




Homeland
Security

July 17, 2018

TO: Neomi Rao, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Stephen Rice  7-17-18
Deputy Chief Information Officer
Department of Homeland Security

SUBJECT: Emergency Approval Request for Revision of the Electronic System for Travel Authorization, I-94W and Electronic Visa Update System Applications 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 Electronic System for Travel Authorization (ESTA), the Electronic Visa Update System (EVUS), and 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) and whether a waiver of certain bars to VWP travel is warranted under the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015* (VWP Improvement Act).¹ Form I-94W, the paper equivalent to the ESTA portion related to travel authorization, is used primarily at the land border by VWP travelers, or on specific occasions at other ports of entry without immediate access to the ESTA application. This request does not recommend changes to the I-94 paper form (different from the Form I-94W) that also is part of this collection. This information collection is approved under Office of Management and Budget (OMB) control number 1651-0111. EVUS is a web-based application and screening system used to determine whether aliens from designated countries holding a visa in a designated category are eligible to travel to the United States.² This information collection is approved under OMB control number 1651-0139.

The VWP Improvement Act amended the *Immigration and Nationality Act* (INA) to restrict certain categories of travelers from traveling to the United States under VWP. Section 217(a)(12)(A)(i) of the INA (8 U.S.C. § 1187(a)(12)(A)(i)) restricts any individual who has been present, at any time on or after March 1, 2011 ... in Iraq, Syria, a country that is designated by the Secretary of State as a State Sponsor of Terrorism (SST) (at time of enactment, Iran, Sudan, and Syria), or any other country or area of concern designated by the Secretary of Homeland Security (currently, Libya, Somalia, and Yemen).” Section 217(a)(12)(A)(ii), in turn, restricts

¹ Consolidated Appropriations Act, 2016, Pub. L. 114-113, div. O, tit. II.

² Currently, the EVUS requirement applies only to nationals of the People's Republic of China (PRC) who hold a valid PRC passport and U.S. 10-year multi-entry B1, B2, or B1/B2 visa. See 8 C.F.R. § 215.24; 22 C.F.R. § 41.122(b)(3).

any individual from VWP travel who is a national of certain designated countries, without regard to whether he or she also is a national of a VWP program country.³ Affected individuals are not barred from traveling to the United States and may still apply for and receive U.S. visas, as appropriate.

On November 27, 2017, the Secretary of State designated North Korea (Democratic People's Republic of Korea, or DPRK) as an SST, having determined that North Korea has "repeatedly provided support for acts of international terrorism." SST designations are made 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).

To meet the requirements and intent of the law, the Department of Homeland Security (DHS) is strengthening the security of the United States through enhancements to the ESTA application, and the Form I-94W. Because the INA, as amended by the VWP Improvement Act, renders ineligible for VWP travel (with some exceptions) any applicant who is a dual national of, or has at any time on or after March 1, 2011 been present in a country that is designated a SST, prompt action to implement the bar is required.

On October 20, 2016, DHS, in coordination with the Department of State (State), established EVUS (81 FR 72600). Although the VWP Improvement Act predates EVUS, in an effort to support consistent vetting across traveler screening programs, DHS asks the same questions to visa holders subject to the EVUS requirement as it does to individuals travelling under the VWP – including questions asked as part of implementation of travel restrictions under the VWP Improvement Act. This data is used in the adjudication of vetting results. A "yes" response to the question on presence in a SST at any time on or after March 1, 2011 does not in and of itself determine the ability of a visa holder subject to the EVUS requirement to have his or her EVUS enrollment approved or to travel to the United States.

Approvals for ESTA or successful enrollment in EVUS is required for travel to the United States and are generally valid for two years or until the traveler obtains a new passport. The primary differences are the populations covered (nationals of the 38 VWP-designated countries for ESTA vs. certain nationals of the Peoples Republic of China (PRC) for EVUS) and that EVUS requires a valid visa. As were done for other questions related to enforcement of the VWP Improvement Act, DHS intends to incorporate the DPRK question into EVUS to make sure DHS has knowledge of presence in North Korea on or after March 1, 2011 by an EVUS enrollee for use in vetting prior to travel to the United States. Adding North Korea to the EVUS

³ The Act provides for limited exceptions to the section 212(a)(12)(A)(i) restriction for presence in Iraq, Syria, an SST, or a designated country of concern on or after March 1, 2011 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." INA § 217(a)(12)(B), 8 U.S.C. § 1187(a)(12)(B). These exceptions do not apply to the section 212(a)(12)(A)(ii) dual national bar. The INA, however, also authorizes the Secretary to waive either or both restrictions in her discretion if a waiver "is in the law enforcement or national security interests of the United States." *Id.* at 217(a)(12)(C), 8 U.S.C. 1187(a)(12)(C).

eligibility questions is particularly relevant given a higher likelihood that an EVUS enrollee (i.e., a national of the PRC) may have previously traveled to North Korea, than a national of most VWP countries (excepting nationals of the Republic of Korea (South Korea)).

DHS, which administers the VWP in consultation with the State, considered the impact of section 217(a)(12)(A)(i)-(ii) of the INA (8 U.S.C. § 1187(a)(12)(A)(i)-(ii)) in light of the SST designation for North Korea – the first such designation to occur following the enactment of the VWP Improvement Act. DHS, after consultation with State, generally will restrict travel to the United States under the VWP of an alien who was physically present in North Korea on or after March 1, 2011, subject to limited statutory exceptions and possibility of a waiver, if warranted.

DHS requests an emergency approval to amend the ESTA application, EVUS enrollment and the Form I-94W to add North Korea to the existing eligibility question on prior travel to restricted countries per the VWP Improvement Act. Affected travelers will be asked to indicate if they have at any time on or after March 1, 2011, been present in one of the eight restricted countries, including North Korea. If the applicant indicates presence in a restricted country, the traveler is prompted to provide additional specifics, such as the primary reason for their presence in these countries (e.g., business, personal, tourism). This modification will assist in the identification of those who may be ineligible to travel to the United States under the VWP or who may warrant additional review under EVUS. Restrictions on travel under the VWP do not bar travel to the United States, but rather require a traveler subject to the restrictions to first obtain a visa from a U.S. embassy or consulate. Likewise, the restrictions do not bar travel under EVUS enrollment. A “yes” response to the question on presence in a SST at any time on or after March 1, 2011 does not in and of itself determine the ability of a visa holder subject to the EVUS requirement to have his or her EVUS enrollment approved or to travel to the United States.

These revisions help DHS remain compliant with legal requirements and adapt to the heightened threat environment as well as the continued threat of terrorism from certain individuals associated with North Korea. The combined totality of existing and revised ESTA, EVUS, and Form I-94W data elements will help the U.S. Government meet the requirements of the VWP Improvement Act, mitigate the terrorist threat, and facilitate lawful travel.

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. DHS is concerned that publishing the new changes to the ESTA, Form I-94W, and EVUS 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.⁴ These individuals may seek to obtain ESTA or EVUS 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.

⁴ See OMB Directives Controlling Paperwork Burdens on the Public, 5 C.F.R. § 1320.13(i).