

## SUPPORTING STATEMENT

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

#### A. Justification

**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.**

#### Background

Passengers traveling under the Visa Waiver Program (VWP) by air or sea, are required to receive a travel authorization through the Electronic System for Travel Authorization (ESTA) prior to travel to the United States. ESTA is a web-based application and screening system used to determine whether certain aliens are eligible to travel to the United States under the VWP in the air and sea environments. Passengers who are not eligible to travel under VWP may apply for a visa at a U.S. Embassy or Consular Office.

ESTA was provided for by Section 711 of the Secure Travel and Counterterrorism Partnership Act of 2007 (part of the Implementing Recommendations of the 9/11 Commission Act of 2007, also known as the "9/11 Act," Public Law 110-53) which requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an electronic system which shall collect such biographical and other information as the Secretary of Homeland Security 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.

U.S. Customs and Border Protection (CBP) Forms I-94 (Arrival/Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are included in the manifest requirements imposed by Sections 231 and 235 of the Immigration and Nationality Act (INA), 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 INA, 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 lists or manifests of the persons on board such vessel or aircraft to CBP officers at the port of arrival. However, CBP

now gathers I-94 data from existing automated sources such as the Advance Passenger Information System (APIS) in lieu of requiring passengers arriving by air or sea to submit a paper I-94 upon arrival. The paper I-94 is still required from travelers entering the United States at a land border. Passengers can access and print their electronic I-94 record via the website [www.cbp.gov/I94](http://www.cbp.gov/I94).

Aliens traveling under the VWP are required to present a completed and 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 aliens are traveling in the air or sea environment and have a travel authorization obtained through ESTA, they may forgo completing the paper Form I-94W. ESTA is not required for VWP travelers at land border crossings, though it should be noted that the overwhelming majority of VWP travelers (approximately 99 percent) arrive in the United States in the air environment.

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (“VWP Improvement Act”) as part of the Consolidated Appropriations Act, 2016. To meet the requirements of this new act, the Department of Homeland Security (DHS, or the Department) strengthened the security of the VWP through enhancements to the ESTA application and to the Form I-94W.<sup>1</sup> Many of the provisions of the new law became effective on the date of enactment of the Visa Waiver Program Improvement Act. The act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP, specifically, if the applicant is also a national of, or has at any time on or after March 1, 2011 been present in Iraq, Syria, a country that is designated a state sponsor of terrorism (currently Iran, North Korea, Sudan, and Syria),<sup>2</sup> or any other country or area of concern as designated by the Secretary of Homeland Security.<sup>3</sup> A delay in implementation has significant national security implications and would put DHS at risk of not being in compliance with these new requirements.

### Recent Changes

DHS requested an emergency approval to revise this information collection to add North Korea to the list of countries in the ESTA application questions specified below to permit the adjudication, on a case-by-case basis, of the waiver authority included in the VWP Improvement and Terrorist Travel Prevention Act

<sup>1</sup> Note that the Form I-94 is not affected by this change.

<sup>2</sup> Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are generally designated pursuant to three laws: section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405); section 40 of the Arms Export Control Act (22 U.S.C. 2780); and section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

<sup>3</sup> The Act contains exceptions for individuals determined by the Secretary of Homeland Security to have been present in these countries, “(i) in order to perform military service in the armed forces of a [VWP] program country; or (ii) in order to carry out official duties as a full time employee of the government of a [VWP] program country.” 8 U.S.C. 1187(a)(12)(B).

of 2015. Because potential waivers will only be considered through the ESTA process, the conditional questions are not included on the I-94W form. The I-94W form includes the mandatory question about travel or presence in particular countries. This request is being made due to North Korea being designated as State Sponsors of Terrorism on November 27, 2017.

