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.**

*Background*

Passengers from visa waiver countries, 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) application 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.

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, 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 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.

*Recent and Proposed Changes*

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (“the Act”) as part of the Consolidated Appropriations Act of 2016. To meet the requirements of this new act, the Department of Homeland Security (DHS or the Department) is strengthening the security of the VWP through enhancements to the ESTA application and to the Nonimmigrant Visa Waiver Arrival/Departure Record (Form I-94W) form. Many of the provisions of the new law became effective on the date of enactment of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. The Act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP 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 designated state sponsor of terrorism (currently Iran, Sudan, and Syria),[[1]](#footnote-2) or any other country or area of concern as designated by the Secretary of Homeland Security.[[2]](#footnote-3)

To assist DHS in meeting the requirements of this Act and to determine whether prospective VWP travelers are ineligible to travel under the program, it used the emergency Paperwork Reduction Act (PRA) process to add new data elements to the ESTA application and to Form I-94W. Passengers from visa waiver countries, traveling under the VWP by air or sea, are required to receive a travel authorization through the ESTA application prior to travel to the United States. DHS determined that the addition of these new data elements improves the Department’s ability to screen prospective VWP travelers while more accurately and effectively identifying those who pose a security risk to the United States and facilitates adjudication of ESTA applications.

The following data elements are new questions that were approved in two recent emergency PRA submissions and have been added to the ESTA application. Some of these questions are also on Form I-94W:

|  |  |
| --- | --- |
| Have you traveled to, or been present in, Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia on or after March 1, 2011? | Mandatory |
| Which country? | Conditional |
| What dates? | Conditional |
| * If yes, what was the primary reason for the visit? * To travel as a tourist (vacation) * For personal travel or a family visit (including emergencies) * For commercial/business purposes * To carry out official duties as a full-time employee of the government of a Visa Waiver Program country * To carry out official duties on behalf of a sub-national government or body of a VWP country * To perform military service in the armed forces of a Visa Waiver Program country * To conduct work as a journalist * To engage in humanitarian assistance on behalf of a humanitarian or international non-governmental organization * To carry out official duties on behalf of an international organization or regional (multilateral or inter-governmental) organization * To attend an academic institution * To participate in a professional exchange or conference * To participate in a cultural exchange program * Other | Conditional |
| Have you ever been issued a passport (or national identity card for travel) by any other country? | Mandatory |
| If yes, which country? | Conditional |
| If yes, most recent passport or national identity card’s year of expiration? | Conditional |
| If yes, most recent passport/national identity card number, country of issuance and expiration year? | Conditional |
| Are you now a citizen or national of any other country? | Mandatory |
| If yes, other countries of current citizenship or nationality? | Conditional |
| If yes, how did you acquire citizenship/nationality from this country?   * By Birth * Through Parents * Naturalized * Other | Conditional |
| Have you ever been a citizen or national of any other country? | Mandatory |
| If yes, other countries of previous citizenship or nationality? | Conditional |
| 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:   * Did not acquire citizenship at birth or have never held citizenship in birth country * Renounced citizenship of birth country * Have not lived or resided in birth country within the past five years * Have not held a passport or national identity card from birth country within the past five years * Other | Conditional |
| If the applicant answers Yes to “presence in” question, identifies Iran as country, selects “For business purposes” as reason, and identifies a date of travel on or after July 14, 2015:   * Please identify the company or entity on behalf of which you traveled to Iran for business purposes. [Write-in field] * What was your official position/title with the company or business entity identified? * If different than your current employer, please provide contact information for the company or business entity identified, including primary address and telephone number. * Please provide your Iranian Business Visa Number * Please list all companies and entities in Iran with which you had business dealings. | Conditional |
| If the applicant answers Yes to “presence in” question, identifies Iraq as country, and selects “For business purposes” as reason:   * Please identify the company or entity on behalf of which you traveled to Iraq for business purposes. * What was your official position/title with the company or business entity identified? * If different than your current employer, please provide contact information for the company or business entity identified, including primary address and telephone number. * Please provide your Iraqi Business Visa Number * Please list all companies and entities in Iraq with which you had business dealings. | Conditional |
| If the applicant answers Yes to “presence in” question and selects “Humanitarian” as reason:   * Please identify the organization or entity on behalf of which you traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia for humanitarian purposes. * Does your organization or entity have consultative status with the United Nations Economic and Social Council? * What was your official position/title with the organization or entity identified? * If different than your current employer, please provide contact information for the organization or entity identified, including primary address and telephone number * Please provide your Iraqi, Syrian, Iranian, Sudanese, Yemeni, Libyan, or Somali Visa Number related to your humanitarian travel. * 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. * Please provide us information about the type of work you were doing in country during this time * Please include any information you are willing to share about other NGOs or international, national or state agencies with which you worked. * Any additional comments. | Conditional |
| If the applicant answers Yes to “presence in” question and selects “International or Regional” or “Sub-National” as reason:   * Please identify the international (multilateral or intergovernmental) organization or regional (multilateral or intergovernmental) organization, on behalf of which you traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia * Please identify the sub-national government or body of a VWP country on behalf of which you traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia. * What was your official position/title with the organization or government identified? * Please provide your Iraqi, Syrian, Iranian, 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] * Have you ever been issued a G-Visa or A–Visa by a United States Embassy or Consulate * If “Yes”, please provide your G-Visa or A-Visa number, if known * Have you ever been issued a United Nations Laissez-Passer * If “Yes,” please provide your Laissez-Passer number | Conditional |
| If the applicant answers Yes to “presence in” question and selects “Journalism” as reason:   * Please identify the company, entity, or organization on behalf of which you traveled to Iraq, Syria, Iran, Sudan, Yemen, Libya or Somalia to engage in journalism. * What is your official position with the company, entity, or organization identified? * Have you ever been issued an I-visa by a United States Embassy or Consulate?   + If Yes- please provide your I-visa number, if known. | Conditional |
| Are you a member of CBP Global Entry Program? | Mandatory |
| If Yes, Please provide your GE member number | Conditional |

