

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.**

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, 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 the Visa Waiver Program (VWP) program are currently required to present a completed, signed Nonimmigrant Visa Waiver Arrival Departure, 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 enable 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 to enable the monitoring of an alien's compliance with applicable United States law.

The data provided by an alien on Form I-94W provides 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.

CBP is currently conducting pilot programs to eliminate the paper I-94W form. However, due to national security concerns, the elimination of this form will be a prolonged process that will be completed only when CBP is assured that the Electronic System for Travel Authorization (ESTA) can collect sufficient information to allow CBP to carry out its screening of passengers traveling under the Visa Waiver Program.

Pilot programs to admit passengers without the I-94W are currently being conducted at Los Angeles (LAX), Philadelphia (PHI), and Shannon Pre-clearance (Republic of Ireland).

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). Unlike the I-94W which is presented to the CBP officer upon arrival at the U.S. port of entry, ESTA screens travelers seeking to enter the United States under the VWP prior to their travel to the United States and is completed electronically prior to boarding the plane to travel to the United States. ESTA is intended to prevent ineligible travelers from departing for the United States. DHS notes that an authorization to travel to the United States, however ESTA is not a determination that the alien is admissible. A determination of admissibility is made only after an applicant applies 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 on ESTA provide information required to support DHS mission requirements as they relate to the screening of alien visitors to the United States. Specifically, the information collected is used 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. 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 a web-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. However, as explained below in more detail, 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, handling, administration, and storage 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. It also includes the traveling alien's written signature and documents the legal waiver of rights inherent in the VWP. System modifications, policy decisions, and interagency coordination will be necessary to allow for the elimination of the paper form and ensure certain data is adequately documented.

DHS is currently implementing a multi-phase project intended to eliminate the I-94W. Under the current process, the CBP Form I-94W is completed by the VWP traveler while on the aircraft or vessel. At the Port of Entry (POE), the CBP officer reviews the form for accuracy and completeness, and applies the admission stamp in two places. The officer then tears off the bottom portion of the form (the departure record) and staples it in the traveler's passport. The upper portion of the form is collected at the POE and sent to a warehouse at the Non-Immigrant Data Processing Services (NIDPS) Central Processing Center in London, Kentucky. At the warehouse, the forms are manually scanned into the system, creating image files that are available for retrieval. The hard copy forms are stored at the warehouse indefinitely. The arrival data is used to create the electronic record of arrival which serves as the system of record. When the traveler departs, the departure coupon is physically removed by the outbound carrier and the information is set to Kentucky to document the traveler's exit. This information is used for a variety of law enforcement purposes and shared with several agencies to support their operations. It is also used to confirm the status of aliens and monitor overstays.

DHS has completed a Project Charter to identify the scope, objective, project deliverables, estimated cost, schedule, and personnel requirements for the I-94W elimination project. DHS made a decision to expedite modifications made to the primary inspection process in the air and sea environment to make automation of the CBP Form I-94W (ESTA) available to the largest number of passengers as quickly as possible. The aggressive schedule allowed DHS to develop technology to use flight manifest data transmitted by carriers, ESTA data, and information provided at the POE when a VWP traveler applies for admission, to create an automated Arrival/Departure record consistent with that created via the paper form. These system updates must be completed on multiple platforms and require the coordination of multiple work groups.

To test the success of these changes, DHS worked collaboratively with Air New Zealand and the New Zealand Customs Service to begin testing the new procedures in November 2009 on a single routinely scheduled flight in a relatively yet controlled environment. Initial testing has been successful, and the pilot has been expanded to additional flights and POEs. Although the overall quantity of automated records created during the tests has been relatively small when compared to the number of VWP travelers that arrive daily, the extent of the technological changes to the

primary inspection process represents a significant milestone for DHS. Additional changes to support automation of the paper form for travelers processed in the secondary environment are expected to be available in April 2010, thus representing another positive step towards reaching the project goal.

In addition to changes to the arrival process, DHS established a new communication interface and departure matching procedure which uses sophisticated algorithms to match information collected in outbound flight manifests to document the exit of travelers. In order to expedite this capability, DHS leveraged existing procedures for matching electronic records; however, additional modifications to technology and processes are needed to ensure the integrity of the data and meet security concerns.