<p>Have you traveled to, or been present in, Iraq, Syria, Iran, North Korea, Sudan, Yemen, Libya or Somalia on or after March 1, 2011?</p>	<p>Mandatory (for each instance of travel or presence.)</p>
<p>You have indicated that you are not a citizen or national of your country of birth. From the list below, please select ALL statements that apply with respect to your country of birth:</p> <ul style="list-style-type: none"> <li>• Did not acquire citizenship at birth or have never held citizenship in birth country</li> <li>• Renounced citizenship of birth country</li> <li>• Have not lived or resided in birth country within the past five years</li> <li>• Have not held a passport or national identity card from birth country within the past five years</li> </ul> <p>Other</p>	<p>Conditional (Only seen by applicants who identify Iraq, Syria, Iran, North Korea, or Sudan as their Country of Birth on ESTA, but who do not also identify that country under "Other countries of current citizenship"; in which case, the question is mandatory.)</p>
<p>If the applicant answers Yes to "presence in" question and selects "Humanitarian" as reason:</p> <ul style="list-style-type: none"> <li>• Please identify the organization or entity on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Sudan, Yemen, Libya or Somalia for humanitarian purposes.</li> <li>• Does your organization or entity have consultative status with the United Nations Economic and Social Council?</li> <li>• What was your official position/title with the organization or entity identified?</li> <li>• If different than your current employer, please provide contact information for the organization or entity identified, including primary address and telephone number</li> <li>• Please provide your Iraqi, Syrian, Iranian, North Korean, Sudanese, Yemeni, Libyan, or Somali Visa Number related to your humanitarian travel.</li> <li>• If your organization or entity has been a recipient of U.S. government funding for humanitarian assistance within the last five years, please provide the most recent grant number.</li> <li>• Please provide us information about the type of work you were doing in country during this time</li> <li>• Please include any information you are willing to share about other NGOs or international, national or state agencies with which you worked.</li> <li>• Any additional comments.</li> </ul>	<p>Conditional (Only seen if the applicant answered affirmative to travel question for humanitarian purposes; in which case, the question is mandatory. The applicant can answer "unknown.")</p>
<p>If the applicant answers Yes to "presence in" question and selects "International or Regional" or "Sub-National" as reason:</p> <ul style="list-style-type: none"> <li>• Please identify the international (multilateral or intergovernmental) organization or regional (multilateral or intergovernmental) organization, on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Sudan, Yemen,</li> </ul>	<p>Conditional (Only seen if the applicant answered affirmative to travel question for international/regional/sub-</p>

<p>Libya or Somalia</p> <ul style="list-style-type: none"> <li>• Please identify the sub-national government or body of a VWP country on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Sudan, Yemen, Libya or Somalia.</li> <li>• What was your official position/title with the organization or government identified?</li> <li>• Please provide your Iraqi, Syrian, Iranian, North Korea, Sudanese, Yemeni, Libyan or Somali Visa Number related to your official travel on behalf of an international or regional organization, or subnational government. [Write-in field]</li> <li>• Have you ever been issued a G-Visa or A-Visa by a United States Embassy or Consulate</li> <li>• If “Yes”, please provide your G-Visa or A-Visa number, if known</li> <li>• Have you ever been issued a United Nations Laissez- Passer</li> <li>• If “Yes,” please provide your Laissez-Passer number</li> </ul>	<p>national government; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>
<p>If the applicant answers Yes to “presence in” question and selects “Journalism” as reason:</p> <ul style="list-style-type: none"> <li>• Please identify the company, entity, or organization on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Sudan, Yemen, Libya or Somalia to engage in journalism.</li> <li>• What is your official position with the company, entity, or organization identified?</li> <li>• Have you ever been issued an I-visa by a United States Embassy or Consulate?</li> <li>• If Yes- please provide your I-visa number, if known.</li> </ul>	<p>Conditional (Only seen if the applicant answered affirmative to travel question for journalism; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>

**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.**

Information on the ESTA application helps DHS determine whether an alien is eligible to travel to the United States under the VWP. The data elements and questions included in the ESTA application help gather information necessary to ensure that someone does not need to pursue a visa through the Department of State instead of being able to travel under this program.

DHS was mandated by Congress to undertake additional national security measures by increasing the amount of information available 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, the data collected via ESTA is to enhance the security of the VWP.

