

## SUPPORTING STATEMENT

### Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization-ESTA OMB No. 1651-0111

#### 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.**

Currently, Forms I-94 and I-94W are included in the manifest requirements imposed by Sections 231 and 235 of the Immigration and Nationality Act (Act) and are required to be prepared by aliens while en route to the United States and presented upon arrival at a sea or air port of entry within the United States. Under the Act, it is the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any alien on board to deliver to the CBP officers at the port of arrival lists or manifests of the persons on board such vessel or aircraft. The list or manifest must be in the form of a separate Arrival/Departure Record, CBP Form I-94 or Waiver Arrival/Departure Record, prepared on board for most passengers, excluding U.S. citizens, lawful permanent resident aliens of the United States, and aliens seeking to immigrate to the United States. Aliens traveling under a visa granted by the United States or seeking admission under the Guam Visa Waiver Program submit Form I-94. Aliens traveling under the Visa Waiver Program (VWP) utilize Form I-94W, and also secure an authorization to travel to the United States via the Electronic System for Travel Authorization (ESTA), as subsequently described. The Visa Waiver Program is authorized by Section 217 of the Immigration and Nationality Act (INA) and 8 CFR 217, and the Guam Visa Waiver Program is authorized by Section 212(l) of the INA and 8 CFR 212.1(e).

Aliens traveling under the VWP program are currently required to present a completed, signed Form I-94W as a condition of admission pursuant to 8 C.F.R. § 217.2(b)(1).

The data elements collected on these forms enables the Department of Homeland Security (DHS) to perform its mission requirements as they relate to the screening of the alien traveler for potential risks to national security, the determination of admissibility to the United States, the timely

and accurate capture of alien visitor biographic data and the matching of the alien's arrival and departure records that enables the monitoring of alien's compliance with applicable United States law.

The data provided by an alien on Form I-94W includes answers to questions that may assist in determining the alien's admissibility to the United States. These questions do not appear on Form I-94 as the alien has undergone the process administered by the Department of State to secure a visa to visit the United States

### **The Electronic System for Travel Authorization**

On August 3, 2007, the President signed into law the *Recommendations of the 9/11 Commission Act of 2007* (9/11 Act), Public Law 110-53. Section 711 of the 9/11 Act requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an internet-based system which shall collect such biographical and other information as the Secretary determines necessary to determine, in advance of travel, the eligibility of the alien to travel to the United States and whether such travel poses a law enforcement or security risk. To satisfy the requirements of section 711 of the 9/11 Act, DHS has implemented the Electronic System for Travel Authorization (ESTA). ESTA screens travelers seeking to enter the United States under the VWP prior to their travel to the United States, and thereby prevents ineligible travelers from departing for the United States. DHS notes that an authorization to travel to the United States via ESTA is not a determination that the alien is admissible. A determination of admissibility is made only after an applicant for admission is inspected by a CBP officer at a U.S. port of entry.

- 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 data collected on Forms I-94/94W and via ESTA provide information required to support DHS mission requirements as they relate to the screening of alien visitors to the United States for potential law enforcement and national security risk, the timely and accurate capture of data that enables matching of alien arrival and departure records that are necessary to monitor alien compliance with United States law and the support of the development of automated solutions intended to further streamline document handling and information processing. Particular to VWP travelers, ESTA is mandated by Congress to enhance national security by increasing the amount of information available to DHS regarding VWP travelers before such travelers embark on a carrier

destined for the United States. As the rationale for mandating the implementation of ESTA, Congress noted that VWP travelers are not subject to the same degree of screening as those travelers who must first obtain a visa before departing for the United States. Therefore, this data is being collected via ESTA in order to mitigate the security vulnerabilities of the VWP, whereby travelers seeking to avoid the scrutiny of the visa issuance process or circumvent immigration laws may attempt to enter the United States under the VWP.

- 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.**

Forms I-94 and I-94W are paper documents prepared by most aliens traveling to the United States. ESTA is an internet-based system that enables VWP travelers to electronically enter applications for authorization to travel to the United States via the VWP.

