

## SUPPORTING STATEMENT

### U.S. VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY (US-VISIT) PROGRAM

OMB CONTROL NO. 1600-0006

#### 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.**

The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program was established by the Department of Homeland Security (DHS) to meet specific legislative mandates intended to strengthen border security, address critical needs in terms of providing decision-makers with critical information, and demonstrate progress toward performance goals for national security, expediting of trade and travel, and supporting immigration system improvements.

Throughout the 1990s and culminating in the terrorist attacks of September 11, 2001, there was a growing concern, both in Congress and across the border management community, that the border officials lacked the necessary information and technology to manage the entry/exit process and enforce the relevant laws as effectively as possible. Congressional concerns included visa overstays, the number of illegal foreign nationals in the country, overall border security issues, and a need to expedite legitimate trade and travel. As a result, Congress passed a number of laws aimed at addressing many of these and other border-related issues, including requiring the border management community to develop a biometric based entry and exit system capable of improving the information resources available to immigration and border management decision-makers. By providing decision makers with the information they need where and when they need it, US-VISIT is helping to make U.S. immigration and border management efforts more collaborative, more streamlined and more effective.

Copies of statutes and regulations associated with the collection were submitted with the prior initial submission, but briefly, the statutes that authorize DHS to establish US-VISIT include, but are not limited to: Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106-215, 114 Stat. 337 (June 15, 2000); Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106-396, 114 Stat. 1637, 1641 (Oct. 30, 2000); Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56, 115 Stat. 271, 353 (Oct. 26, 2001); Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act) Public Law 107-173, 116 Stat. 543, 552 (May 14, 2002); Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458, 118 Stat. 3638, 3817 (December 17, 2004); and Section 711 of the Implementing Recommendations of the 9/11

Commission Act of 2007, Public Law 110-52, 121 Stat. 266 (Aug. 3, 2007). DHS provided detailed abstracts of the particular sections of the statutes that established and authorized the US-VISIT program in prior rulemakings and the proposed rule. *See* 69 Fed. Reg. 468 (Jan. 5, 2004); 69 Fed. Reg. 53318 (Aug. 31, 2004) (attached).

On July 27, 2006, DHS published a notice of proposed rulemaking (NPRM or proposed rule) proposing to expand the population of aliens subject to US-VISIT requirements to include lawful permanent residents and other categories of immigrants. 71 Fed. Reg. 42605. DHS published the final rule, entitled “United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT); Enrollment of Additional Aliens in US-VISIT; Authority To Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry” on December 19, 2008. That final rule became effective on January 18, 2009. Attached is a copy of the final rule, 73 Fed. Reg. 77473.

**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.<sup>1</sup>**

US-VISIT collects and disseminates information from individuals during their entry into and exit from the United States. This information is disseminated to specific DHS components; other federal agencies; federal, state and local law enforcement agencies; and the federal intelligence community to assist in the decisions they make related to, and in support of, the homeland security mission. Additionally, information may be shared with international partners in support of counter terrorism and international travel security. Information shared includes biographic, travel history, travel document, and biometric information (photographs and fingerscans) pertaining to covered individuals. No personally identifiable information is collected other than that which is necessary and relevant for the purposes of US-VISIT.

Individuals subject to US-VISIT requirements and processes (“covered individuals”) are those who are not U.S. citizens at the time of entry or exit. Non-U.S. citizens who later become U.S. citizens will no longer be covered by US-VISIT for entry and exit recording purposes, but the information about them collected by US-VISIT while they were noncitizens will be retained, as will information collected about citizens who did not identify themselves as such. *See* DHS Automated Biometric Identification System (IDENT) System of Records Notices, 71 Fed. Reg. 42651, July 27, 2006; 72 Fed. Reg. 31080, June 5, 2007.