The data collected on CBP Forms I-94/I-94W and on the ESTA application 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 to assess potential law enforcement and national security risks, and the timely and accurate capture of data that enables matching of alien arrival and departure records that are necessary to monitor alien compliance with U.S. law.

- 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 travelers will forgo completing these forms on conveyances). Information about these forms can be found at: <https://www.cbp.gov/travel/international-visitors/i-94> and <http://www.cbp.gov/travel/international-visitors/visa-waiver-program>

ESTA is a web-based system that enables DHS to determine whether the individual is eligible to travel to the United States under the VWP. ESTA can be accessed at: <https://esta.cbp.dhs.gov>. Samples of Forms I-94 and I-94W can be found at: <http://www.cbp.gov/document/forms/form-i-94-arrivaldeparture-record> and <http://www.cbp.gov/document/forms/form-i-94w-visa-waiver-arrivaldeparture-record>.

CBP captures Form I-94 data for passengers arriving by air or sea from APIS in lieu of passengers submitting a paper Form I-94. Passengers can access and print their electronic Form I-94 via [www.cbp.gov/I94](http://www.cbp.gov/I94). This supplements the existing process whereby passengers who want a copy of their Form I-94 would need to file a Form I-102. Passengers may still file a Form I-102 for this purpose if desired.

CBP modified the process by which a traveler arriving at the land border can provide Form I-94 information and pay the related fee by adding an electronic option. Specifically, CBP enhanced the I-94 website to enable travelers arriving at a land port of entry to submit the Form I-94 information to CBP and pay the required fee prior to arrival.

- 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.**

This information is not duplicated in any other place or any other form.

**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.**

The data elements collected from VWP travelers allow DHS to remain compliant with its legal requirements and identify those who may not be eligible to enter the United States through the VWP and those who may seek to exploit the VWP or do harm to the United States. Research by DHS and our interagency partners has determined that these data elements will advance the ability of the Department to identify these travelers before they attempt to travel to the United States.

**7. Explain any special circumstances.**

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 including a 60-day notice published on August 15, 2019 (84 FR 41727) on which no comments were received and a 30-day notice published on October 21, 2019 (84 FR 56195) on which 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.**

A Privacy Impact Assessment (PIA) entitled "Electronic System for Travel Authorization (September 1, 2016), a SORN entitled Electronic System for Travel Authorization, and a SORN entitled "Electronic System for Travel Authorization" (September 2, 2016, 81 FR 60713); and a SORN entitled "Non-Immigrant

Information System” (March 13, 2015, 80 FR 13398) are applicable to ESTA. The SORN for ESTA has been revised to include the addition of North Korea to the modified questions. There is no assurance of confidentiality provided to the respondents.

- 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, and the explanation to be given to persons from whom the information is requested.**

The ESTA application and I-94W form ask respondents if they have certain diseases. This question is to assist CBP in determining admissibility into the United States under U.S. immigration law. All questions directly address the grounds of inadmissibility and criteria for VWP travel eligibility described in sections 212(a) and 217(a), respectively, of the INA. There are no questions on either the ESTA application or Form I-94W that ask about sexual nature and attitudes or religious beliefs, or any other personal information that is outside the scope of the INA.

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

<b>Form/Collection</b>	<b>Number of Respondents</b>	<b>Total Annual Responses</b>	<b>Time Per Respondent (in hours)</b>	<b>Annual Reporting Burden Hours</b>
I-94	4,387,550	4,387,550	0.133 (8 mins)	583,544
I-94 Website	3,858,782	3,858,782	0.066 (4 mins)	254,679
I-94W	941,291	941,291	0.2667 (16 mins)	251,042
ESTA burden	23,010,000	23,010,000	0.3833 (23 mins)	8,819,733
ESTA fee* (subset of total ESTA respondents)	18,930,000 (subset of 23.01m above)	18,930,000 (subset of 23.01m above)	0.00 (already included in ESTA burden above)	0.00 (already included in ESTA burden above)
<b>TOTAL</b>	<b>32,197,623</b>	<b>32,197,623</b>		<b>9,908,998</b>

\*Note: The 18.93 million respondents paying the \$14.00 fee (\$10 Travel Promotion Act charge plus \$4 ESTA fee) are a subset of the total 23.01 million ESTA respondents. They should not be added to the total respondents (or else they would be double counted).

