

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.**

CBP proposes to revise some of the data elements on the Electronic System for Travel Authorization (ESTA) and on Form I-94W in order to make them more easily understandable to respondents, and to collect more detailed information about health and security issues. CBP also proposes to remove some questions from ESTA and from Form I-94W that are no longer relevant. CPB also proposes to add a new question.

CBP Forms I-94 and I-94W are included in the manifest requirements imposed by Sections 231 and 235 of the Immigration and Nationality 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 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 via the website www.cbp.gov/I94

Aliens traveling under the Visa Waiver Program (VWP) program are 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), they may forgo completing the paper form 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.

ESTA was provided for by 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.

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.

Each question addresses U.S. immigration inadmissibility grounds under the Immigration and Nationality Act and Title 8 Code of Federal Regulations section 212a. This information is valuable to DHS because violations of these regulations may result in denial of travel to the United States under the VWP or denial of admission.

The proposed revisions to Form I-94W and ESTA are intended to make this form and website easier for respondents to understand which will should result in more accurate responses. The revised questions and the one additional question should improve the accuracy of data and enable better enforcement screening. It will assist DHS to better determine the eligibility of travelers to travel to the United States and determine admissibility upon arrival.

The data collected on CBP 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 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 United States law.

The proposed revisions to Form I-94W and ESTA should make this form and website easier for respondents to understand which should result in more accurate responses. The narrative questions discussed in Supporting Statement Q15 on the current ESTA application are lengthy and some have indicated they were difficult to understand. In the six years that CBP has been running the ESTA program and had communication with the traveling public, we have found that the single biggest complaint from travelers is the complexity of these questions. CBP has determined that the proposed changes should address this complaint from travelers. See Supporting Statement Q15. The new question "Have you ever stayed in the United States longer than the admission period granted to you by the U.S. government?" is a new question that is being proposed. This additional question should assist CBP to identify foreign nationals who unlawfully overstayed a previous period of admission. To remain

in the United States longer than the period of admission granted by CBP is a violation of the terms of the Visa Waiver Program (VWP) and results in ineligibility for VWP travel. As is true of the ESTA program, the goal is resolve travelers' issues prior to travel to the United States. Responses to this question will help CBP determine eligibility for the VWP or whether a visa is required.

ESTA was 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, the data collected via ESTA is 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) that are filled out on conveyances or at the land border. Information about these forms can be found at: <http://www.cbp.gov/travel/international-visitors/i-94-instructions/i94-rollout> and <http://www.cbp.gov/travel/international-visitors/visa-waiver-program>

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. ESTA can be accessed <http://www.cbp.gov/travel/international-visitors/esta> and a sample of Form I-94 can be found at http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20I-94%20English%20SAMPLE_Watermark.pdf, and I-94W can be found at <http://www.cbp.gov/sites/default/files/documents/%20I-94W%20English%20%2811-11%29%20FINAL%20%28reference%20only%29.pdf>

CBP captures I-94 data for passengers arriving by air or sea from the Advance Passenger Information System (APIS) in lieu of passengers submitting a paper I-94. Passengers can access and print their electronic I-94 via www.cbp.gov/I94. This supplements the existing process whereby a passenger who wanted 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.

- 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.

Without this information collection, CBP would be unable to track or document an alien's arrival to and departure from the United States. Also, please see Supporting Statement Questions 1 and 2 responses.

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 published on November 26, 2013 (Volume 78, Page 70570) on which one comment was received, and on February 14, 2014 (Volume 79, Page 8984) on which no comments have been received.

A letter was received from the American Immigration Lawyers Association (AILA), dated January 27, 2014 in which they made the following points:

Comment: CBP should clarify the question relating to crimes involving moral turpitude

CBP recognizes that the term "crime involving moral turpitude" is complex and we have removed that term from the list of questions. CBP proposes changing the question to ask "Have you ever been arrested or convicted for a crime that resulted in serious damage to property, or serious harm to another person or government authority? And, have you ever violated any law related to possessing, using, or distributing illegal drugs?"

In order to enable the citizens of the 37 VWP countries to use the ESTA website, the text is translated into 22 languages other than English. The way in which the United States legal system defines terms such as “cited”, “indicted” and “ordinance” are not universally understood as AILA states. Translation into languages other than English would compound the confusion.

Comment: CBP should differentiate between the words “work” and “employment”

CBP will use the term “employment” instead of “work”. The term “gainfully” is not commonly understood as AILA defines it. The form must contain text that can be translated into many different languages and be universally understood.