US-VISIT’s mission is to collect, maintain, and share information, including biometric identifiers, on foreign nationals to assist U.S. Government officials in determining whether individuals (1) should be prohibited from entering the United States; (2) can receive, extend, change, or adjust immigration status; (3) have overstayed or otherwise violated the terms of their admission; (4) should be apprehended or detained for law enforcement action; or (5) need special protection/attention (e.g., refugees). US-VISIT provides biometric identification and analysis for homeland security decision makers. Additionally, US-VISIT supports DHS programs ability to:

- electronically verify – using biometrics – that the person presenting a credential is the

- person to whom it was issued;
- make biometrically-based screening information available for subsequent interactions by DHS programs and support recurrent vetting based on biometrics;
- store and match biometrics associated with DHS and other agency encounters with links to the appropriate case tracking systems and provide the ability for biometrics to be associated with multiple credentials; and
- ensure opportunities for redress and provide a mechanism for individual to ask for correction of their including biometric records.

Personal information that US-VISIT collects will be used only for the purposes for which it was collected, unless other uses are specifically authorized or mandated by law. This collected information is principally accessed by Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and Consular Officers of the Department of State (DOS). Appropriate Federal, state, local, or foreign government law enforcement agencies may use this information when needed to carry out their law enforcement responsibilities in support of the DHS immigration enforcement mission. Additionally, the Office of Personnel Management (OPM), the Transportation Security Agency (TSA), and other federal agencies use this information for background checks and granting access to critical transportation infrastructure.

All information collected is kept secure and confidential, and will not be discussed with, nor disclosed to, anyone within or outside US-VISIT and only in conjunction with their official duties, other than as authorized by law. The DHS Chief Privacy Officer reviews pertinent aspects and conducts information audits to ensure that proper safeguards are in place and being adhered to appropriately, and that counsel and guidance concerning privacy information management and accessibility are provided.

**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 to reduce burden.**

Numerous Congressional enactments provide for the creation of an integrated and automated system to record the arrival and departure of aliens; the deployment of equipment at all ports of entry to verify aliens' identities and authenticate travel documents through the comparison of biometric identifiers; and the recording of alien arrival and departure information from biometrically authenticated travel documents.<sup>1</sup>

US-VISIT is designed to accurately collect the necessary information as quickly as possible. To achieve these goals of speed and accuracy, US-VISIT relies heavily on automated, electronic, and other technological collection techniques. US-VISIT employs digital cameras to collect photos and digital fingerprint scanners to collect fingerprint images from aliens seeking entry into the United States through our ports of entry. The biometrics the aliens provide are entered

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<sup>1</sup> See authority cited in *Implementation of the United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"); Biometric Requirements*, 69 FR 468, 468 (Jan. 5, 2004).

into the US-VISIT Automated Biometric Identification System (IDENT). The biographic information is sent to the US-VISIT Arrival Departure Information System (ADIS) from the CBP TECS database and from the Arrival/Departure Form (I-94). The alien's biometric and other information will be checked against law enforcement and intelligence data to determine whether the alien is a threat to national security or public safety, or is otherwise inadmissible.

US-VISIT has deployed equipment and software so that CBP Officers can biometrically compare and authenticate travel documents that the Departments of State and Homeland Security issue to aliens. This has greatly improved CBP's ability to detect document fraud during the inspection process and has prevented over 8,000 known criminals and immigration law violators from entering the U.S. since the US-VISIT procedures were implemented on January 5, 2004.

**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.**

Immigration and border security management is provided by a number of entities within the Departments of Homeland Security, State, and Justice. The border management agencies created an Integrated Project Teams (IPT) to ensure that various agencies were not duplicating information collection from foreign nationals during the entry or exit processes. Consequently, the data collection executed by US-VISIT is not duplicative of other DHS efforts.

US-VISIT's functionality is currently supported by more than 16 different information technology systems, including those managed by the Department of State, CBP, ICE, USCIS, the Federal Bureau of Investigation (FBI), the Department of Defense, and INTERPOL. The ability to exchange real-time, transaction-level data in a secure fashion represents an increasing need across the immigration and border management community. US-VISIT has prepared the foundation for the next challenging portion of the program, which calls for replacing existing "stove-piped" systems with integrated systems designed to support a reengineered border management process with the latest technology available.

