

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement -- Information Collection Request

OMB Control Number 1513-0127

Petitions to Establish or Modify American Viticultural Areas.

**A. Justification**

1. *What are the circumstances that make this collection of information necessary, and what legal or administrative requirements necessitate the collection? Also align the information collection to TTB's Line of Business/Sub-function and IT Investment, if one is used.*

The Federal Alcohol Administration Act (FAA Act), at 27 U.S.C. 205(e), authorizes the Secretary of the Treasury (the Secretary) to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act and its related regulations pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary also has delegated various authorities to administer and enforce the FAA Act to the TTB administrator through Treasury Department Order 120-01.

Under the authority of the FAA Act at 27 U.S.C. 205(e), TTB has issued regulations in 27 CFR Part 4, Wine, regarding the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. In addition, the TTB regulations in 27 CFR Part 9, American Viticultural Areas, set forth the requirements for petitions from the public requesting the establishment or modification of American viticultural areas (AVAs), and that part lists all established AVAs and describes their boundaries. Specific to this information collection, 27 CFR 9.11 describes how and where the public may submit an AVA petition to TTB, and § 9.12 describes the evidence and other information that a petitioner must include in an AVA petition.<sup>1</sup>

This information collection is aligned with:

Line of Business/Sub-function: Law Enforcement / Substance Control.

IT Investment: None.

2. *How, by whom, and for what purpose is this information used?*

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<sup>1</sup> 27 CFR 9.13 and 9.14 describe TTB's processing of AVA petitions and the AVA rulemaking process but do not require respondents to submit information to TTB.

TTB's Regulations and Rulings Division evaluates the evidence and other information contained in an AVA petition to determine whether or not to proceed to rulemaking to establish a new AVA or to modify an existing AVA.

*3. To what extent does this collection of information involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology? What consideration is given to use information technology to reduce burden?*

There is no standard format for an AVA petition document. Because of the various sources of information that must be submitted by the petitioner, including United States Geological Survey maps, the submission of an AVA petition does not lend itself to automation at this time.

*4. What efforts are used to identify duplication? Can similar information already available be used or modified for use for the purposes described in Item 2 above?*

The collected information is unique to each AVA petition and is not otherwise requested by, or available to, TTB. Accordingly, efforts to identify duplication are not applicable to this information collection.

*5. If this collection of information impacts small businesses or other small entities, what methods are used to minimize burden?*

TTB believes that the information required in an AVA petition is the minimum necessary for the Bureau to determine whether or not to proceed to the petitioned-for AVA rulemaking. As such, reduced requirements solely for small businesses are not appropriate for this information collection. TTB also notes that there is no fee for filing an AVA petition and that the use of attorneys or other paid consultants by a petitioner is not required or necessary to submit a successful AVA petition to the Bureau.

*6. What consequences to Federal program or policy activities and what, if any, technical or legal obstacles to reducing burden will occur if this collection is not conducted or is conducted less frequently?*

This collection of information only occurs when a member of the public (or a group) voluntarily petitions TTB to establish a new AVA or modify an existing AVA. As such, AVA petitions cannot be collected less frequently. Additionally, if TTB did not collect the information required in AVA petitions, TTB would be unable to determine if it should engage in the AVA-related rulemaking that members of the public wish TTB to undertake.

*7. Are there any special circumstances associated with this information collection that would require it to be conducted in a manner inconsistent with OMB guidelines? (See 5 CFR 1320.5(d)(2).)*

There are no special circumstances associated with this information collection that would require it to be inconsistent with OMB guidelines.

8. *What effort was made to notify the general public about this collection of information? Summarize the public comments that were received and describe the action taken by the agency in response to those comments.*

To solicit comments from the general public, TTB published a “60-day” comment request notice for this information collection in the Federal Register on May 7, 2020, beginning at 85 FR 27272. TTB received no comments on this information collection in response.