**Public Cost:**

The estimated annual public cost is **\$726,870,827** and is calculated as follows:

Form/ Collection	Number of Respondents	Annual Reporting Burden Hours	Value of time*	Fee charge (\$6.00 per respondent)	ESTA fee (\$14.00 per respondent)	Total public cost
I-94	4,387,550	583,544	\$11,373,273	\$26,325,300	\$0	\$37,698,573
I-94 Website	3,858,782	254,679	\$11,608,269	\$0	\$0	\$11,608,269
I-94W	941,291	251,042	\$4,892,809	\$5,647,746	\$0	\$10,540,555
ESTA burden	23,010,000	8,819,733	\$402,003,430	\$0	\$0	\$402,003,430
ESTA fee	18,930,000		\$0	\$0	\$265,020,000	\$265,020,000
<b>TOTAL</b>			<b>\$429,877,781</b>	<b>\$31,973,046</b>	<b>\$265,020,000</b>	<b>\$726,870,827</b>

\* Recall from the previous table that the burden for Form I-94 is 8 minutes; the burden for the I-94 website is 4 minutes (0.066 hours); the burden for Form I-94W is 16 minutes (0.2667 hours); and the burden for ESTA is 23 minutes (0.3833 hours). DHS uses the Department of Transportation’s guidance on value of travel time for its value of time estimates [http://www.dot.gov/sites/dot.dev/files/docs/vot\\_guidance\\_092811c.pdf](http://www.dot.gov/sites/dot.dev/files/docs/vot_guidance_092811c.pdf) \$19.49 for travel by land (this applies to I-94 and I-94W) and \$45.58 for travel by air and sea (this applies to ESTA and I-94 website).

**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.**

Providing and administering the ESTA system costs the Federal government approximately \$4 per application. These costs are offset by the ESTA user fee, which constitutes a transfer from the ESTA applicant to the government.<sup>4</sup> The estimated collections for the \$4 fee CBP retains for 18,930,000 respondents are \$75,720,000. Any excess collections over the cost to the Federal government represent a transfer from the applicant to the government and are recorded as a cost to the public. CBP does not intend to change the ESTA user fee at this time.

<sup>4</sup> The ESTA user fee is the sum of \$10.00 per application credited to the Travel Promotion Fund and \$4.00 per application available to CBP to recover the costs of administering and providing the system. See 8 U.S.C. 1187(h)(3).

Note: \$10.00 of the \$14.00 ESTA fee is a Travel Promotion Act fee that is not related to the costs of ESTA. In fact, this fee is deposited into an account where it is not available to CBP/DHS. CBP is required to collect this fee, alongside the \$4 ESTA fee, by the Travel Promotion Act, as amended. The \$10 fee is a transfer from the traveler to the government and is counted as a cost to the public for the purpose of this collection.

Forms I-94 and I-94W cost the Government \$6.00 to process multiplied (x) by the number of applications filed (5,328,841) for a total of \$31,973,046. These costs are offset by the Forms I-94 and I-94W application fees.<sup>5</sup>

CBP estimates that the optional process for land border travelers to file and pay the I-94 fee online is estimated will save CBP officers 10 minutes per instance. In the economic analysis for the final rule titled, "Definition of Form I-94 to Include Electronic Format," CBP estimates that, in total, this option will save CBP officers 58,333 hours and \$4,985,750 each year.

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

There has been no increase or decrease in the estimated annual burden hours previously reported. There is no change to the information being collected.

**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 paper forms because large quantities are stocked at CBP ports and by airlines in 22 languages. However, the expiration date is displayed on the ESTA website and on the I-94 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.

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<sup>5</sup> Federal statute requires CBP to deposit these two fee collections into the Land Border Inspection Fee Account, where they are then available only for certain statutorily-enumerated purposes. See 8 U.S.C. 1356(q)(2)-(3).

