



**Homeland
Security**

October 18, 2023

TO: Richard Revesz, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

FROM: Eric Hysen, Chief Information Officer
U.S. Department of Homeland Security

SUBJECT: Emergency Approval Request for Arrival and Departure Record and
Electronic System for Travel Authorization (ESTA) under the Paperwork
Reduction Act

This memorandum requests an emergency approval to revise the existing collection of information under the Paperwork Reduction Act (PRA) for U.S. Customs and Border Protection's (CBP) Arrival and Departure Record and Electronic System for Travel Authorization (ESTA) to account for the designation of Israel to the Visa Waiver Program (VWP). As an ESTA is required for any travel to the United States under the VWP, DHS is revising the collection to include citizens and nationals of Israel. This information collection is approved under OMB control number 1651-0111.

Emergency Justification

DHS is requesting an emergency information collection revision under 5 CFR 1320.13, with the intention of carrying out all the regular requirements for publication and review after implementation.

On September 26, 2023, the Secretary of Homeland Security designated Israel as a VWP participant, to be effective that same day.¹ On September 29, 2023, DHS published a final rule adding Israel to the list of countries designated for VWP participation at 8 C.F.R. § 217.2(a), also effective that same day.² At the time, DHS projected an implementation date of November 30,

¹ See Memorandum for the Secretary from Under Secretary for Strategy, Policy, and Plans Silvers and General Counsel Meyer, *Initial Designation of Israel to the Visa Waiver Program* (Sept. 26, 2023).

² See 88 Fed. Reg. 67,063 (Sept. 29, 2023).

2023,³ and announced that “[b]y November 30, 2023, the Electronic System for Travel Authorization (ESTA) will be updated to allow citizens and nationals of Israel.”⁴

DHS bypassed notice and comment in issuing the rule on multiple grounds, including that implementation of the Secretary’s designation involves a foreign affairs function of the United States.⁵ Such implementation advances the President’s foreign policy goals and directly involves relationships between the United States and foreign countries. Consistent with past practice,⁶ DHS indicated that it would seek a change to the subject information collection on an emergency basis.⁷

The need for prompt implementation grew substantially on October 7, 2023, when the U.S.-designated foreign terrorist organization Hamas conducted an attack on Israel emanating from the Gaza Strip, resulting in the deaths of at least 27 U.S. citizens and 1,300 Israelis. Accelerating the implementation of the ESTA application for eligible Israeli citizens is an important way for the United States to reaffirm its support for Israel, as Israel defends itself against Hamas’ terrorist attacks, and to ensure the safety of vulnerable Israelis.

The agency cannot reasonably comply with the normal clearance procedures under the PRA because delayed implementation would undermine the foreign policy and humanitarian goals of expedited implementation. The need to avoid such public harm meets the standard set forth at 5 C.F.R. 1320.13(a)(1), (2)(i)-(ii).

After implementation of the revised collection to expand the respondent group, CBP will undergo the normal PRA revision process, beginning with a 60-day notice for public comment as described at 5 CFR 1320.10, within 45 days of approval. After publication of the FRNs required under the PRA, DHS will address comments and concerns as necessary and submit the information collection to OMB for three-year approval within the required timeframe.

Thank you for your consideration of this Emergency Request.

³ See *id.* at 67,063, 67,064.

⁴ See DHS, Press Release, Secretary Mayorkas and Secretary Blinken Announce Designation of Israel into the Visa Waiver Program (Sept. 27, 2023), <https://www.dhs.gov/news/2023/09/27/secretary-mayorkas-and-secretary-blinken-announce-designation-israel-visa-waiver> (last accessed Oct. 12, 2023).

⁵ See *id.* at 67,064; 5 U.S.C. § 553(a)(1).

⁶ See 86 Fed. Reg. 54,029, 54,030-31 (Sept. 30, 2021) (designation of Croatia); 84 Fed. Reg. 60,316, 60,318 (Nov. 8, 2019) (designation of Poland).

⁷ See 88 Fed. Reg. at 67,065.