9. *Was any payment or gift given to respondents, other than remuneration of contractors or grantees? If so, why?*

No payment or gift is associated with this information collection.

10. *What assurance of confidentiality was provided to respondents, and what was the basis for the assurance in statute, regulations, or agency policy?*

No assurance of confidentiality is provided for this information collection. Rulemaking petitions submitted to TTB by members of the public are part of the rulemaking record and are subject to disclosure. Specifically, AVA petitions accepted for rulemaking became part of the rulemaking docket and are posted for public viewing on the Federal government’s e-rulemaking website, Regulations.gov (<https://www.regulations.gov>), along with the related notice of proposed rulemaking.

11. *What is the justification for questions of a sensitive nature? If personally identifiable information (PII) is being collected in an electronic system, identify the Privacy Impact Assessment (PIA) that has been conducted for the information collected under this request and/or the Privacy Act System of Records notice (SORN) issued for the electronic system in which the PII is being stored.*

This information collection contains no questions of a sensitive nature. In addition, this information collection does not collect personally identifiable information (PII) in an electronic system. Therefore, no Privacy Impact Assessment (PIA) or System of Records Notice (SORN) is required for this collection.

12. *What is the estimated hour burden of this collection of information?*

Estimated Annual Burden Hours: Based on recent experience, TTB estimates that 15 respondents will file one AVA petition per year. TTB estimates that each AVA petition requires an average of 130 hours to complete, for a total estimated annual burden of 1,950 hours for this information collection.

(15 respondents x 1 annual response = 15 total annual responses x 130 hours per response = 1,950 total estimated annual burden hours).

Estimated Respondent Labor Costs: TTB estimates the labor costs to respondents to complete and file an AVA petition as shown below. TTB notes that the use of paid consultants in the preparation of an AVA petition is at the petitioner’s option. Based on recent data, TTB estimates that of the 15 AVA petitions it receives annually, 8 petitioners

use consultants in developing their petition, while 7 petitioners do not use consultants. TTB further notes that almost all petitioners are wine industry members and that the most recent U.S. Department of Labor, Bureau of Labor Statistics, salary estimate for the position of “viticulturist” sufficiently represents the typical wage rate for AVA petitioners.

<i>Respondent Type</i>	<i>Hours per Response &amp; Viticulturist Fully Loaded Labor Rate<sup>2</sup></i>	<i>Cost per response</i>	<i>Total Cost</i>
Petitioner with Consultant Assistance	50 hours @ \$45.12/hour (for 8 responses)	\$ 2,256.00	\$ 18,048.00
Petitioner without Consultant Assistance	130 hours @ \$45.12/hour (for 7 responses)	\$ 5,865.60	\$ 41,059.20
<i>Average Petitioner Labor Cost / Total Cost</i>		\$ 3,940.48	\$ 59,107.20

Record Retention Burden: TTB does not require respondents to keep records related to AVA petitions. (TTB keeps accepted AVA petitions, maps, and related correspondence and other documents as part of the rulemaking records it maintains.)

13. *What is the estimated annual cost burden to respondents or record keepers resulting from this information collection request (excluding the value of the hour burden in Question 12 above)?*

TTB estimates the annual cost to petitioners to complete and file an AVA petition as shown below. TTB notes that the use of paid consultants in the preparation of an AVA petition is at the petitioner’s option. Based on recent data, TTB estimates that, annually, 8 petitioners use consultants while 7 petitioners do not use consultants.