Comment: CBP should add a traveler redress number to the ESTA application and Form I-94W

The Traveler Redress Inquiry System (TRIP) is managed by the Transportation Security Administration (TSA). Respondents can seek redress using this system.

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 PIA, entitled Electronic System for Travel Authorization, dated July 2, 2008 was submitted with this ICR. Also a SORN entitled Electronic System for Travel Authorization dated June 10, 2008 (Vol. 73, Page 32720), and a SORN entitled, Non-Immigrant Information System, dated December 19, 2008 (Vol. 73, Page 77739) are included in this ICR. The current PIA and SORN do not require any updates as it relates to the revisions included in this ICR package. 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 the I-94W does ask applicants “Do you have a physical or mental disorder; or are you a drug abuser or addict; or currently have any of the following diseases:

- Chancroid

- Gonorrhea
- Granuloma Inguinale
- Leprosy, infectious
- Lymphogranuloma venereum
- Syphilis, infectious
- Active Tuberculosis

These diseases that are listed are consistent with communicable diseases outlined in 42 CFR 34.2

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

Form/Collection	Number of Respondents	Total Annual Responses	Time Per Respondent (in hours)	Annual Reporting Burden Hours
I-94	4,387,550	4,387,550	0.133 (8 mins)	583,544
I-94 Website	5,047,681	5,047,681	0.066 (4 mins)	333,147
I-94W	941,291	941,291	0.133 (8 mins)	125,192
ESTA burden	22,090,000	22,090,000	0.25 (15 mins)	5,522,500
ESTA fee* (subset of total ESTA respondents)	18,183,000 (subset of 21.9m above)	18,183,000 (subset of 21.9m above)	0.00 (already included in ESTA burden above)	0.00 (already included in ESTA burden above)
TOTAL	32,466,522	32,466,522		6,564,383

*Note that the 18.183 million respondents paying the \$14.00 for the ESTA fees are a subset of the total 22 million ESTA respondents. They should not be added to the total respondents (or else they would be double counted).

The numbers in the table above reflect the following changes from the previous submission:

- 1) The number of I-94Ws was changed from 100,000 to 941,291 to reflect the most recent estimates. The burden hours were recalculated accordingly.
- 2) The number of ESTA respondents was changed from 19,140,000 to 22,090,000 to reflect the most recent estimates. The burden hours were recalculated accordingly.
- 3) Although the questions were changed on ESTA and on the I-94W, the time per response was not changed from the previous submission because our analysis indicated there was no substantial time difference.

Public Cost:

The estimated annual public cost is **\$553,324,795** 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	\$10,503,792	\$26,325,300	\$0	\$36,829,092
I-94 Website	5,047,681	333,147	\$14,025,489	\$0	\$0	\$14,025,489
I-94W	941,291	125,192	\$2,253,456	\$5,647,746	\$0	\$7,901,202
ESTA burden	22,090,000	5,522,500	\$232,497,250	\$0	\$0	\$232,497,250
ESTA fee	18,183,000		\$0	\$0	\$254,562,000	\$254,562,000
TOTAL			\$259,279,987	\$31,973,046	\$254,562,000	\$553,324,795

* Recall from the previous table that the burden for the I-94 and I-94W forms is 8 minutes (0.133 hours); the burden for ESTA is 15 minutes (0.25 hours). We use the Department of Transportation's guidance on value of travel time for value of time estimates: \$18.00 for travel by land (this applies to I-94 and I-94W) and \$42.10 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.

There are no Government costs to process these forms because the costs are offset by the fee charges.

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

CBP proposes to revise some of the data elements on Form I-94W and ESTA in order to make them more easily understandable to respondents. CBP also proposes to remove questions that are no longer relevant and add one question to identify foreign nationals who unlawfully overstayed a previous period of admission.

In addition, the estimated number of paper I-94W's and ESTA respondents was revised based on updated estimates. There are no burden changes as a result of the proposed revisions. The specific revisions are described in Item #12. and are listed in the chart provided below.

This chart compares the current questions to the proposed revised questions. The questions have been **bolded** to distinguish it from explanatory text.