Before DHS may eliminate the paper form entirely in the air environment, carriers must be able to receive and validate ESTA status messages prior to boarding VWP travelers. DHS expects that most signatory carriers will use 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 established a testing and certification process to support the initiative. DHS began testing in October 2008 and progress has been made; however, numerous carriers are still completing necessary changes and are unable to validate or receive ESTA status messages. 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 and may require that additional changes be made to DHS and carrier systems. Many have indicated they will not be ESTA compliant until at least late 2010. DHS has modified the eAPIS system to accommodate carriers who are unable or unwilling to use the APIS interactive process, though this system is not well suited to carriers transporting large numbers 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.

DHS is finalizing a roll out strategy for nationwide implementation of automated I-94W procedures in the air environment with plans turn on this functionality by late 2010. This is contingent on continued positive

assessment of the project and maintenance of screening capabilities and data integrity. DHS projects this will lead to a significant reduction in the use of the paper form. It is important to note that DHS must retain the ability to use the CBP Form I-94W in the event of system outages and on an as-needed basis as determined by law enforcement need.

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, U.S. 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, 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:

- **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 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.

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 7, 2009 (Volume 74, Page 64092) and on March 19, 2010 (Volume 74, Page 13293). One comment was received.

CBP received comments from United Airlines.

Summary of United Airlines (UA) comments:

In their letter, United Airlines makes the following points:

Forms I-94/I-94W are not cost-effective and should be eliminated;

That the benefits of using these forms are unknown;

That the forms are obsolete since passenger information has been collected for Advance Passenger Information System (APIS) for at least 10 years;

That the forms are redundant due to data collection under other U.S. Government requirements and unnecessary for creating arrival/departure records for the majority of the travelers to the United States;

That the data collected on the Forms is unverifiable and thus unreliable, and that the information is unknown or unavailable to the alien.

That CBP does not justify the need for or intended use of recently-added data fields (email, telephone number;

That the value of the data collected is questionable since verification is impossible;

That CBP's estimated number of respondents is inaccurate, and thus, the burden and costs proposed are understated and should be revised.

That CBP fails to estimate the airlines' burden of time to provide, explain and timely collect the forms from passengers, which increases air carrier personnel costs millions annually;

That they have no knowledge of the steps CBP takes to match the arrival and departure data.

United Airlines summarizes their comment by reiterating that Arrival and Departure data collection be discontinued entirely due to the fact that 1) Five existing info collection procedures provide DHS/CBP and other U.S. agencies with the same information; 2) That the human collection of the Forms make the data vulnerable to delays, human error and difficult to search; and 3) That the collection imposes unnecessary costs on the traveling public and air carriers.

UA urges CBP to withdraw the request to revise the existing info and eliminate the Forms and that OMB deny any future CBP renewal requests for these forms .

CBP's response to United Airline's comments:

CBP recognizes that the forms I-94 and I-94W are not a highly-efficient and reliable source of traveler arrival/departure data, which is why CBP has carefully planned, developed and begun testing of a process by which the data collected by Form I-94W is automated (ESTA). Changes to the ESTA process are currently being assessed for quality assurance to ensure the use of the data for law enforcement purposes and mitigate security risks.

There are numerous factors that influenced the design of ESTA, most of which have not been accounted for by United Airlines. The paper form cannot be discontinued until it is determined that ESTA can ensure

accurate departure data, which is critical in determining and documenting overstay rates. CBP must also ensure that ESTA can satisfy the concerns of government officials who have questioned the security of the Visa Waiver Program (VWP), as well as ensure that the process places no additional burden on CBP primary officers so they can continue to facilitate efficient passenger processing at the ports of entry.

In their letter, UA references the many years they have requested that the arrival/departure forms be eliminated. However, in the post 9/11 environment, the U.S. Government has enlarged the law enforcement footprint on national and international travel and placed additional requirements on travelers.

UA mentions five different collections of form data that are related to arrival and departure, however, they do not consider that the information is collected at different times, from different people, for different purposes. Specifically, the data collection related to the Advance Passenger Information System (APIS) determines who may board a flight but does not provide the immigration information that ESTA and the I-94W provide.

Although ESTA collects a lot of the same data elements as the I-94W, ESTA is intended to prevent the boarding of aliens on planes en route to United States if they do not qualify for the VWP, and is therefore collected prior to travel and is not considered an admissibility document with respect to entering the United States. Because the carriers are required by law to return inadmissible aliens, this ultimately benefits the carriers in reducing the numbers of those they would have to return because they were denied entry into the VWP.