DHS also proposes to add an optional data field to the ESTA application to request social media identifiers to be used for vetting purposes, as well as applicant contact information in some cases. Social media questions/fields are optional. Many individuals now use social media accounts as legitimate forms of communication to the same extent, or in place of, phone, e-mail, text messaging, etc. Having an applicant’s social media identifier will provide an additional means by which DHS can contact an applicant if needed. Should an individual choose to provide his/her social media identifier(s), DHS will be able to use the information for vetting purposes if the application is flagged because of possible derogatory information. This use is consistent with the use of other selectors provided on the ESTA form, and this disclaimer for vetting purposes against law enforcement databases is provided on the ESTA application. Adding an optional request for an ESTA applicant’s social media identifier will provide DHS with greater screening opportunities to inform determination of eligibility for travel to the United States under the VWP.

**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: <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 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.

**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 new elements enhance the information previously collected from travelers and allow DHS to better identify those who may seek to exploit the VWP and to do harm to the United States. Extensive research by DHS and our interagency partners has determined that these additional data elements will increase the ability to stop 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.

1. **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 June 23, 2016 (Volume 81, Page 40892) on which ## comments were received, and a 30-day notice published on xxx (Volume xx, Page xxxx) on which no comments have been received.

1. Issue: Access to information collected

Submitted by: David Cain

Overview of Comment: Since the government is regularly augmenting its security practice with private contractors, this information will also be available to those contractors, who may attempt to monetize information on private citizens as well, without explicit consent.

**CBP response:** CBP contractors, as is the case with CBP officers, with access to Sensitive Personally Identifiable Information (PII) are required to sign non-disclosure agreements, Privacy Act Agreements, and other legally-binding documents that safeguard applicants’ information. For CBP to grant a contractor access to sensitive information or law enforcement databases, the contractor must have job duties that justify this access and complete annual training and certification in the privacy rules that govern the use of these systems. CBP contractors must also pass rigorous background investigations and be found suitable to hold a Public Trust position.

1. Issue: Privacy setting on social media

Submitted by: Matthew (Last Name Unknown), James Godfrey, Piotr Urek

Overview of Comment: The public expressed concerns that there are numerous social media platforms with varying degrees of privacy settings and accessing such information would force the hosting provider to violate these settings.

**CBP Response:** If an applicant chooses to answer this question, DHS will have timely visibility of the publicly available information on those platforms, consistent with the privacy settings the applicant has set on the platforms. Therefore, the hosting provider will not be asked to violate any privacy settings or policies.