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

The collection of information 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 conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

It is crucial to border security decision makers and law enforcement officials that they have access to timely and accurate information on the biometric-based identification of individuals who should be denied entry to the United States. US-VISIT works with other DHS components, the Department of Justice (DOJ), DOS, and the intelligence community to collect and share this

critical information. Reduction of the information collection requirements for US-VISIT cannot occur without depriving immigration and border security decision makers of critical and timely admissibility and national security information, and would be in direct contravention of numerous existing statutory requirements, including the Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) and section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

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

- requiring respondents to report to the agency more often than quarterly;

Respondents submit information (biometric fingerprints and visa/passport information) based upon the frequency of their travel into the United States. Moreover, the information collection is required by law each time aliens apply for immigration benefits or seek entry into (and eventually exit from) the United States. Frequent travel to and from the United States may cause respondents to submit information more often than quarterly. Information is updated as needed.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

Not applicable. The collection of information from respondents is through electronic devices. No written responses are collected.

- requiring respondents to submit more than an original and two copies of any document;

Not applicable. The collection of information from respondents is through electronic devices.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records for more than three years;

Not applicable. Respondents are not required to retain records in connection with this information collection.

- 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;

Aside from mandated reports to Congress, there are no statistical aspects to this information collection.

- requiring the use of statistical data classification that has not been reviewed and approved by OMB;

Aside from mandated reports to Congress, there are no statistical aspects to this information collection.

- 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

Not applicable. No such requirement has been imposed.

- requiring respondents to submit proprietary trade secret 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.

Not applicable. No such requirement has been imposed.

- 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 burdens.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A 60-day Federal Register notice was published on March 09, 2010, requesting public comments in Volume 75, Number 45, page 10809. DHS received three comments in response to that notice.

**Comment:** one commenter reported that he had taken manual fingerprints for years and stated that was better to take an extra 20 seconds to capture all digits to better validate identities.

**Response:** US-VISIT relies on the collection and use of inkless fingerscans to establish and verify identity in support of homeland security decision makers. US-VISIT continues to refine the fingerscan technology capability to accurately capture biometric data to enhance security while expediting legitimate travel and trade.

**Comment:** one commenter stated that the fingerprint technology is accurate and effective, that a 35 second delay in entering the United States to capture fingerprints is a very small amount of time to ensure the safety of United States citizens, and praised DHS.

**Response:** US-VISIT is pleased to receive this positive appraisal. By providing decision makers with the information they need where and when they need it, US-VISIT is helping to make U.S. immigration and border management efforts more collaborative, more streamlined and more effective.

**Comment:** One commenter stated that violence on the U.S. border is on the rise and the situation will most likely become worse over the coming years, it is essential that law enforcement officials be given access to the US-VISIT program to ensure the security of Americans domestically.

**Response:** Under US-VISIT, information systems associated with border inspections and

security are being linked. Biometric and other information are available to appropriate staff in U.S. Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), U.S Citizenship and Immigration Services (CIS), DOS consular officers, and other staff involved with the adjudication of visa applications at overseas posts, other DHS officers, appropriate officers of the United States intelligence and law enforcement community, when needed for the performance of their duties. US-VISIT also supports other federal agencies, state and local law enforcement, and the intelligence community in their screening and enforcement missions by sharing biometrics of individuals deemed a threat by DHS and by receiving data from other agencies for individuals deemed to be a threat to national security. US-VISIT will continue to integrate appropriate additional databases and ensure interoperability with other databases as appropriate. In so doing, US-VISIT directly support DHS strategic goal of protecting our Nation from dangerous people.

On May 19, 2010, US-VISIT published a 30 day Federal Register Notice at in Volume 75, Number 96, page 28034.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Not applicable. DHS does not provide payment or gifts to respondents in exchange for information provided to US-VISIT.

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

The Privacy Act of 1974 (Public Law 93-589) mandates that personal information solicited from the individual completing federal records and forms shall be kept confidential. The respondent is informed that the response is mandatory and that only authorized agency officials will have access to the border and crossing history information. While not required by the Privacy Act, DHS policy extends certain provisions of the Privacy Act to an alien's data stored with US-VISIT.

US-VISIT published Privacy Impact Assessments (PIA), which provide further, detailed guidance on how the Program ensures that personal information is used appropriately, protected from misuse and improper disclosure, and destroyed when no longer needed. Personal data is securely stored and made available only to authorized officials and selected law enforcement agencies on a need-to-know basis to help protect the nation against those who intend harm to U.S. citizens or visitors and to ensure integrity in our immigration system. We have attached recent PIAs for your review.