With certain exceptions, such as the collection of a written signature by the traveler on the Form I-94W, ESTA and the Form I-94W ask travelers to provide the same information. As explained below, the Form I-94W in its current form serves several law enforcement functions, such as a physical record of a VWP alien's exit from the United States and a written acknowledgment of receipt of the form, that are not currently duplicated by the ESTA system.

CBP is working to eliminate the I-94W, hence reducing the burden on VWP travelers and the carriers in terms of the preparation and handling of paper forms.

- 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.**

While ESTA and the Form I-94W collect some of the same data, ESTA does not duplicate several important functions of the paper form.

For example, the Form I-94W contains a unique departure number and perforated section that is physically collected from aliens at the time of exit from the United States, and includes a written signature by the traveling alien.

The paper form has several important information collection functions that are not captured by the ESTA system. Unlike ESTA, the I-94W paper form is currently used to create an admission record, verify the physical departure of individuals, and document the legal waiver of rights inherent to the VWP. System modifications, policy decisions, and interagency coordination will be necessary to allow for the elimination of the paper form and data is adequately documented.

DHS is attempting to identify funding to initiate a multi-phase project intended to eliminate the I-94W. The authorization for eliminating the I-94W form is documented in the ESTA Interim Final Rule (IFR) that was published in the Federal Register on June 9, 2008. As stated in the IFR,

*“The development and implementation of the ESTA program will eventually allow DHS to eliminate the requirement that VWP travelers complete an I-94W prior to being admitted to the United States. As DHS moves towards elimination of the I-94W requirement, a VWP traveler with valid ESTA authorization will not be required to complete the paper form I-94W when arriving on a carrier that is capable of receiving and validating messages pertaining to the traveler’s ESTA status as part of the traveler’s boarding status. Once all carriers are capable of receiving and validating messages pertaining to the traveler’s ESTA status as part of the traveler’s boarding status, DHS will eliminate the I-94W requirement.”*

DHS has drafted a Project Charter to identify the scope, objective, project deliverables, estimated cost, schedule, and personnel requirements for the I-94W elimination project. Additional documentation currently in draft includes an Implementation Plan and a Business Requirements to support the necessary technical modifications inherent in eliminating the I-94W. In the past year, DHS has been hosting interagency working groups geared towards addressing the various technical, procedural, and legal challenges associated with this effort and has established an Integrated Project Team to monitor progress.

Despite DHS’s efforts, a significant milestone towards eliminating the paper I-94W form has not yet occurred. Before DHS may eliminate the paper form, carriers must be able to receive and validate ESTA status messages prior to boarding VWP travelers. DHS expects that most signatory carriers will utilize the Automated Passenger Information System (APIS) Interactive process to transmit passenger manifest data and receive ESTA messages. Developing this capability requires technical modifications to carrier systems and has a variety of operational impacts for the check in process. DHS published the technical guidance required for the carrier industry to make required programming changes in the Consolidated User Guide in June 2008 and has established a testing and

certification process to support the initiative. DHS began testing in October 2008. However, to date, the majority of carriers have yet to complete testing or receive ESTA codes in their production systems. Carriers are also currently tasked with making system modifications to accommodate the Transportation Security Administration's Secure Flight Rule which further impacts their schedule for ESTA compliance. Many have indicated they will not be ESTA compliant until late 2009. DHS is modifying the eAPIS system to accommodate carriers who are unable or unwilling to use the APIS interactive process and it is expected this system will be available by the end of July 2009; however, this system is not well suited to carriers transporting large quantities of VWP travelers. It is critical that the form remain in place until carriers have completed testing and become certified to send and receive the appropriate data elements, or have modified their operations to allow them to use eAPIS. DHS has made a commitment to the travel industry to work with them to monitor travel compliance. Both DHS and the carrier industry must continue outreach efforts to improve traveler compliance which is currently approximately 87%.

DHS systems must also be modified to support the elimination of the paper I-94W. These system updates will be required on multiple platforms and require the coordination of multiple work groups. Due to the scope of the project, DHS will conduct a variety of different gate reviews and processes to ensure compliance with Information Technology standards. DHS is also evaluating the possibility of initiating a Pilot with one carrier at one port of entry to ensure close monitoring of the process and maintenance of data integrity. It is estimated that the entire process may take up to 12 months to complete all necessary modifications to support the project.

