

relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*G. Executive Order 12988: Civil Justice Reform*

This final rule meets the relevant standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

*H. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule will require some minor edits to the Form I-566, Inter-Agency Record of Individual Requesting Change/Adjustment to or From A or G Status; or Requesting A, G, or NATO Dependent Employment Authorization, (currently approved OMB Control No. 1615-0027). Accordingly, USCIS has submitted an OMB 83-C, Correction Worksheet, to OMB for review and approval for the minor edits to the form and instructions.

**List of Subjects**

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 214—NONIMMIGRANT CLASSES**

■ 1. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Public Law 110-229; 8 CFR part 2.

- 2. Section 214.2 is amended by:
  - a. Removing the “.” at the end of paragraph (a)(2)(v) and adding “; or” in its place;
  - b. Adding a new paragraph (a)(2)(vi);
  - c. Removing the word “and” at the end of paragraph (g)(2)(iv);
  - d. Removing the “.” at the end of paragraph (g)(2)(v) and adding “; or” in its place; and by
  - e. Adding a new paragraph (g)(2)(vi).
 The additions read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(vi) An immediate family member of an A-1 or A-2 principal alien described in 22 CFR 41.21(a)(3)(i) to (iv) with A-1 or A-2 nonimmigrant status, who falls within a category of aliens recognized by the Department of State as qualifying dependents.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(vi) An immediate family member of a G-1, G-3, or G-4 principal alien described in 22 CFR 41.21(a)(3)(i) to (iv) with G-1, G-3, or G-4 nonimmigrant status who falls within a category of aliens designated by the Department of State as qualifying dependents.

\* \* \* \* \*

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

■ 3. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; Title VII of Pub. L. 110-229; 8 CFR part 2

■ 4. Section 274a.12 is amended by revising paragraphs (c)(1) and (c)(4) to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

\* \* \* \* \*

(c) \* \* \*

(1) An alien dependent of a foreign government official A-1 or A-2 principal alien defined in 8 CFR 214.2(a)(2), and who presents a fully executed Form I-566 bearing the endorsement of an authorized representative of the Department of State;

\* \* \* \* \*

(4) An alien dependent of an officer of, representative to, or employee of an international organization G-1, G-3, or G-4 principal alien defined in 8 CFR 214.2(g)(2), and who presents a fully executed Form I-566 bearing the endorsement of an authorized

representative of the Department of State;

\* \* \* \* \*

**Janet Napolitano,**

*Secretary.*

[FR Doc. 2010-19620 Filed 8-6-10; 8:45 am]

**BILLING CODE 9111-97-P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**8 CFR Part 217**

[USCBP-2010-0025; CBP Dec. No. 10-25]

**RIN 1651-AA83**

**Electronic System for Travel Authorization (ESTA): Travel Promotion Fee and Fee for Use of the System**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Interim final rule; solicitation of comments.

**SUMMARY:** Nonimmigrant aliens who wish to enter the United States under the Visa Waiver Program at air or sea ports of entry must obtain a travel authorization electronically through the Electronic System for Travel Authorization (ESTA) from U.S. Customs and Border Protection prior to departing for the United States. This rule requires ESTA applicants to pay a congressionally mandated fee of \$14.00, which is the sum of two amounts: a \$10 travel promotion fee for an approved ESTA statutorily set by the Travel Promotion Act and a \$4.00 operational fee for the use of ESTA as set by the Secretary of Homeland Security to ensure recovery of the full costs of providing and administering the ESTA system.

**DATES:** This interim final rule is effective on September 8, 2010. Comments must be received on or before October 8, 2010.

**ADDRESSES:** Please submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2010-xxxx.

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

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking.

All comments will be posted without change to <http://www.regulations.gov>, including any personal information provided.

- **Docket:** For access to the docket to read background material or comments, go to <http://www.regulations.gov>. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20229. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

- For additional information on ESTA, visit the Web site: <http://www.cbp.gov/esta>.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Shepherd, Office of Field Operations, [CBP.ESTA@dhs.gov](mailto:CBP.ESTA@dhs.gov) or (202)-344-2073.

#### **SUPPLEMENTARY INFORMATION:**

#### **Table of Contents**

I. Public Comments
II. Background
A. Travel Promotion Act of 2009
B. Operational Fee Amount
C. Fee Collection
III. Statutory and Regulatory Requirements
A. Administrative Procedure Act
B. Executive Order 12866
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132
F. Executive Order 12988 Civil Justice Reform
G. Paperwork Reduction Act
H. Privacy Interests
List of Subjects
Amendments to the Regulations

#### **I. Public Comments**

Interested persons are invited to submit written comments on all aspects of this interim final rule, including the amount of the fee. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental or federalism effects of the rule, as well as comments related to the Paperwork Reduction Act. We urge commenters to explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

#### **II. Background**

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security, in consultation with the Secretary of State, may

designate certain qualifying countries as Visa Waiver Program (VWP) countries.<sup>1</sup> Eligible travelers who are nationals of VWP countries are not required to obtain a visa to travel to the United States. Other nonimmigrant alien travelers generally must obtain a visa from a U.S. embassy or consulate and undergo an interview by consular officials overseas, in advance of travel to the United States.