In addition to previous submissions on prior supporting statements, as noted in the response to 1.A, DHS published a final rule, entitled “United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT); Enrollment of Additional Aliens in US-VISIT; Authority To Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry” on December 19, 2008. That rule became effective on January 18, 2009, and expanded the population of aliens subject to US-VISIT requirements. In that final rule, DHS received 71 comments on the July 27, 2006, notice of proposed rulemaking. Some comments were positive, while other comments were negative or asked that the regulation be withdrawn. The most common issue raised by the comments was the inclusion of lawful permanent residents (LPRs) in US-VISIT enrollment and verification.

There were one or two comments received on economic impact. DHS was required to weigh the benefits and costs of changes of the proposed rule. US-VISIT has, by design, been implemented in stages-for technology, operational and cost reasons. The expansion of the population aliens is another step for the program, and one in which DHS has weighed the benefits and costs. We have attached a copy of the final rule for your review.

On November 15, 2007, US-VISIT published a PIA for the change of biometrics collection at ports of entry from 2 to 10 fingerprints. Attached is a copy of this PIA.

On February 10, 2009, US-VISIT published a Privacy Impact Assessment (PIA) to reflect the addition of Lawful Permanent Residents (LPRs) to the scope of US-VISIT. Attached is a copy of this PIA.

**11. Provide additional justification for any questions of sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly consider 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.**

Not applicable. There are no questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

See Attachment A for incremental implementation of US-VISIT Program.



**Annual Reporting Burden:**

a. Number of Respondents	156,732,422
b. Number of Responses per each Respondent	1
c. Total annual Responses	156,732,422
d. Hours for Response	.0097 (35 secs)
e. Total Annual Reporting Burden	1,520,304
f. Total Public Cost	\$34,131,000

**Total annual reporting burden hours are 1,520,304.** This estimate is calculated by multiplying the number of respondents (156,732,422) by the frequency of response (1), by the hours per response (35 seconds or .0097 hours).

The estimate of 35 seconds for 10-print processing is based on a survey of about 20,000 samples taken from 35 air, land, and sea ports of entry. The current time estimate accounts for officer instructions, print capture, and photo capture.

- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

There are no forms associated with this collection.

- Provide estimates of annualized cost to respondents for the hour burdens for collection of information identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead this cost should be included in Item 14.

**Annual Public Cost**

**Total public cost is \$34,131,000.** This estimate is based on the number of respondents multiplied by 35 seconds (.0097 hours) per response, multiplied by \$22.45 (average hourly rate) plus the number of responses (1).

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this collection are identified in items 12 and 14.

**14. Provide estimates of annualized cost to the Federal Government.**

Cost Analysis:

Printing Cost	\$ 0.00
Collecting and Processing Cost	\$53,211,000

Total Cost to Program	\$53,211,000
Fee Charge	\$ 0.00
Total Cost to Government	\$53,211,000

### **Government Cost**

**The estimated cost of the program to the Government is \$53,211,000.** This figure is calculated by using the estimated number of respondents (156,732,422) multiplied by 35 seconds (.0097), the time it takes the agency to collect and process the information, multiplied by \$35 (the fully loaded 2010 hourly rate for a CBP inspection officer at the GS-9 step 5 level with benefits).

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

The time measurement for 2-print collection cited in prior notices did not account for officer instructions to the respondent. The time measurement used for 10-print collection in this notice includes that additional process.

Beginning on December 10, 2007, US-VISIT expanded the collection of fingerprints from two prints to ten. This capability was rolled out to all of the ports of entry (air, sea, land) which were then collecting two prints. The collection of 10 fingerprints, as well as including time for officer instructions and collection of a digital photograph has increased the time of collection from 15 seconds to 35.