1. Issue: Increase the risk of identity theft

Submitted by: Rebecca Janzen

Overview of Comment: The public expressed concerns stating social media identifiers is an unnecessary invasion of privacy and may increase the risk of identity theft.

**CBP Response:** DHS takes the protection and security of all Sensitive Personally Identifiable Information (PII) very seriously and strictly adheres to Federal privacy laws and guidance. CBP takes precautions to maintain the security, confidentiality, and integrity of the information collected. Safeguards include access controls that limit access of the information to only authorized users. These safeguards employ advanced security technologies to protect the information stored on our systems from unauthorized access. The data collected under the Electronic System for Travel Authorization (ESTA) will be safeguarded and stored in accordance with the ESTA System of Records Notice (SORN), which will be updated and published in the Federal Register prior to collecting social media information.

1. Issue: Invasion of Privacy

Submitted by: R. Jason Cronk

Overview of Comment: The public has expressed concerns that courts have consistently ruled that acts of government, even when they do not have a direct prohibition on speech, are unconstitutional.

**CBP response:** In accordance with 8 CFR 217.5 and Section 217 of the Immigration and Nationality Act (INA), CBP is authorized to collect data elements in conjunction with an Electronic System for Travel Authorization (ESTA) application. These authorities apply to the collection of social media identifiers.

1. Issue: Cost of implementing question

Submitted by: Seth Uhl, Anonymous, Robert Peterson, Maarten De Waal, Anonymous, Casey Gibson, Brian Hicks, Robert Campbell, Michael Gagan, Malcolm Duffield, Joyce Frohn, Shana Carter, Robin Adams, Matthew Brooks, Kris Alman, Cory Doctorow, Center for Democracy and Technology, ACLU *et al*, Internet Association

Overview of comment: The public expressed concerns on the excessive amount it would cost the United States to implement this question.

**CBP response:** CBP has taken into account the costs involved in collecting this information and has found it reasonable and justified given the security benefits from this collection. CBP estimates that it will need to hire an additional 15 full time employees as a result of the additional ESTA questions, including the social media question. CBP believes that the security benefits generated by adding these questions easily exceed the costs, and notes that the cost will be covered by user fees. There is no change in the monetary cost to the public – the fee is remaining unchanged.

1. Issue: Rule will be ineffective for its stated purpose and will gather no useful data

Submitted by: Jonathan Corbett, Peio Powieur, Anonymous (German Traveler), Randy Bush, Matthew (Last Name Unknown), Justin Collins, William Hargreaves, Scott Francis, Charles Miskoley, Anonymous, Michael Castleman, James Godfrey, Michael Smithson, Michael Smithson, Maartan De Waal, Casey Gibson, A Barber, Michael Gagan, Malcolm Duffield, Ryan Bruington, David Blakely, Andrew Fergeson, Kris Alman, Peter Bowers, Alix Albert, Lulzim Ajvazi, Spencer Adams, ACLU *et al*, Internet Association, Kenneth Murphy, Holger L. Ratzel, Paul te Vaanholt, Susan Rautine, EM, Wolter Van Den Brink, Pete Powell, Lydia Lacy Wallace, Kelly Scneider, Aubrey Warsop, Christian Rosager, Heidi Reyes, Sophia Cope (Electronic Frontier Foundation), Deb P, Gary Joseph, Jonathan Peterson, Ellen Schrantz, Rachel K

Overview of comment: The public expressed concern that the rule will be ineffective for its stated purpose, will gather no useful data, and is unlikely to be a helpful tool for finding any nefarious activity.

**CBP response:** As stated by Secretary Johnson, “Social media can provide the Department with critical information related to the execution of our mission.” Social media is a prominent component of modern society, and DHS’s efforts to protect the homeland must evolve as society evolves. Given the nature of DHS’s mission, it would be irresponsible for DHS not to ask for and review this information in DHS’s vetting programs. Given the nature of DHS’s mission, it would be irresponsible for DHS not to ask for and review this information in DHS’s vetting programs. Information found in social media will be used to review Electronic System for Travel Authorization (ESTA) applications to validate legitimate travel and to identify potential threats. It may help facilitate legitimate travel by providing an additional means to adjudicate issues related to relevant questions about identity, occupation, previous travel, and other factors. It may help detect potential threats because experience has shown that criminals and terrorists, whether intentionally or not, have provided previously unavailable information via social media that identified their true intentions.