Included in the I-94W elimination effort is the modification to processes and technology necessary to ensure that all government, state and local authorities are positioned to execute their respective missions given the elimination of the paper forms. Stakeholders include Immigration and Customs Enforcement, Citizenship and Immigration Services, US-VISIT, Department of State, Bureau of Immigration Statistics, Department of Commerce, Central Intelligence Agency, Federal Bureau of Investigations, and various state and local organizations. DHS has engaged these groups in strategic discussions and must continue working with them to ensure information sharing continues to take place.

There are also statutory and regulatory changes that must be made before the form may be eliminated. DHS has initiated a legal working group to both identify necessary regulatory changes and address litigation risks, such as the ramifications due to the elimination of the signed waiver of rights that is a crucial element in Visa Waiver Removal processing.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of the OMB Form 83-I), describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

- 6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Without this information collection, CBP would be unable to track or document an alien's arrival to and departure from the United States.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.6.

- 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.**

Public comments were solicited through two Federal Register notices published on December 12, 2008 (Volume 73, Page 75730) and on February 13, 2009 (Volume 74, Page 7243). No comments were received.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There is no offer of a monetary or material value for this information collection.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

DHS advises preparers of Forms I-94 and I-94W and applicants who interact with ESTA for authorization to travel to the United States that the data entered on the forms and on the electronic application for travel authorization is subject to the protection afforded by the United States

Privacy Act. Further, DHS advises that the information entered is used for U.S. Government purposes and official use only and will not be shared, reproduced or otherwise made available to third parties.

- 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.**

Both Form I-94W and the application for authorization to travel to the United States prepared by the VWP traveler contain “sensitive” questions/information that may be commonly considered private. The questions/information provided by the traveler is used by DHS to determine risk to national security and therefore admissibility. The traveler is advised that the information secured and subject to the Privacy Act regarding limitations on distribution is used for official U.S. Government purposes only. The traveler is advised by information provided on the Form and electronic application that his consent to this official use of the information is indicated by his signature or otherwise indicated by his acknowledgement as provided in the electronic application prepared via ESTA.

- 12. Provide estimates of the hour burden of the collection of information.**

<b>Form/Collection</b>	<b>No. of Respondents</b>	<b>Total Annual Responses</b>	<b>Time Per Respondent (in hours)</b>	<b>Annual Reporting Burden</b>
I-94	13,924,380	13,924,380	.133 (8 mins)	1,851,943
I-94W	18,000,000	18,000,000	.133 (8 mins)	2,394,000
ESTA	18,000,000	18,000,000	0.25 (15 mins)	4,500,000
<b>TOTAL</b>	<b>49,924,380</b>	<b>49,924,380</b>		<b>8,745,943</b>

**Public Cost:**

The estimated annual public cost is **\$322,735,418**. This estimate is based on the current total number of responses for the paper forms **31,924,380** (13,924,380 I-94s +18,000,000 I-94Ws= 31,924,380) x an estimated average response time of 8 minutes (0.133 hours per response) x \$15 (Average

hourly rate) = **\$63,689,138**. Plus, the \$6 fee charge for the I-94 and the I-94W (31,924,380) responses x \$6 = **\$191,546,280**). Plus, the new costs for ESTA (18,000,000 responses x 0.25 hours per response x \$15 = **\$67,500,000**.)

**13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.**

There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

**14. Provide estimates of annualized cost 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.**

There are no Government costs to process these forms because the costs are offset by the fee charge. Additionally, Congress has appropriated \$36 million in funding for development and implementation of the ESTA system. This funding will cover ESTA program expenses in FY2008.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

The burden hours increased due to the recent expansion of the Visa Waiver Program to include eight additional countries.

**16. For collection of information whose results will be published, outline plans for tabulation, and publication.**

This information collection will not be published.

**17. If seeking approval to not display the expiration date, explain the reasons that displaying the expiration date would be inappropriate**

CBP requests not to display the expiration date on these two forms because large quantities (50 million) are stocked at CBP ports in 17 languages. However, when a new expiration date is provided by OMB, CBP will display it on the ESTA website.

**18. "Certification for Paperwork Reduction Act Submissions."**

CBP does not request an exception to the certification of this information collection.

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

No statistical methods were employed.