Additional information are as follows:

#### **1) Timeline of Transition from 2 print to 10 print collections at the Ports of Entry:**

- November 2007 - March 2008: 10-Print Initial Deployment to select lanes at 10 air ports of entry (POEs).
- December 2007 – May 2008: Evaluation of the Initial Deployment.
  - o Site evaluations occur from December 2007 – March 2008.
  - o 10-Print Evaluation Report completed May 2008.
- April 2008: National Environmental Policy Act (NEPA) Environmental assessment completed.
- July 2008: Facilities site assessment plans and designs completed.
- July – August 2008: Completed deployment to remaining inspection lanes at the Initial Deployment sights.
- July – December 2008: Deployment to sea POEs.
- July – December 2008: Deployment to land POEs.
- September – November 2008: Deployment to additional locations that, combined with the initial 10 sites, cover the 33 airports that process 97 percent of Visa Waiver Program (VWP) travelers entering the United States.
- September – December 2008: Deployment to remaining air POEs, with priority given to those airports in the same region as the 33 locations processing VWP travel to minimize installation timelines.

- May 2009: 10-Print Evaluation Report updated. It is within this updated report that the inspection time is documented to increase from 15 seconds to 35.
- July 2009: National Environmental Policy Act (NEPA) Environmental assessment updated to reflect 10-Print Phase II.
- October 2009 – November 2009: Phase II Deployment – to remaining POEs.

## 2) Legal authority and prior published notice of 2-10 print:

- Aliens may be required to provide fingerprints, photographs, or other biometric identifiers upon arrival in, or departure from, the United States, and select classes of aliens may be required to provide information at any time. See, e.g., INA sections 214, 215(a), 235(a), 262(a), 263(a), 264(c); 8 U.S.C. §§ 1184, 1185(a), 1225(a), 1302(a), 1303(a), 1304(c). Pursuant to section 215(a) of the INA, and Executive Order No. 13323, 69 Fed. Reg. 241 (Jan. 2, 2004), the Secretary of Homeland Security, with the concurrence of the Secretary of State, has the authority to require certain aliens to provide requested biographic identifiers and other relevant identifying information as they depart the United States. Under section 214 of the INA, 8 U.S.C. § 1184, DHS may make compliance with US-VISIT departure procedures a condition of admission and maintenance of status for nonimmigrant aliens while in the United States.
- DHS's broad authority to control alien travel and inspect aliens under INA sections 215(a) and 235, 8 U.S.C. 1185 and 1225, further supports the requirements under US-VISIT that foreign nationals provide biometric identifiers and other relevant identifying information upon admission to, or departure from, the United States. "The Secretary of Homeland Security or his designee may require any alien, other than aliens exempted under paragraph (iv) of this section or Canadian citizens under section 101(a)(15)(B) of the Act who are not otherwise required to present a visa or be issued Form I-94 or Form I-95 for admission or parole into the United States, to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States and/or whether he or she is admissible. The failure of an alien at the time of inspection to comply with any requirement to provide biometric identifiers may result in a determination that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act or any other law; Aliens who are required under paragraph (d)(1)(ii) to provide biometric identifier(s) at inspection may also be subject to the departure requirements for biometrics contained in § 215.8 of this chapter, unless otherwise exempted." 8 C.F.R. § 235.1(f)(1)(ii), (iii).
- The statutory authority for the collection of biometrics from individuals subject to US-VISIT includes, but is not limited to: the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208 (Sept. 30, 1996), at Div. C, Section 110, which provided for the development of an automated entry-exit control system; the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Pub. L. 106-215 (June 15, 2000), codified as amended at 8 U.S.C. § 1365a, which amended section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to call for an integrated entry and exit data system; the Visa Waiver Permanent Program Act of 2000 (VWPPA), Pub. L. 106-396 (Oct. 30, 2000), codified as amended at 8 U.S.C. § 1187(h), which provided for a fully automated entry and exit control system for visa waiver program applicants; the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act of 2001) Pub. L. 107-56 (Oct. 26, 2001), codified as amended at 8 U.S.C. § 1379 (biometric technology standards); the Homeland Security Act of 2002; the Enhanced Border Security and Visa Reform Act of 2002 (EBSVERA) Pub. L. 107-173 (May 14, 2002) (significantly strengthening the legislative requirements for biometric identifiers to be utilized in the context of the entry exit system); Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law No. 108-458 (Dec. 17, 2004), 8 U.S.C. 1365b, provides for DHS to collect biometric exit data for all categories of aliens who are required to provide biometric entry data; and section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, (9/11 Recommendations Act), Pub. L. 110-53 (August 3, 2007), directs the Secretary of Homeland Security, within one year of enactment, to "establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program[.]" INA section 217(i), 8 U.S.C. § 1187(i).