Although ESTA is used for admissibility into the VWP, it does not determine admissibility into the United States. However, both the I-94 and I-94W are documents that determine admissibility into the U.S. In addition, both the I-94 and I-94W document arrival in, and departure from, the U.S, as required by Section 235 of the Immigration and Nationality Act, and they are used by foreign nationals as proof of status, which is not the case with ESTA.

Also, as noted in item #6 of the Supporting Statement, 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. It also includes the traveling alien's written signature and documents the legal waiver of rights inherent in the VWP. System modifications, policy decisions, and interagency coordination will be necessary to allow for the

elimination of the paper form and ensure certain data is adequately documented.

UA also brings up several other forms that have some duplicate information with the immigration forms including the 6059B, Customs Declaration, and the State Department visa application. However, the Customs Declaration is used for determining duty and taxes on items brought in by travelers entering the United States and must be a separate form since it is completed by the traveler, and its primary purpose is not security like I-94, I-94W and ESTA.

The information submitted on visa applications is used by the U.S. Department of State to determine eligibility for nonimmigrant visas. It is not related to passenger information, and by law, is not used to determine admissibility under U.S. Immigration law.

Therefore, discontinuance of the forms is not possible without consideration of the multiple stakeholders that use the form data for various purposes.

CBP agrees that the manual collection of these forms is labor intensive, subject to delays, and the information is difficult to search. This is why CBP has invested its resources to automate the I-94W data: to improve the quality and reliability of the information for CBP and all other stakeholders; to reduce the cost of the data collection and entry; and to accomplish these with minimal to no impact on CBP primary inspection processes. CBP is working toward full implementation of the automated I-94W and is currently conducting several pilot programs to eliminate the I-94W for arriving passengers under the VWP.

With respect to the issue of the burden on the airlines that was raised by UA, CBP is receptive to considering a change to the burden for this ICR, however, UA did not present any specific data or evidence of what the burden should be changed to.

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 through the internet 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.

- 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 is 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.

Form/Collection	No. of Respondents	Total Annual Responses	Time Per Respondent (in hours)	Annual Reporting Burden
I-94	Old: 13,924,380 New: 14,000,000	Old: 13,924,380 New: 14,000,000	.133 (8 mins)	Old: 1,851,943 New: 1,862,000
I-94W	Old: 18,000,000 New: 17,000,000	Old: 18,000,000 New: 17,000,000	.133 (8 mins)	Old: 2,394,000 New: 2,261,000
ESTA	Old: 18,000,000 New: 17,000,000	Old: 18,000,000 New: 17,000,000	0.25 (15 mins)	Old: 4,500,000 New: 4,250,000
TOTAL	Old: 49,924,380 New: 48,000,000	Old: 49,924,380 New: 48,000,000		Old: 8,745,943 New: 8,373,000

Public Cost:

The estimated annual public cost is **\$495,444,000**.

This estimated costs associated with the monetization of the burden hours are **\$234,444,000**, which is calculated as follows: the current total number of responses for the paper forms 31,000,000 (14,000,000 I-94s + 17,000,000 I-94Ws = 31,000,000 forms) x an estimated average response time of 8 minutes (0.133 hours per response) x \$28 (average hourly rate) = **\$115,444,000**. Plus, the total number of responses for ESTA (17,000,000) x an estimated response time of 15 minutes (0.25 hours per response) x \$28 (average hourly rate) = **\$119,000,000**.

The estimated costs associated with the fee charges are **\$186,000,000**. This is calculated as follows: \$6 fee charge for the I-94 and I-94W (31,000,000) responses x \$6 = **\$186,000,000**.

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

There are no record keeping, capital, start-up or maintenance costs associated with this information collection. The fee charges related to this ICR are described in item #12 above.

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 charges. Additionally, Congress appropriated \$36 million in funding for development and implementation of the ESTA system. This funding will cover ESTA program expenses in FY2008 and FY2009. CBP plans to institute a fee for ESTA in 2010 to cover our costs. Section 711 of the 9/11 Act authorizes the Secretary of Homeland Security to collect a fee for ESTA.

15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13 of this Statement.

The burden hours were adjusted for the I-94W and ESTA based on actual reporting numbers from 2009. In addition, the numbers for all three information collections (I-94, I-94W, and ESTA) were rounded.

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.