



AILA National Office
918 F Street, NW
Washington, DC 20004

Tel: 202.216.2400
Fax: 202.783.7853

www.aila.org

Jeanne A. Butterfield
Executive Director

Susan D. Quarles
Deputy Director, Finance & Administration

Crystal Williams
Deputy Director, Programs

January 8, 2008

U.S. Customs and Border Protection
Office of International Trade
Office of Regulations and Rulings
Border Security Regulations Branch
1300 Pennsylvania Avenue, NW (Mint Annex)
Washington, DC 20229

**Re: Proposed Collection; Comment Request; Arrival and
Departure Record (Forms I-94 and I-94W) 72 Fed. Reg. 63622,
November 9, 2007**

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) submits the following comments to the "Proposed Collection; Comment Request; Arrival and Departure Record (Forms I-94 and I-94W)," 72 Fed. Reg. 63622, November 9, 2007 (the "proposal").

We appreciate the opportunity to comment on the interim rule and believe that we are particularly well qualified to do so. AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing and teaching in the field of immigration and nationality law. Our mission includes the advancement of law pertaining to immigration and naturalization, and the facilitation of justice in the field. AILA members regularly assist nonimmigrant visa holders who travel to and from the United States for business and pleasure and are familiar with the ever-changing complexities of immigration.

AILA recognizes that it is vitally important to enhance our nation's security and that we must do so in a way that balances our need for security with the efficient cross-border flow of people, goods, and services that are the foundation of the economy and American way of life. We support the "secure borders, open doors" policy articulated by the U.S. Department of State and the Department of Homeland

Security.¹ We also support allocation of the appropriate government resources to develop a smart border policy that balances economics and security, with sensible requirements, applied with consistency.

AILA is familiar with the process by which a traveler coming to the United States temporarily completes white Form I-94 (if arriving on a nonimmigrant visa), or, completes a green-colored Form I-94W (if eligible for admission without a visa under the Visa Waiver Program).² Under the proposal, the traveler's e-mail address and telephone number would be added to information collected on Forms I-94 and I-94W.³ AILA does not believe the collection of the e-mail address and telephone number for Form I-94 and Form I-94W as described in the proposal is necessary for the proper performance of CBP functions, and may cause confusion and delay in the admissions process.

a) The Collection of Information Would be Redundant to Information Collected for Applicants for Nonimmigrant Visas, Which Information is Already is Available to CBP.

To some extent, automated collection techniques through information technology already exist to collect e-mail and telephone number information for travelers. Currently, foreign nationals who apply for nonimmigrant visas to the United States complete a Form DS-156, which is submitted to the U.S. Department of State for visa processing. The visa applicant is asked to provide contact information on State Department Form DS-156, including an e-mail address and contact telephone numbers. The information is added to the Consular Affairs Consolidated Database (CCD) and may be available to CBP through the interoperable components of the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) system.⁴ To that extent, seeking the e-mail address and telephone number for the Form I-94 would be redundant.

AILA recognizes that not all travelers with a Form I-94 or Form I-94W will have applied for a nonimmigrant visa. Travelers arriving on the Visa Waiver Program under 8 CFR § 217 do not apply for a visa or complete a DS-156. Nor is a visa required of all citizens of Canada, Bermuda, Bahamian nationals or British subjects resident in certain islands, or certain Caribbean residents who are visa exempt under 8 CFR § 212.1(a) or (b). Thus, there are some travelers to the United States who might not have been required to provide any telephone number or e-mail address. Further, AILA recognizes that for those who have provided the information through the visa application process, CBP might seek to inquire about whether the information is current. In the event the proposal was to be

¹The concept of "Secure Borders, Open Doors" was described in January, 2006 in a joint announcement of Secretary of State Condoleezza Rice and Department of Homeland Security Secretary Michael Chertoff. Their "joint vision" calls for "maintaining the right balance between stronger security and facilitating travel." See, "Rice-Chertoff Joint Vision: Secure Borders and Open Doors in the Information Age," (<http://www.state.gov/r/pa/prs/ps/2006/59242.htm>).

² 8 CFR §§ 235.1(h), 217.2(b)(1).

³ 72 Fed. Reg. 63622

⁴ US-VISIT Privacy Impact Assessment, 70 Fed. Reg. 39300, 39306 (July, 7, 2005).

implemented, a procedure should be established to utilize existing technology and to avoid asking travelers to provide redundant information.

b) The Estimated Time for Providing the Information is Underestimated; Collection of Information Will Slow the Entry Process.

The proposal estimates that collecting the information will add seven minutes to the process. AILA anticipates that the actual amount of time may be substantially longer. When travelers are asked to provide the information, undoubtedly questions will arise about how to comply under various scenarios, such as the following:

- The traveler will not be reachable by telephone or e-mail at all while in the United States, for example, the traveler will be camping in the wilderness. What contact information will the traveler be expected to provide?
- The traveler does not have any e-mail address. Will the traveler be asked to provide someone else's e-mail address?
- The traveler will be staying with a person in the United States who has not given authority to give out his or her telephone number. Will the traveler be deemed noncompliant?
- The traveler does not know the telephone number of the place where he or she will be staying. Will the traveler be refused entry until he or she can provide the number?
- The traveler's itinerary calls for staying at various locations. Will the traveler be asked and expected to provide the telephone numbers for all the locations?

Addressing all these issues, and others that may arise, will unduly slow the entry process.

c) The Consequences of Failing to Provide a Suitable E-Mail Address or Telephone Number are Unclear from the Proposal.

AILA has concerns that failure to provide CBP with an e-mail address or telephone number that CBP could use to contact the traveler might be deemed a violation of nonimmigrant status, or raise suspicion of misrepresentation, or cause additional scrutiny on subsequent travel to the United States.

The issue may arise where CBP attempts to contact the traveler at an e-mail address or telephone number provided, and the traveler does not respond. The proposal does not indicate what consequences may ensue. AILA questions whether the consequences would include the following:

- Being deemed to have violated nonimmigrant status;
- Being deemed to have made a material misrepresentation;
- Being rendered inadmissible for future travel to the United States;

- Being ineligible for the visa waiver program for future travel to the United States.

If CBP intends to attach negative consequences for failure to provide contact information or for providing erroneous or ineffective contact information, an adequate notice and comment period must be provided, and specific notice to travelers must be provided as to what information is required, and why.

d) Piecemeal Revision to the Form I-94 Is Not Efficient; The I-94 Needs Substantial Reform to Make the Patchwork Regulations Governing it More Effective.

To enhance the quality, clarity and utility of the I-94, a more comprehensive revision should be considered. The patchwork of I-94 regulations set forth in 8 CFR §§ 214, 217, 231 and 235 contribute to the lack of clarity. As one example, considerable confusion exists regarding several issues surrounding Arrival-Departure Records, such as issuance and surrender of multiple entry I-94s. At some ports the I-94 attached to an I-797 is recognized as an entry document, and at other ports it is not, and a new I-94 must be issued. Multiple entry I-94s usually are required to be surrendered when departing the United States by air, but not land, even though the regulations do not require surrender of multiple entry I-94s prior to expiration.⁵ The mechanism for surrendering Forms I-94 when departing the United States by land is inadequate; the recommended method is to mail it back to a designated address after departure. Requesting and e-mail address and telephone number on the I-94 where many questions remain and issues remain unresolved can contribute to uncertainty, resulting in a chilling effect on international travel without enhancing the effective operation of CBP functions.

E. Conclusion

We urge CBP to reconsider whether the proposal described is necessary and whether the revision, as a whole, merits the investment such an endeavor will require.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

⁵ 8 C.F.R. § 231.1(b).