	<i>Per Petitioner</i>	<i>Total Costs</i>
Consultants (\$125/hour x 80 hours x 8 respondents)	\$ 10,000	\$ 80,000.00
USGS Maps (x 15 respondents)	\$ 70	\$ 1,050.00
Postage & Supplies (x 15 respondents)	\$ 50	\$ 750.00
Total Costs with Consultants (x 8 respondents)	\$ 10,120	\$80,960
Total Costs without Consultants (x 7 respondents)	\$ 120	\$840
<b>TOTAL ANNUAL PETITIONER COSTS</b>	(avg. \$5,453.33)	\$81,800

14. *What is the annualized cost to the Federal Government?*

<sup>2</sup> Fully-Loaded Labor Rate = Hourly wages plus benefit costs, which, for the private sector may be determined by multiplying the hourly wage by 1.44. Per the most recent Dept. of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook (<https://www.bls.gov/ooh/home.htm>), the median hourly wage rate for a viticulturist is \$31.33/hr. Therefore, the median fully loaded labor rate for a viticulturist is \$45.12/hr. (\$31.33 x 1.44 = \$45.12).

Estimates of annual costs to the Federal Government for this information collection, based on fully loaded labor rates and Federal Register publication costs, and rounded up to the nearest whole dollar, are as follows:<sup>3</sup>

Evaluation of AVA Petitions by TTB's AVA Program Manager	\$ 206,950.00
Supervisory and Legal Review of AVA Rulemaking Documents	\$ 15,158.00
Publication of AVA Rulemaking Documents in the Federal Register	\$ 47,565.00
<b>TOTAL COSTS</b>	<b>\$ 269,673.00</b>
Average Cost per Petition	\$ 17,979.00

15. *What is the reason for any program changes or adjustments reported?*

There are no program changes associated with this information collection at this time. While there are no adjustments to the estimated annual number of respondents, responses, and burden hours for this information collection, TTB is revising its cost estimates for this collection based on more recent respondent and wage rate data. Specifically, TTB is separating this information collection's respondent labor cost estimate (see Question 12) from its respondent non-labor cost estimate (see Question 13), and is increasing its Federal government cost estimate (see Question 14).

16. *Outline plans for tabulation and publication for collections of information whose results will be published.*

AVA petitions accepted for rulemaking by TTB result in the publication of a notice of proposed rulemaking (NPRM) in the Federal Register that summarizes the petition's evidence and describes the proposed AVA's boundaries. Also upon publication of the NPRM, TTB creates a rulemaking docket on the Federal government's e-rulemaking website, Regulations.gov, and posts the petition in that docket for public viewing (see <https://www.regulations.gov/>). Rejected AVA petitions are not published and are returned to the petitioner.

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<sup>3</sup> Federal Government Fully-loaded Labor Rate = Hourly wage plus benefit costs, calculated as hourly wage x 1.63. Therefore, in the Washington, DC locality pay area, for a GS-14, step 6 AVA Program Manager, the fully loaded labor rate is the hourly wage of \$67.82 x 1.63 = \$110.55/hour. TTB estimates its AVA Program Manager works 1,872 hours annually (90% of work hours) on AVA petition evaluation, AVA rulemaking document writing, and management of those activities. The fully loaded labor rate for GS-15, step 5, supervisors and attorneys in the Washington, DC pay area is hourly wage of \$77.49 x 1.63 = \$126.31/hour. TTB estimates that each AVA rulemaking may require up to 8 hours of supervisory and attorney review for a total of 120 hours for 15 petitions received annually. See <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2020/general-schedule/> and <https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/workingpaper/2012-04fedbenefitswp0.pdf>. The estimated annual Federal Register publication costs equal 15 documents x 21 columns per document x \$151 per column = \$47,565.00.

17. *If seeking approval to not display the expiration date for OMB approval of this information collection, what are the reasons that the display would be inappropriate?*

This information collection consists of petitions for AVA rulemaking submitted to TTB by interested persons or a group of such persons. While the TTB regulations contain requirements for what information must be included in such a petition, there is no prescribed TTB form for AVA petitions. As such, there is no medium for TTB to display this information collection's OMB approval expiration date.

18. *What are the exceptions to the certification statement?*

- (c) See item 5 above.
- (f) This is not a recordkeeping requirement.
- (i) No statistics are involved.
- (j) See item 3 above.

**B. Collections of Information Employing Statistical Methods.**

This information collection does not employ statistical methods.