On August 3, 2007, the President signed into law the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Public Law 110-53. Section 711 of the 9/11 Act required that the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, develop and implement a fully automated electronic travel authorization system to collect biographical and other information as the Secretary determines necessary to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. On June 9, 2008, the Department of Homeland Security (DHS) published an interim final rule (IFR) in the **Federal Register** (73 FR 32440) announcing the creation of the Electronic System for Travel Authorization (ESTA) program for aliens traveling to the United States by air or sea under the VWP. *See* 8 CFR 217.5.

The ESTA system now requires VWP travelers arriving in the United States by air or sea to provide certain biographical and other information electronically to CBP in advance of travel so that CBP can determine eligibility for travel to the United States under the VWP. Each ESTA travel authorization generally is valid for two years. Implementation of ESTA as a mandatory requirement initially was delayed to allow carriers and the public to become ESTA-compliant. Since January 12, 2009, all nonimmigrant aliens traveling to the United States under the VWP on an air or sea carrier must obtain travel

<sup>1</sup> The list of countries currently eligible to participate in the VWP is set forth at 8 CFR 217.2(a). Under the VWP, eligible nationals of VWP countries may apply for admission to the United States at a U.S. port of entry as nonimmigrant aliens for a period of ninety (90) days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory authority. Further details regarding the VWP are contained in the background section of the June 9, 2008 interim final rule, at 73 FR 32440, and on the Web site <http://www.cbp.gov/esta>. As of the date of publication of this interim final rule, the current list of designated VWP countries can be found at 75 FR 15991 (Mar. 31, 2010).

authorization from the ESTA Web site. 73 FR 67354.

Travel authorization under ESTA allows an alien from a VWP country to travel to the United States, however, it does not serve as a determination of admissibility to the United States. If an alien's travel authorization application is denied, the alien may still seek to obtain a visa to travel to the United States through a U.S. embassy or consulate or may reapply through the ESTA Web site at a later date if circumstances change or an error was made during the application process.

Although the 9/11 Act authorized the Secretary to charge a fee for ESTA to recover the costs of providing and administering the System, the ESTA IFR did not establish a fee. At the time the IFR was issued, DHS was focused on the successful development and deployment of the ESTA system to collect the relevant traveler data and to properly vet applicants. DHS wanted to ensure the efficient operation and maintenance of the ESTA system before establishing an operational fee to recoup the costs of processing ESTA applications and vetting individual applicants. On January 12, 2009, when the ESTA system became mandatory, DHS began evaluating the costs associated with operating and maintaining the system in order to establish a fee. DHS has completed this evaluation and a detailed fee analysis explaining how the ESTA operational fee is calculated and the methodology used can found in the public docket for this rule at <http://www.regulations.gov>.

#### **A. Travel Promotion Act of 2009**

On March 4, 2010, the United States Capitol Police Administrative Technical Corrections Act of 2009, Public Law 111-145 was enacted. The Travel Promotion Act of 2009 (TPA), which was contained in section 9, mandates that the Secretary establish a fee for the use of the ESTA system and begin assessing and collecting that fee no later than 6 months after enactment of the TPA. *See* section 217(h)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. 1187(h)(3)(B). Accordingly, to comply with the TPA, the Secretary is required to assess and collect the fee by September 4, 2010.

The TPA expressly provides that the required initial ESTA fee shall consist of the sum of "\$10 per travel authorization" (travel promotion fee) plus "an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary" (operational fee). The TPA provides that the \$10 per travel authorization is to be

credited to the Travel Promotion Fund established by the TPA and is to be used by the Corporation for Travel Promotion, also established by the TPA, to promote international travel to the United States. The operational fee is to be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer ESTA. Under the TPA, the travel promotion fee has a sunset provision and the Secretary is authorized to collect this fee only through September 30, 2015.<sup>2</sup> The operational fee, in contrast, does not include a sunset provision but will be reassessed on a regular basis to ensure it is set at a level to fully recover ESTA operating costs.