- On January 5, 2004, DHS published the *Implementation of the United States Visitor and Immigrant Status Indicator Technology Program* ("US-VISIT"); *Biometric Requirements*, see 69 Fed. Reg. 468. In this interim final rule, 'Biometric Identifier' is defined as "a physical characteristic or other attribute unique to an individual that can be collected, stored, and used to verify the claimed identity of a person who presents himself or herself to a border inspector. To verify identity, a similar physical characteristic or attribute is taken from the person who presents himself or herself and it is compared against the previously collected identifier. Examples of biometric identifiers include, but are not limited to, the face (i.e., captured in a photograph), fingerprints, hand geometry measurements, handwriting samples, iris scans, retina scans, voice patterns, and other unique characteristics." See 69 Fed. Reg. 468, 470 (Jan. 5, 2004). (Copy attached).
- In the January 5, 2004 interim final rule there is a paragraph entitled: "What Biometrics Will Be Collected and Will They Ever Change?" That section provides: "The Department initially plans to take a digital photograph and two fingerprints from each nonimmigrant alien who presents a visa at designated air or sea ports of entry. **The Department, however, reserves its right to expand the types of biometric identifiers required in the future** where doing so will improve the border management, national security, and public safety purposes of the entry exit system. Additional biometric requirements will be implemented in compliance with section 403(c) of the USA PATRIOT Act." See 69 Fed. Reg. 468, 471 (emphasis added).
- In the January 5, 2004 interim final rule there is a paragraph entitled: "How Did DHS Determine Which Biometric Identifiers Would Be Collected for US-VISIT Purposes.?" That section provides: "The Department has chosen to collect two fingerprints and photographs, in part, because they currently are less intrusive than other forms of biometric collections and because the combination of these biometric identifiers are an effective means for verifying a person's identity. Also, historically fingerprints and photographs have been the biometrics of choice within the law enforcement communities and the travel industry. **As the deployment of more comprehensive technologies becomes feasible, however, the Department may collect additional biometric data to improve its ability to verify the identity and determine the admissibility of nonimmigrant aliens.**" See 69 Fed. Reg. 468, 471. (emphasis added).
- "The Department, as it always has, reserves the right to require fingerprints or other identifying information from any individual whom it has reason to believe may not be who he or she claims." See 69 Fed. Reg. 468, 472.
- An April 24, 2008, Notice of Proposed Rulemaking entitled "Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT")" provides "The change from a two-index-fingerprint to all fingerprints (no thumb) from one hand system is expected to provide faster processing and more reliable verification." 73 Fed. Reg. 22065, at 22070, FN 5.
- United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"); Enrollment of Additional Aliens in US-VISIT; Authority To Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry (Additional Aliens Rule), December 19, 2008. The Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) in accordance with several statutory mandates that collectively require DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens; biometrically compares the identities of aliens; and authenticates travel documents presented by such aliens through the comparison of biometric identifiers. Aliens subject to US-VISIT may be required to provide fingerscans, photographs, or other biometric identifiers upon arrival in, or departure from, the United States. 73 Fed. Reg. 77473.  
 . . . Ten-Print Enrollment- One commenter inquired whether LPRs for whom DHS has no electronic biometric record will have ten-print or two-print fingerscan enrollment upon being processed in US-VISIT in the primary lane. DHS began transitioning to a ten-print enrollment process in December 2007. These processes will not be limited to LPRs, however, and DHS is confident that it can use technology to minimize the potential for delay as a result of the change. *Id.* at \*77478.

- Privacy Impact Assessment-US-VISIT published a PIA on November 15, 2007 to update and describe the US-VISIT Program's change from collecting two (2) fingerprints to collecting up to ten (10) fingerprints (using inkless optical reading devices) from foreign nationals entering or exiting from the United States. [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_usvisit\\_10p.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_usvisit_10p.pdf); see also previously published PIA for the US-VISIT Comprehensive Exit Program: Air Exit Pilot, published May 20, 2009 (discussing the taking of one to ten fingerprints); PIA for the Automated Biometric Identification System (IDENT) (July 31, 2006); and PIA for the US-VISIT Program in Conjunction with the Notice on Automatic Identification of Certain Nonimmigrants Exiting the United States at Select Land Ports of Entry (July 1, 2005).

