicity)³.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
 - **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
 - **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.**

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 5 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.

³ https://obamawhitehouse.archives.gov/omb/fedreg_race-ethnicity/

- **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. Overall respondents will spend an estimated 5 hours submitting items for this activity.

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 activity in this information collection will be prepared by the tribal counsel. The estimated rate for local government attorney rate (Bureau of Labour Statistics [Occupation Employment Statistics 23-2011](https://www.bls.gov/oes/current/oes23-2011.htm)⁴; Lawyers; local government) is \$51.44 per hour with a fully burdened rate of \$66.84 (salary plus 30% for estimated overhead and benefits). Therefore, the USPTO estimates that the respondent cost burden for this information collection will be approximately \$334 per year.

Table 2: Burden Hour/Cost to Respondents (Tribal Governments)

Item #	Item	Estimated Time for Response (Minutes) (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) / 60 = (c)	Rate (\$/hr) d	Total Costs (c) x (d) = (hourly cost burden) (e)
1	Request to Record an Official Insignia of a Federally Recognized Tribe	1 hour	4	4	\$66.84	\$267.36
2	Request to Record an Official Insignia of a State-Recognized Tribe	1 hour	1	1	\$66.84	\$66.84
	Totals	.....	5	5	.....	\$334

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a

⁴ <https://www.bls.gov/oes/current/oes231011.htm>

total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The total annual (non-hour) cost burden for this information collection is calculated in Table 3 below. This information 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 \$7.65 (based on a flat 9" by 12" envelope weighing 2 ounces), and that up to 5 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	4	\$7.65	\$30.60
2	Request to Record an Official Insignia of a State-Recognized Tribe	1	\$7.65	\$7.65
	Totals	5	---	\$39

Therefore, the USPTO estimates a total of \$39 in non-hourly cost burden.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

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 \$103.70 (GS-15/6 hourly rate of \$79.77 with 30% (\$23.93) added for benefits and overhead), and the hourly cost of a GS-12, step 8 employee is \$66.33 (GS-12/8 hourly rate of \$51.02 with 30% (\$15.31) added for benefits and overhead), for a weighted average hourly rate of \$85.02

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	0.75	4	3	\$85.02	\$255.06
2	Request to Record an Official Insignia of a State-Recognized Tribe	0.75	1	0.75	\$85.02	\$63.77
	Totals	.....	5	4	.....	\$319

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

- A) OMB previously approved the renewal of this information collection resulting in a collection containing:

BURDEN**ICR Summary of Burden:**

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	5	0	0	1	0	4
Annual Time Burden (Hr)	5	0	0	1	0	4
Annual Cost Burden (\$)	39	0	0	34	0	5

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

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

- 5 respondents
- 5 burden hours
- \$332 in respondent hourly cost burden
- \$38.25 in annual (non-hour) costs

The USPTO estimates 5 total annual responses and 5 total annual burden hours, which results in an adjustments of 1 additional response and 1 additional burden hour from the currently approved burden for this information collection. The slight increase in annual (non-hourly) costs is due to an increase in the estimated postage costs for items mailed to the USPTO.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

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

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

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

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

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.