1. Issue: Failure to provide, possess, or are untruthful or inaccurate about their social media identifiers

Submitted by: Peio Powieur, Tom Brover, James McClure, Michael Smithson, Mats, Internet Association, Center for Democracy and Technology

Overview of Comment: The public expressed concern that many individuals will fail to provide or possess accounts, or will be untruthful in the accounts they provide in regards to their social media identifiers. Companies have found that offline representations of account ownership are ripe with typographical errors and/or fraud.

**CBP response:** CBP has a layered approach to security, and social media identifiers collected via the Electronic System for Travel Authorization (ESTA) application would be only one component. While there may be the potential for an applicant to provide false or inaccurate information, CBP verifies identity through a variety of mechanisms. If an applicant chooses to not fill out or answer questions regarding social media, the ESTA application can still be successfully submitted.

1. Issue: How will DHS define “online presence” and “social media”?

Submitted by: Michael Smithson, Center for Democracy and Technology, Internet Association, ACLU *et al*

Overview of Comment: The public expressed concern about how DHS will define “online presence” and “social media.” Is it limited to Facebook, LinkedIn, or Twitter? Did it also include Amazon, email, texting accounts, online banking, eBay, blogs, newspapers, ITunes, etc., where comments or reviews are posted?

**CBP response:** A social media identifier is any name, or “handle”, used by the individual on platforms including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram. Applicants are able to volunteer up to 10 identifiers.

1. Issue: Changing the question from optional to mandatory

Submitted by: Jonathan Corbett, David Crawley, David Cain, Scott Francis, Anonymous, James McClure, Center for Democracy and Technology, Sophia Cope (Electronic Frontier Foundation)

Overview of comment: The public expressed concern on eventually changing the question from an optional field to mandatory. The public may feel compelled to respond even if the information is optional.

**CBP Response:** The proposed collection is voluntary, as some people may not have a social media account or may choose not to provide this information. Similar to other optional fields on the ESTA application, the application will clearly inform the applicant that answering the social media question is optional.

1. Issue: The rule will subject U.S. citizen-travelers to retaliation

Submitted by: Jonathan Corbett, Anonymous, Matthew (Last Name Unknown), Internet Association, Karl Koscher, Sophia Cope (Electronic Frontier Foundation)

Overview of comment: The public expressed concern that implementing this question will subject U.S. citizen-travelers to retaliation from other Visa Waiver countries, such as additional rules and regulations to abide by prior to traveling to their countries

**CBP Response:** All sovereign countries are within their authority to impose travel regulations and entry requirements. DHS does not dictate the rules and regulations of other countries. DHS has added additional fields to the ESTA application over the last two years and has not seen other countries reciprocate in the questions asked to U.S. visitors.

1. Issue: Retention, Usage, and Storage

Submitted by: Jonathan Corbett, David Cain, Peio Powieur, Anonymous (German Traveler), Kevin Murphy, Charles Miskoley, Patrick Burroughs, Maureen O’Brien, Omar Katz

Overview of comment: The public expressed concern on how the data will be retained, used, and stored.

**CBP Response:** DHS will retain, use, and store the new information in the same manner as other information collected through Electronic System for Travel Authorization (ESTA) and will document these procedures in the System of Records Notice (SORN) and Privacy Impact Assessment (PIA), which will be available on the DHS website (www.dhs.gov/privacy). The information will be used as an additional tool to further enhance the security vetting process and support the adjudication of Visa Waiver Program ineligibility waivers.

1. Issue: Supportive comment

Submitted by: Bin Li, Larry Menard, Seth Uhl, Bogdan- Gheorghe Iorga, Michael Lederman, Scott Taylor, Jack King, Jason Moultire, Nicolas Weaver, Emilia Tragon, Lana Melnichuk

Overview of Comment: The individuals expressed the opinion that implementation of the question is a good idea and should become mandatory.

**CBP Response:** CBP appreciates the positive feedback and comments.

1. Issue: Declination to answer results in denial of application

Submitted by: Anonymous, William Hargreaves, Center for Democracy and Technology

Overview of Comment: The public expressed concern that declination to answer the social media question will result in the denial of an ESTA application or a visa application.