### 3) Accommodations for those unable to give 10 prints.

- In the January 5, 2004 interim final rule, there is a section that outlines the accommodations for the passengers who are unable to provide 10 prints or for an individual who cannot provide clear fingerprints or photographs or is disabled in such a way that he or she is unable to provide the biometric information. That section provides: "The Department will make reasonable efforts that are also consistent with the Government's need to verify an alien's identity to accommodate any person with disabilities which prevent him or her from complying with the requirements of this rule for fingerprinting, photographs or other biometric collections. We will follow all required procedures that are applicable to government action under the Americans With Disabilities Act, codified as amended at 42 U.S.C. 12101 et seq. and the Federal Rehabilitation Act, codified as amended at 29 U.S.C. 701 et seq. In cases where a satisfactory fingerprint, for example, cannot be taken, the inspecting officer may accept another biometric identifier that will reasonably identify the person or sufficient additional information from the alien from which the officer can determine the individual's identity. In some instances where the identity of a person with disabilities does not appear to be truly at issue, the requirement for fingerprints or other biometric identifier may be waived in the discretion of the inspecting officer. The Department will ensure that procedures for handling the collection of biometric information from persons with disabilities are covered in any internal field guidance it may issue to implement this rule. In addition, the Department welcomes public comment on methods for properly handling situations where persons with disabilities are not able to provide the requested biometrics, but that still permit the Department to make the necessary identity and admissibility determinations." See 69 Fed. Reg. 468, 471 (Jan. 5, 2004). The interim final rule also discussed what may happen if an alien refuses to provide the required biometric identifiers at time of entry: "The rule does not change any of the existing criteria for inadmissibility, but allows inspectors to consider a failure to provide requested biometric identifiers as a factor in their admissibility determinations. In some circumstances, such as an individual who cannot physically provide clear fingerprints, a failure to do so will not necessarily result in an inadmissibility determination, provided that the inspector is otherwise satisfied that the person is who he claims to be and has appropriate authorization to enter the country." See *id.* at 473.

### 4) Information about the process after the first enrollment, i.e., how do subsequent enrollments work?

- In the January 5, 2004 interim final rule, there is a section that outlines how the biometric information will be used. "The fingerprints and photograph(s) of the alien will be entered initially into an existing system called IDENT. The alien's fingerprints and photographs will be compared against the biometric information already stored in IDENT to determine whether there is any information that would indicate the alien is an imposter or otherwise inadmissible. In addition, IDENT and the other technology associated with US-VISIT will permit the inspecting officer to compare the alien's fingerprints and photographs with any such biometric information previously captured. . . . The inspecting officer will be able to compare the biometrics associated with the person who applied for the visa at the consular office abroad against the biometrics of the person who is present at the port of entry. Once the machine readers are in place at the ports of entry, this process will be fully automated and the visas and certain other travel documents will be capable of being scanned and compared electronically." See 69 Fed. Reg. 468, 472 (Jan. 5, 2004).
- US-VISIT published a PIA on November 15, 2007 to update and describe the US-VISIT Program's change from collecting two (2) fingerprints to collecting up to ten (10) fingerprints (using inkless optical reading devices) from foreign nationals entering or exiting from the United States. [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_usvisit\\_10p.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_usvisit_10p.pdf); All foreign nationals subject to US-VISIT requirements will be required to provide up to 10 fingerprints, along with the same limited biographic information they provide currently, when processed through a CBP lane equipped with a 10 fingerprint

scanner, in most cases on a first encounter. There will be two collection methods tested: (a) the 'three slap process' where individuals provide four flat fingerprints from the right hand, four flat fingerprints from the left hand, and then simultaneous capture of the two thumbs; and (b) the 'four slap process', which requires four flat fingerprints from the right hand, and the right thumbprint, then four flat fingerprints from the left hand, and the left thumbprint. Once an individual's 10 fingerprints are collected and stored in IDENT, subsequent encounters, in most cases, will require the collection of fewer than 10 fingerprints for purposes of verification.

