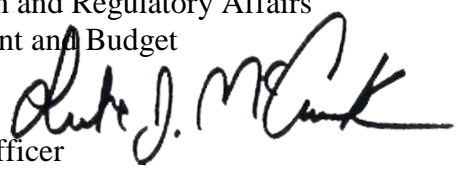




Homeland Security

June 16, 2016

TO: Howard Shelanski, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Luke J. McCormack 
Chief Information Officer
Department of Homeland Security

SUBJECT: Emergency Approval Request for Revision of the Electronic System for
Travel Authorization Application under the Paperwork Reduction Act

This memorandum requests an emergency approval to revise the collection of information under the Paperwork Reduction Act (PRA) for U.S. Customs and Border Protection's (CBP) Electronic System for Travel Authorization (ESTA) and for Form I-94W. 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 Visa Waiver Program (VWP). Form I-94W, the paper equivalent to the ESTA portion related to travel authorization, is used primarily at land ports of entry by VWP travelers. This request does not recommend changes to the I-94 paper form (different from the I-94W) that also is part of this collection. This information collection is necessary to change to the ESTA application required under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (the Act) and is approved under Office of Management and Budget (OMB) control number 1651-0111.

On December 18, 2015, the President signed the Act into law as part of the Consolidated Appropriations Act, 2016. To meet the requirements of this new law, the Department of Homeland Security (DHS or the Department) is strengthening the security of the VWP through enhancements to the ESTA application and to Form I-94W. Section 203 of the Act inserts a new provision in section 217(a) of the Immigration and Nationality Act (INA), generally barring travel under the VWP for nationals of VWP program countries who have been present at any time on or after March 1, 2011, in Iraq, Syria, a country designated as a state sponsor of terrorism (currently Syria, Iran, and Sudan), or other country or area of concern as designated by the Secretary of Homeland Security, and who are dual nationals of Iraq, Syria, or one of the state sponsors of terrorism. 8 U.S.C. § 1187(a)(12)(A)(i)-(ii). Many of the provisions of the new law, including section 203, became effective on the date of enactment of the Act.

Pursuant to the Act, the Secretary of Homeland Security had 60 days to determine whether additional countries (in addition to Iran, Iraq, Sudan, and Syria, as designated in the Act) or areas of concern should be subject to the travel or dual nationality restrictions under the Act. On February 18, 2016, after careful consideration and in consultation with the Director of National Intelligence and the Secretary of State, the Secretary of Homeland Security designated Libya, Somalia, and Yemen as countries of concern, thereby restricting VWP travel by individuals who have traveled to one or more of these countries since March 1, 2011. At this time, the restriction on VWP travel will not apply to dual nationals of these three countries.

Under the new law, the Secretary of Homeland Security may waive these new eligibility restrictions for travel under the VWP with respect to an alien if the Secretary determines that such a waiver is in the law enforcement or national security interests of the United States. Whether ESTA applicants will receive this waiver will be determined on a case-by-case basis in accordance with policy and operations guidance.

DHS requests an emergency approval to amend the ESTA application and Form I-94W to include two additional questions that will be used to determine eligibility of a national of a VWP country to travel to the United States under the VWP.

First, DHS requests emergency approval to amend the ESTA application and Form I-94W to include a question that will be used to determine if an applicant from a VWP country has at any time on or after March 1, 2011, traveled to or been present in Libya, Somalia, or Yemen. ESTA applicants will be asked to indicate when after March 1, 2011, they were present in or traveled to each country and to provide additional specifics such as the primary reason for their presence (e.g., business, personal, tourism).

Second, DHS requests emergency approval to further amend the ESTA application and Form I-94W to include a question requesting the ESTA applicant's Global Entry program number, if applicable. If an applicant has been pre-approved for travel under the Global Entry program, DHS has already assessed the individual to be a low-risk traveler. Global Entry is a CBP program that allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United States. Travelers must be pre-approved for the Global Entry program, and all applicants undergo a rigorous background check and in-person interview before enrollment. Record of successful enrollment in the program will provide those responsible for vetting the individual's ESTA application with valuable information for consideration when granting waivers and will ultimately lead to a better informed waiver determination, an authority granted to the Secretary of Homeland Security under the new law.

These revisions help DHS remain compliant with legal requirements and adapt to the heightened threat environment. The combined totality of existing and newly proposed ESTA data elements will help the U.S. Government meet the requirements of the Act, mitigate the foreign fighter threat, and facilitate lawful travel under the VWP. DHS is requesting an emergency information collection approval with the intention of carrying out all the regular requirements for publication and review no later than six months after implementation.

These modifications will assist in the identification of those who may be ineligible to travel to the United States under the VWP. The U.S. Government has always retained the authority to deny certain travelers the ability to travel under the VWP. The restrictions do not bar travel to the United States, but they do require a traveler covered by the restrictions in the law to obtain a visa from a U.S. Embassy or Consulate. Most U.S. Embassies and Consulates in VWP partner countries and worldwide have short wait times for visa interviews.

DHS is concerned that publishing the new changes to the ESTA data elements prior to implementation will allow persons who may be trying to cause harm to the United States to attempt to circumvent these new requirements.¹ These individuals may seek to obtain ESTA approval before the effective date of the new data elements in an effort to evade detection in order to gain unlawful entry to the United States under the VWP. DHS believes that individuals may try to take advantage of such a delay similar to the way individuals tried to avoid paying the ESTA fee by applying for an ESTA after the fee was announced but before it was implemented.

DHS requests OMB's approval of this Emergency Request to revise the ESTA application and Form I-94W. The Department believes that taking immediate action to enhance the ESTA application is the best way to uphold Congress' intent, meet our legal requirements, and address evolving threats. After implementation of the new data elements, upon publication, the Department will stand ready to address comments and concerns, as necessary, under the PRA. Thank you for your consideration of this Emergency Request.

¹ See OMB Directives Controlling Paperwork Burdens on the Public, 5 C.F.R. § 1320.13(i).