

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). However, so long as these travelers are traveling in the air or sea environment and have a travel authorization obtained through the Electronic System for Travel Authorization (ESTA, see below), they may forgo completing the paper I-94W form. ESTA is not available for VWP travelers at land border crossings, though it should be noted that the overwhelming majority of VWP travelers (approximately 99 percent) arrive into the United States in the air environment.

The data elements collected on these forms and through ESTA 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 through ESTA answer 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.

As of June 29, 2010, CBP is able to use ESTA to admit travelers to the United States at all airports and large seaports, rather than collecting the paper I-94W from travelers as they undergo the admission process. Very few passengers will continue filling out the I-94W, but it cannot be eliminated completely at this time. As noted previously, ESTA is not available in the land environment. Additionally, travelers will occasionally have to complete an I-94W if there is an outage either at the port or with ESTA, though CBP believes that by the end of 2010 enough redundancy will be built into ESTA that outages will rarely, if ever, be an issue. Thus, this collection of information is being substantially modified to eliminate the burden for the vast majority of I-94W forms.

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. Unlike the I-94W, which was 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. It 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 ESTA provides an authorization to travel to the United States; however, ESTA is not a determination that the alien is admissible. The determination of admissibility is made only after an applicant 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, these data are 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 (though now most VWP travelers will forgo completing the I-94W). 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.

- 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.**

DHS is currently implementing a multi-phase project intended to eliminate the I-94W, as much of the information on this form is also provided through ESTA prior to travel. The vast majority of I-94W forms will thus be eliminated and will greatly reduce duplication of information collection.

- 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 fully recognizes that the forms I-94 and I-94W are not a highly-efficient and reliable source of traveler arrival/departure data. CBP began an extensive process to test and elimination of the I-94W at the end of 2008, and that process is now largely complete, with elimination of the I-94W in all airports and major seaports. The I-94 will remain a paper form for the foreseeable future.

It should be noted that 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.

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. These forms are not included in 1651-0111 and are beyond the scope of this collection.

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.

Complete discontinuance of the forms is not possible without consideration of the multiple stakeholders that use the form data for various purposes and the travel environments in which the forms are used.

CBP agrees that the manual collection of these forms is labor intensive, subject to delays, and the information is difficult to search, which is why CBP has largely eliminated the paper I-94W (with some exceptions described elsewhere in this collection).

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.

The forms and the electronic application for authorization to travel to the United States prepared by the VWP traveler contain “sensitive” questions and information that may be commonly considered private. The 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 Forms and in ESTA 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.

NEW

| Form/Collection | Number of Respondents | Total Annual Responses | Time Per Respondent (in hours) | Annual Reporting Burden |
|-----------------|-----------------------|------------------------|--------------------------------|-------------------------|
| I-94 | 14,000,000 | 14,000,000 | .133 (8 mins) | 1,862,000 |
| I-94W | 100,000 | 100,000 | .133 (8 mins) | 13,300 |
| ESTA | 18,900,000 | 18,900,000 | 0.25 (15 mins) | 4,725,000 |
| TOTAL | 33,000,000 | 33,000,000 | | 6,600,300 |

OLD

| Form/Collection | No. of Respondents | Total Annual Responses | Time Per Respondent (in hours) | Annual Reporting Burden |
|-----------------|--------------------|------------------------|--------------------------------|-------------------------|
| I-94 | 14,000,000 | 14,000,000 | .133 (8 mins) | 1,862,000 |
| I-94W | 17,000,000 | 17,000,000 | .133 (8 mins) | 2,261,000 |
| ESTA | 17,000,000 | 17,000,000 | 0.25 (15 mins) | 4,250,000 |
| TOTAL | 48,000,000 | 48,000,000 | | 8,373,000 |

Public Cost:

The new estimated number of respondents above reflects the near elimination of the I-94W paper form. CBP estimates that .05 percent of travelers (95,000 of 19 million, rounded to 100,000) will need to complete the I-94W. These travelers arrive primarily in the land border environment and cannot take advantage of ESTA. Additionally, CBP has updated the total number of VWP travelers to reflect the most recent estimates of travel levels (19 million) less the number who will not use ESTA (100,000), which is a total of 18.9 million ESTA users.

The estimated annual public cost is **\$382,808,400** and is calculated as follows:

| Form/Collection | Respondents | Value of time (\$28.00 per hour) | Immigration fee (\$6 per respondent) | Total public cost |
|--------------------|-------------|----------------------------------|--------------------------------------|----------------------|
| I-94 | 14,000,000 | \$52,136,000 | \$84,000,000 | \$136,136,000 |
| I-94W | 100,000 | 372,400 | 114,000,000* | 114,372,400 |
| ESTA burden | 18,900,000 | 132,300,000 | 0 | 132,300,000 |
| Grand total | | \$184,808,400 | \$198,000,000 | \$382,808,400 |

*Note that while VWP travelers will largely forgo completing the I-94W, they will still be charged the Immigration Fee of \$6. This fee is collected upon booking the travel to the United States or is collected by the CBP officer at the land border port of entry. Thus, the immigration fee is charged to all 19 million VWP travelers (19 million × \$6 = \$114 million).

OLD

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 immigration 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.

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 costs associated with the system. 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 as well as the elimination of most of the I-94W forms. 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.