CURRENT QUESTIONS	REVISED QUESTIONS	Explanation
<p>Do you currently have a communicable disease; physical or mental disorder; or are you a drug abuser or addict?</p>	<p>The term “communicable disease” is a medical term not easily understood by the public, especially without a definition. It has been replaced with:</p> <p>Do you have a physical or mental disorder; or are you a drug abuser or addict; or currently have any of the following diseases:</p> <ul style="list-style-type: none"> • Chancroid • Gonorrhea • Granuloma Inguinale • Leprosy, infectious • Lymphogranuloma venereum • Syphilis, infectious • Active Tuberculosis 	<p>Our experience with the public has indicated that many people do not understand that the only communicable diseases that CBP is concerned with are the ones now listed in the revised question.</p> <p>The amended question is intended to result in fewer denials based on “yes” answers because they have, e.g., a cold, arthritis or are wheelchair bound.</p>
<p>Have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or been a controlled substance trafficker; or are you seeking entry to engage in criminal or immoral activities?</p>	<p>The legal terms “crime of moral turpitude” and “offenses” are not easily understood outside the US Court system. The term “aggregate sentence” is also difficult for foreign nationals to understand. It has been replaced with the following two questions:</p> <p>Have you ever been arrested or convicted for a crime that resulted in serious damage to property, or serious harm to another person or government authority?</p> <p>AND</p> <p>Have you ever violated any law related to possessing, using, or distributing illegal drugs?</p>	<p>Comments from the public indicate that this question is too confusing because of the terms used. CBP and DHS counsel are simplifying and clarifying the language and separating the old question into two new ones so they will be easier to understand.</p> <p>The ESTA application will continue to indicate that, if the subject has questions of a legal nature, the recommended</p>

		<p>course of action is to apply for a nonimmigrant visa. The visa is a more rigorous application process that can help clarify issues of admissibility. But CBP does feel that the new questions will help most travelers determine a proper answer to the questions.</p>
<p>Have you ever been or are you now involved in espionage or sabotage; or in terrorist activities; or genocide; or between 1933 and 1945 were involved, in any way, in persecution associated with Nazi Germany or its allies?</p>	<p>The number of years that have passed since WWII renders the reference to Nazi Germany during the stated time period no longer applicable. It has been replaced with:</p> <p>“Do you seek to engage in or have you ever engaged in terrorist activities, espionage or sabotage; or genocide?”</p>	<p>CBP is updating this question to be more relevant. Data on connections to Nazi Germany is no longer necessary.</p>
<p>Are you seeking to work in the U.S.; or have ever been excluded or deported; or been previously removed from the United States; or procured or attempted to procure a visa or entry into the U.S. by fraud or misrepresentation?</p>	<p>The terms “excluded”, “deported” and “removed” are U.S. immigration law terms of art and are not easily understood or distinguishable by foreign nationals. It has been replaced with the following two questions:</p> <p>Have you ever committed fraud or misrepresented yourself or others to obtain, or assist others to obtain, a visa or entry into the United States?</p> <p>AND</p> <p>Are you currently seeking employment in the United States or you were you previously employed in the United States without prior permission from the U.S. government?</p>	<p>Public comments indicate confusion between the terms “work” and “employment”. The term was changed to “employment” because that should be easier for the public to understand. In addition, CBP believes that technical terms such as “exclusion” and “deportation” are not generally understood by the traveling public.</p>

<p>Have you ever detained, retained or withheld custody of a child from a U.S. citizen granted custody of the child?</p>	<p>Removed</p>	<p>DHS removed this question because experience shows that there are so few travelers to which this applies.</p>
<p>Have you ever been denied a U.S. visa or entry into the U.S. or had a U.S. visa cancelled? If yes, When? _____ Where? _____</p>	<p>This modification specifically refers to “current or previous” passports to provide crucial information to U.S. immigration law enforcement.</p> <p>Have you ever been denied a U.S. visa you applied for with your current or previous passport, or have you ever been refused admission to the United States or withdrawn your application for admission at a U.S. port of entry? If yes, When? _____ Where? _____</p>	<p>Many travelers do not understand that this question of whether they have ever been denied a visa, and whether it was for question clarifies and simplifies the question so that fewer ESTAs will be denied in their current country of citizenship or previous countries of citizenship. The modified question clarifies and simplifies the question so that fewer ESTAs will be denied in error.</p>
<p>Have you ever asserted immunity from prosecution?</p>	<p>Removed</p>	<p>CBP found that this data is no longer needed.</p>
	<p>This additional question will assist CBP to identify foreign nationals who unlawfully overstayed a previous period of admission.</p> <p>Have you ever stayed in the United States longer than the admission period granted to you by the U.S. government?</p>	<p>To remain in the United States longer than the period of admission granted by CBP is a violation of the terms of the Visa Waiver Program (VWP) and results in ineligibility for VWP travel. As is true of the ESTA program, the goal is resolve travelers’ issues prior to travel to the U.S. Responses to this question will help</p>

		CBP determine eligibility for the VWP or whether a visa is required.
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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 are stocked at CBP ports and by airlines in 17 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.