**CBP Response:** CBP is aware that some individuals may not have social media accounts, or may choose not to provide them. Providing this information is voluntary. If an applicant chooses not to fill out or answer questions regarding social media the ESTA application can still be successfully submitted. Similar to other optional fields on the ESTA application, the application will clearly inform the applicant that answering the social media question is optional.

Comments about visa applications were deemed outside the scope of the ICR, as visa applications are a responsibility of the Department of State.

1. Issue: Potential to create unnecessary lists, exploit innocent people, and be invasive

Submitted by: Anonymous, James McClure, David Cain, Center for Democracy and Technology, Piotr Urek, Marcos Alonso, Dimitar Sakarov, Raefe Mahadeo, Robert Pennoyer, ACLU *et al*

Overview of Comment: The public expressed concerns that the pool of data that is built and retained for additional screening uses. This pool includes United States citizen friends and family members of VWP travelers. Social media posts may be taken out of context. These factors may lead to unnecessary lists of ‘persons of interest’ that need to be vetted or are erroneously placed on watchlists.

**CBP response:** CBP only collects information relevant to the adjudication of the Electronic System for Travel Authorization (ESTA) application. DHS will not use this information to create “unnecessary lists” of persons – it will merely add one additional data element to the ESTA collection. Social media information is just one data point for vetting travelers and is intended to complement other information, including application data provided by applicants. Highly trained CBP personnel will independently research publicly available social media information and will be able to recognize factors such as context. CBP will make case-by-case determinations based on the totality of the circumstances.

DHS will handle social media identifiers in the same manner as other information collected through ESTA and will document these procedures in the System of Records Notice (SORN) and Privacy Impact Assessment (PIA), which will be available on the DHS website (www.dhs.gov/privacy).

1. Issue: Rule will make CBP Officers biased

Submitted by: Anonymous, Ruth Coustick-Deal

Overview of Comment: The public expressed concern that the rule will make CBP Officers biased; such as if a person traveling works tirelessly to raise money for breast cancer research or a person being penalized for their personal views on subjects like politics, race, or religion.

**CBP Response:** DHS is steadfastly committed to the highest standards of conduct across the Department, most acutely when it comes to the fair, unbiased, and transparent enforcement of our laws. Consistent with DHS’s mission to secure the Nation from threats and facilitate legitimate trade and travel, the collection of social media identifiers will not be used to prevent travel based on applicant’s political views, race, ethnicity, or religion. These are not relevant factors in determining admissibility and/or eligibility to travel under the Visa Waiver Program. CBP trains its officers in the appropriate method for reviewing traveler data for Electronic System for Travel Authorization (ESTA) applicants.

1. Issue: Social media data gathering will inappropriately target Muslims and/or Arabs.

Submitted by: Center for Democracy and Technology, ACLU *et al*

**CBP Response**: DHS is steadfastly committed to the highest standards of conduct across the Department, most acutely when it comes to the fair, unbiased, and transparent enforcement of our laws. Consistent with DHS’s mission to secure the Nation from threats and facilitate legitimate trade and travel, the collection of social media identifiers will not be used to prevent travel based on applicant’s political views, race, ethnicity, or religion. These factors are not relevant in determining admissibility and/or eligibility to travel under the Visa Waiver Program.

1. Issue: Rule will lead to a complete police state and excessive government oversight

Submitted by: Anonymous (Concerned Citizen), Matthew (Last Name Unknown), Jeff Caslake, Jeffery Austin, Sherry Halbrook, Maarten De Waal, Barb Quarton

Overview of comment: The public expressed concern this rule is a deliberate step towards a complete police state in this country and excessive government oversight.

**CBP Response:** DHS’s proposal is respectful of individual privacy and strictly adheres to Federal privacy laws and guidance. Providing social media identifiers is optional. If an applicant chooses to answer this question, DHS will have timely visibility of the publicly available information on those platforms, consistent with the privacy settings the applicant has set on the platforms. Prior to the inclusion of social media identifiers on the Electronic System for Travel Authorization (ESTA) application, DHS will post an updated Privacy Impact Assessment (PIA) and System of Record Notice (SORN) for ESTA on the DHS website (www.dhs.gov/privacy) to provide notice and assess the privacy risks associated with enhancements to the ESTA application questionnaire, including the addition of an optional field for social media usernames or identifiers for all ESTA applicants. The SORN will also be published in the Federal Register. Moreover, it is important to note concerning this program, CBP only collects information relevant to the adjudication of the ESTA application.