Based on the TPA, this rule establishes an initial ESTA fee that consists of the sum of “\$10 per travel authorization” (travel promotion fee) plus “an amount that will at least ensure recovery of the full costs of providing and administering the [ESTA] System, as determined by the Secretary” (operational fee) no later than 6 months after enactment of the TPA. *See* 8 U.S.C. 1187(h)(3)(B)(i).

#### B. Operational Fee Amount

DHS has determined that a \$4.00 fee is necessary to ensure recovery of the full costs of providing and administering the system. This fee takes into account the costs to develop, implement, maintain, and make any necessary updates to the ESTA system. A full explanation of the methodology used to determine the \$4.00 operational ESTA fee is contained in the ESTA Fee

Analysis (*Explanation of the Electronic System for Travel Authorization (ESTA) Fee*, April 2010), which can be found in the public docket for this rulemaking at <http://www.regulations.gov>. A brief summary of the methodology is provided below.

The following methodology was employed to determine the \$4.00 ESTA fee for applications through FY 2015:

1. Determine the costs associated with ESTA—initial investment, direct, and indirect costs associated with ESTA development, operation, and maintenance. Costs are adjusted upward annually to account for inflation.

2. Estimate the total number of ESTA applicants—total VWP travelers adjusted downward to account for travelers who make multiple trips during the 2-year period each ESTA is valid. Travelers will remit the ESTA fee upon initial application; they need not pay the fee each time they visit the United States during the authorization period.

3. Determine the fee per applicant by dividing the total costs, plus an operating carryover amount, by the number of projected ESTA applicants. The carryover is included to assure there is sufficient funding in the event there is an unforeseen drop in ESTA applicants.

The estimated costs associated with ESTA from FY 2008 through FY 2015 are \$312 million. Costs in FY 2008 and FY 2009 totaled approximately \$39.5 million. From FY 2010 through FY 2015, costs include the administration, staffing, and operation of the system (plus overhead costs), as well as

information technology for other CBP and non-CBP systems that permit information sharing and services that are necessary for ESTA to operate effectively. An additional carryover sum of \$12.5 million, equal to one fiscal quarter of operating costs, is added to the total FY 2008 through FY 2015 costs as a contingency in case travel volumes fall below expected levels.

Using traveler projection data from the Department of Commerce, Office of Travel and Tourism Industries, CBP estimated the future number of VWP travelers for FY 2011 through FY 2015. CBP then adjusted that estimate to account for the estimated number of “repeat travelers” during that period. These repeat travelers would, in most cases, be required to apply for a travel authorization only once over a 2-year period, not each time they traveled to the United States. Using data from CBP’s Advance Passenger Information System (APIS), CBP calculated an actual percentage of past repeat travelers, which was then applied as an estimated percentage of “repeat travelers” during the period from FY 2011 through FY 2015. With this adjustment for repeat travelers, the cumulative total of ESTA applicants FY 2011 through FY 2015 is an estimated 86 million travelers.

The \$4.00 fee was determined by dividing the total estimated costs (\$312 million in costs + \$12.5 million for a carryover reserve) by the total ESTA applicants (86 million) through FY 2015, then rounding up to the nearest whole dollar amount. Exhibit 1 shows the calculation of the fee.

#### EXHIBIT 1—CALCULATION OF ESTA OPERATIONAL FEE

(A) Cumulative costs from FY 2008–2015 .....	\$312,025,861
(B) Carryover reserve funding .....	12,470,060
(C) Total (A + B) .....	324,495,921
(D) Estimated number of ESTA applications from FY 2011–2015 .....	86,180,659
(E) Calculated fee (C ÷ D) .....	3.77
Calculated fee, rounded up to the nearest whole dollar .....	4.00

Any changes to the \$4.00 ESTA operational fee will be accomplished through a future rulemaking consistent with the Administrative Procedure Act.

#### C. Fee Collection

During the ESTA application process, the ESTA user will be directed to provide credit card information to pay the non-refundable \$4.00 operational fee and authorize the \$10 travel promotion fee through the Federal Government’s

online payment system, Pay.gov. The \$10 travel promotion fee will be charged to the applicant’s credit card only when the ESTA is granted. Pay.gov is a system by which parties can make secure electronic payments to many Federal Government agencies. The Pay.gov Web site is available 24 hours a day, 7 days a week (holidays included) for users to submit payments.

The operational fee discussed in this notice is for processing the application and vetting the individual applicant. The operational fee is nonrefundable if a traveler’s application is denied. In the event that an ESTA application is denied, the traveler may apply for a visa through a U.S. embassy or consulate or may reapply through the ESTA Web site at a later date if circumstances change or an error was made during the ESTA

<sup>2</sup> On July 2, 2010, the Homebuyer Assistance and Improvement Act of 2010, in part, amended the

TPA by extending the sunset provision of the travel promotion fee and authorizing the Secretary to

collect this fee through September 30, 2015. *See* Pub. L. 111–198.

application process. Each ESTA applicant will incur the \$4.00 operational fee when he or she submits an ESTA application. By contrast, an applicant will incur the \$10 travel promotion fee only if he or she receives travel authorization.