#### 5) **Photograph information.**

- In the January 5, 2004 interim final rule, there are sections that outline how the biometric information and photograph will be used and the privacy protections afforded. "The fingerprints and photograph(s) of the alien will be entered initially into an existing system called IDENT. The alien's fingerprints and photographs will be compared against the biometric information already stored in IDENT to determine whether there is any information that would indicate the alien is an imposter or otherwise inadmissible." See 69 Fed. Reg. 468, 472 (Jan. 5, 2004). "US-VISIT records will be protected consistent with all applicable privacy laws and regulations. Personal information will be kept secure and confidential and will not be discussed with, nor disclosed to, any person within or outside the US-VISIT program other than as authorized by law and as required for the performance of official duties. In addition, careful safeguards, including appropriate security controls, will ensure that the data is not used or accessed improperly. Finally, the Department will maintain secure computer systems that will ensure that the confidentiality of individuals' personal information is maintained. In doing so, the Department and its information technology personnel will comply with all laws and regulations governing government systems, such as the Federal Information Security Management Act of 2002, Title X, Public Law 107-296, 116 Stat. 2259-2273 (2002) (codified in scattered sections of 6, 10, 15, 40, and 44 U.S.C.); Information Management Technology Reform Act (Clinger-Cohen Act), Public Law 104-106, Div. E, codified at 40 U.S.C. 11101 et seq.; Computer Security Act of 1987, Public Law 100-235, 40 U.S.C. 1441 et seq. (as amended); Government Paperwork Elimination Act, Title XVII, Public Law 105-277, 112 Stat. 2681-749--2681-751 (1998) (codified, as amended, at 44 U.S.C. 101; 3504 note); and Electronic Freedom of Information Act of 1996, Public Law 104-231, 110 Stat. 3048 (1996) (codified, as amended, at 5 U.S.C. 552)." See 69 Fed. Reg. 468, 475-76 (Jan. 5, 2004).

#### 6) **Total respondents.**

The total number of respondents claimed in previous information collection review records has remained 156,732,442 since 2006, when US-VISIT expanded its biometric requirements to include additional aliens, as it is based on the expected total population when all phases of US-VISIT (arrival and departure) have been deployed. Annual travel fluctuations and periodic scope expansion will not alter the stated PRA total number of responses because this has already been set to the maximum potential population. Therefore, the original respondent estimate is still valid, as reflected in the recent March 9 and May 19, 2010, US-VISIT published 60-Day and 30-Day Federal Register Notices, where the total of respondents claimed is 156,732,442

Historical information collection review records reflect that in 2005, the total respondents were 43,334,834, ICR reference number: 200412-1600-001. See [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200412-1600-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200412-1600-001)

Historical information collection review records also reflect that on May 30, 2006, US-VISIT submitted an information collection review request, ICR reference number: 200605-1600-001, which was approved for 6 months to December 31, 2006, with a new total of respondents of **156,732,422**. See [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200605-1600-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200605-1600-001).

On May 31, 2007, US-VISIT received OMB approval (OMB Control number 1600-0006) for an extension without change of a currently approved collection. It was valid to May 31, 2010. The total respondents were **156,732,422**. The total burden hours were 658,276. The estimated time per respondent was 15 seconds. See also 72 Fed. Reg. 576 (Jan. 5, 2007) (60 day notice); 72 Fed. Reg. 9953 (Mar. 6, 2007) (30 day notice).

Finally, on March 9 and May 19, 2010, US-VISIT published 60-Day and 30-Day Federal Register Notices,

revision of existing information collection request. The new collection time is 35 seconds, an increase from 15 seconds of the previous approved ICR in 2007. The total respondents remained the same at **156,732,422**. See 75 Fed. Reg. 10809 (60 day notice); 75 Fed. Reg. 28034 (30 day notice).

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

DHS does not intend to employ the use of statistics or the publication thereof for this collection of information except in the mandated reports to Congress, as in reporting of overstays.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

No specific form is utilized in the information collection process.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

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

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.