1. Issue: Rule will lead to a time increase for filling out the ESTA application, leading to a “waste of time” and “taxpayers’ money”

Submitted by: Liro Auteinen, Michael Smithson

Overview of comment: The public expressed concern this rule will increase the time to complete the current ESTA application, approximately an additional 23 minutes. One subject stated, “…we have a bureaucratic data collection idea that will be a waste of time and taxpayers’ money.”

**CBP response:** Adding the proposed social media question to the ESTA application and Form I-94W will have a negligible impact on the total time it takes a respondent to complete these applications. Twenty-three minutes is the total time CBP estimates for the completion of the entire ESTA application – not just the proposed social media question. Together with the questions that were added to the ESTA application and to Form I-94W in two recent emergency submissions under the Paperwork Reduction Act (that request information from applicants about countries they have visited since March 1, 2011; countries of which they are citizens; countries for which they hold passports; and Global Entry Numbers), the proposed social media question will increase the total ESTA application and Form I-94W time burdens by an average of three minutes. With these new questions, the average time burden to complete the ESTA application will increase by three minutes to 23 minutes (up from 20 minutes) and the average time burden to complete the Form I-94W will increase by three minutes to 16 minutes (up from 13 minutes). There is no change in the monetary cost to the public – the fee is remaining unchanged.

1. Issue: Requiring written comment on this proposal, rather than electronic submission

Submitted by: Robert Peterson

Overview of comment: The subject stated, “…requiring written comment on this proposal, rather than providing for electronic submission of public comment, places a burden on interested members of the public…it is also ironic that public comment must be addressed in writing, to the Paperwork Reduction Act Officer.”

**CBP response:** Public comments on this notice were accepted electronically through regulations.gov.

1. Issue: Unsupportive, unrelated or insubstantial comments

Submitted by: John Gale, Walker Bennet, Bill Blank, Kristen Dziembowski, Jonathan Corbett, Peter Halvarsson, B. Ross Ashley, Ingmar Forne, Hakan Anderberg, Hans Henderson, Miranda Harper, Matthew Ferrara, Michael Draper, Anonymous, Caroline Darst, Jim Freeberg, Roy Blake, Jordan Head, Laura Bordeaux, MD Abbas Ali. Charles Lowe, Robert Miles, Ludo Van Son, Christopher Miller, Harry Jones, Doris Woolf, Cliff Mitchell, William Hurless, Gage Hutchins, Scott Koterbay, Ronald Norman, Alexander Zimering, Wilfried Vetter, Peter, Lee, Bakota, Eric Meyer, Amanda Papilhau, T.R. Wilson, Sue Jackson, John Niendorf, Jennifer Schmitt, Josef Taylor, Aleksander Laane, MM, Thomas Lee, Dirk Van Nouhuys, Janine McNamara, Anonymous, Bonnie Price, Maureen Rogers, David Seagrave, Jim Sander, Jim Swanson, Lis Krueger, Richard Kosinski, Evan Thompson, David Roberts, Chris Marsh Richard Stallman, Stu Mcalean, Vincent Silenzio, Martin Washington, Eldon Rosenberg, Andrew Roach, Thomas Pauly, Asd, Garret Murphy, Omar Katz, Bryan Rasmussen, II, JT Smith, Frederick McDonald, David Crawley, Herman Goering, CJ Hendrickson, Joan Dugdale

Overview of comments: The public submitted numerous responses that did not address the social media proposal or were unsupportive of the proposal, but did not provide substantial commentary.

**CBP Response**: Comments were deemed outside the scope of the ICR.

1. Issue: Increased intelligence gathering

Submitted by: ACLU *et al*, Center for Democracy and Technology

Overview of comment: The collection of social media identifiers is essentially an expansion of intelligence gathering. As such, the information will be shared with other agencies.

**CBP Response**: Social media identifiers voluntarily submitted by applicants through the Electronic System for Travel Authorization (ESTA) website will continue to be subject to the same strict privacy provisions, use limitations, and access controls that are currently in place for ESTA and that are consistent with the protections for similar traveler screening programs.

