



DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Native American Tribal Insignia Database

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (hereafter “USPTO” or “Agency”), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0048 (Native American Tribal Insignia Database). The purpose of this notice is to allow 60 days for public comments preceding submission of the information collection to the Office of Management and Budget (OMB).

DATES: To ensure consideration, you must submit comments regarding this information collection on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- Email: InformationCollection@uspto.gov. Include “0651-0048 comment” in the subject line of the message.
- Federal eRulemaking Portal: <http://www.regulations.gov>.

- Mail: Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.
- Telephone: Cristiana Schwab, Office of Enrollment and Discipline, 571-272-3514.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Cristiana Schwab, Attorney Advisor, at: Office of the Deputy Commissioner for Trademark Examination Policy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; 571-272-3514; or Cristiana.Schwab@uspto.gov with “0651-0048 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov/> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trademark Law Treaty Implementation Act of 1998 (Pub. L. 105-330, 302, 112 Stat. 3071) required the 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, 1999.¹ 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 FR 44603).²

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

¹ <https://www.govinfo.gov/content/pkg/PLAW-105publ330/pdf/PLAW-105publ330.pdf>.

² <https://www.govinfo.gov/content/pkg/FR-2001-08-24/pdf/01-21479.pdf>.

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 the trademark search system, 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/trademarks/laws/native-american-tribal-insignia>.

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 allowed or 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.

II. Method of Collection

The USPTO prefers that items in this information collection be submitted via email. Items may also be submitted in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651-0048.

Forms: None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: State, Local, and Tribal Governments.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 39 respondents.

Estimated Number of Annual Responses: 39 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately one hour to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

Estimated Total Annual Respondent Burden Hours: 39 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$3,426.

Table 1: Total Reporting Burden Hours and Hourly Costs to Tribal Government Respondents

Item No.	Item	Estimated Annual Respondents (a)	Responses per Respondent (b)	Estimated Annual Responses (a) x (b) = (c)	Estimated Time for Response (hours) (d)	Estimated Burden (hour/year) (c) x (d) = (e)	Rate ¹ (\$/hr) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
1	Request to Record an Official Insignia of a Federally Recognized Tribe	11	1	11	1	11	\$87.86	\$966
2	Request to Record an Official Insignia of a State-Recognized	28	1	28	1	28	\$87.86	\$2,460
	Totals	39	---	39	---	39	---	\$3,426

Estimated Total Annual Respondent Non-hourly Cost Burden: \$24. There are no capital startup costs, maintenance costs, or recordkeeping costs associated with this information collection. However, the USPTO estimates that the total annual non-hour cost burden for this information collection, in the form of postage, is \$24.

Postage

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service. The USPTO estimates that 5% of the items of this information collection may be submitted in the mail, resulting in two mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat-rate envelope, will be \$12.10. Therefore, the USPTO estimates the total mailing costs for this information collection at \$24.

IV. Request for Comments

The USPTO is soliciting public comments to:

- (a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be advised that the entire comment—including PII—may be made publicly available at any time. While one may ask in a comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

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