ESTA information may be shared with other agencies that have a need to know the information to carry out their national security, law enforcement, immigration, or other homeland security functions.Any and all information sharing with agencies outside DHS will abide by existing memoranda of understanding between the agencies and be consistent with applicable statutory and regulatory requirements.

DHS will handle the new information in the same manner as other information collected through ESTA and will document these procedures in the System of Records Notice (SORN) and Privacy Impact Assessment (PIA), which will be available on the DHS website (www.dhs.gov/privacy).

**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” (Dated June 6, 2016), a SORN entitled “Electronic System for Travel Authorization,” (Friday, June 17, 2016, 81 FR 39680) and a SORN entitled “Non-Immigrant Information System,” are included in this information collection request. The PIA and SORN for ESTA have been revised to include the new 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.**

As a result of Executive Order 13295, which was made on July 31, 2014, revising the list of quarantinable communicable diseases included in Section 264(b) of Title 42, CBP proposes to change question #1 on the yes/no questions of the ESTA application and the Form I-94W to:

Do you have a physical or mental disorder; or are you a drug abuser or addict; or do you currently have any of the following diseases (communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act):

•   Cholera

•   Diphtheria

•   Tuberculosis, infectious

•    Plague

•    Smallpox

•    Yellow Fever

•    Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo

•    Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality

1. **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 | 3,858,782 | 3,858,782 | 0.066  (4 mins) | 254,679 |
| I-94W | 941,291 | 941,291 | 0.267  (16 mins) | 251,325 |
| ESTA burden | 23,010,000 | 23,010,000 | 0.383  (23 mins) | 8,812,830 |
| 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) |
| TOTAL | **32,197,623** | **32,197,623** |  | **9,495,206** |

\*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 **$708,420,298** 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 | $11,373,275 | $26,325,300 | $0 | $37,698,575 |
| I-94 Website | 3,858,782 | 254,679 | $11,608,269 | $0 | $0 | $11,608,269 |
| I-94W | 941,291 | 251,325 | $4,898,324 | $5,647,746 | $0 | $10,546,070 |
| ESTA burden | 23,010,000 | 8,812,830 | $401,688,791 | $0 | $0 | $401,688,791 |
| ESTA fee | 18,930,000 |  | $0 | $0 | $265,020,000 | $265,020,000 |
| **TOTAL** |  |  | **$429,568,659** | **$31,973,046** | **$265,020,000** | **$726,561,705** |

\* 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 (0.267 hours); and the burden for ESTA is 23 minutes (0.383 hours).  We use the Department of Transportation’s guidance on value of travel time for value of time estimates <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).

DHS is adding one optional questions about social media handles to ESTA, however DHS does not believe the average time per response will increase.

There are no changes to Form I-94 or the I-94 website.

1. **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.

1. **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.[[3]](#footnote-4) The estimated collections for the $4 dollar 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.

Under the new law, the Secretary of Homeland Security may waive the travel eligibility restrictions if he determines that such a waiver is in the law enforcement or national security interests of the United States. DHS will establish a CBP-led interagency cell to adjudicate these waivers, on a case-by-case basis, by reviewing and validating the information provided by the applicant through the ESTA system. This review and adjudication process will increase the costs to the government. In order to meet operational demands, 15 full-time CBP employees will be needed to review and adjudicate possible waivers during multiple shifts seven days a week. These 15 additional full-time CBP employees will cost $1,720,368 per year. This is calculated by multiplying (x) the number of employees (15) times the number of estimated annual hours (2,080) = 31,200 hours multiplied (x) by the estimated average loaded rate of a CBP officer ($55.14) = $1,146,912. Other agencies will be consulted during the waiver adjudication process, but no specific costs have been identified for agencies other than DHS.

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[[4]](#footnote-5).

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

CBP proposes to add one optional question about social media handles; however, this addition will not increase the average times per response. There are no changes to Form I-94 or to the I-94 website.

**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 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.

1. 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). [↑](#footnote-ref-2)
2. The Act establishes exceptions to the bar for travel to Iraq, Syria, Iran, and Sudan since 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.” 8 U.S.C. 1187(a)(12)(B). [↑](#footnote-ref-3)
3. 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) [↑](#footnote-ref-4)
4. 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. 8 U.S.C. 1356(q)(2 & 3). [↑](#footnote-ref-5)