VWP travelers with a valid travel authorization will be able to update and/or correct certain information provided on the ESTA application (such as the destination address in the United States) without having to pay another operational or travel promotion fee. However, as provided in the ESTA IFR, certain events, such as the issuance of a new passport, will require the VWP traveler to apply for a new travel authorization through ESTA. In that case, the traveler would be required to pay the operational fee as part of the new application process. Travelers receiving a new authorization before September 30, 2015 would also be required to pay the \$10 travel promotion fee. Detailed instructions are available on the ESTA Web site regarding how to make ESTA updates and corrections and when a new travel authorization is required.

### III. Statutory and Regulatory Requirements

#### A. Administrative Procedure Act

The APA generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, pursuant to 5 U.S.C. 553(b)(B), a notice of proposed rulemaking is not required when the agency determines, for good cause, that notice and public participation is impracticable, unnecessary, or contrary to the public interest.

In this case, the TPA requires the Secretary of Homeland Security to begin assessing and collecting a fee equal to the sum of the travel promotion fee (\$10) and the operational fee (\$4.00) within 6 months of the TPA's enactment, which is September 4, 2010. See 8 U.S.C. 1187 (h)(3)(B)(i). The \$10 travel promotion fee is intended to fund the Corporation for Travel Promotion (Corporation) and, once collected, the \$10 travel promotion fees are to be made available by the Secretary of the Treasury to the Corporation for start-up expenses. Accordingly, the TPA requires DHS to be able to collect the ESTA fees to fund the Corporation. If DHS is unable to collect the ESTA fee, the Secretary of the Treasury would be unable to appropriate funding to cover the Corporation's initial expenses and

activities. Moreover, given the limited duration of the travel promotion fee, which expires on September 30, 2015, it seems likely that Congress intended that the ESTA fee would be collected as soon as possible, but no later than six months from enactment of the TPA, which is September 4, 2010.

Considering the TPA's time constraints, implementing the new ESTA fees through notice and comment rulemaking process would prevent the Corporation from promptly receiving the funds necessary to serve its function of promoting tourism to the United States. As such, the statutory timeline imposed by the TPA to collect the sum of the travel promotion fee and the operational fee by September 4, 2010, when coupled with the sunset provision for the travel promotion fee, makes it impracticable for DHS to engage in the notice and comment rulemaking process. This IFR provides the mechanism through which DHS is able to assess and collect the ESTA fees in a manner consistent with the statutory provisions.

In sum, providing the public the opportunity to comment on these regulations prior to implementation would hamper the ability of DHS to collect the necessary fees as required under the TPA by September 4, 2010. Accordingly, DHS has determined that there is good cause to publish this rule without prior public notice and comment procedures. The Department, however, is interested in obtaining public comments on this interim final rule prior to the issuance of a final rule. Therefore, DHS is providing the public with the opportunity to comment after publication of this interim final rule. All comments received will become a matter of the public record.

#### B. Executive Order 12866

Executive Order 12866 (Regulatory Planning and Review; September 30, 1993) requires Federal agencies to conduct economic analyses of significant regulatory actions as a means to improve regulatory decision-making. Significant regulatory actions include those that may “(1) [h]ave an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of

recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.” This rule is a significant regulatory action because the annual effect on the economy is \$100 million or more in any one year. The annualized cost to applicants, primarily in the form of transfers from foreign citizens to the U.S. government, is estimated between \$152 million and \$258 million. As a result, this rule has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The following summary presents the costs to applicants and benefits of the rule.<sup>3</sup>

OMB Circular A-4 states the following with regard to the scope of Federal regulatory assessments: “Your analysis should focus on benefits and costs that accrue to citizens and residents of the United States. Where you choose to evaluate a regulation that is likely to have effects beyond the borders of the United States, these effects should be reported separately.”<sup>4</sup> Additionally, Circular A-4 states: “You should not include transfers in the estimates of the benefits and costs of a regulation. Instead, address them in a separate discussion of the regulation's distributional effects.”<sup>5</sup> CBP notes that the costs estimated in this analysis are primarily transfers, in the form of fees, from foreign visitors to the U.S. government. As described in more detail below, CBP has also estimated a charge for currency conversion that ESTA users will incur when they make their fee payments in pay.gov. These currency conversion costs are not transfers, but they are incurred by foreign travelers and are paid to foreign financial institutions. Thus, the costs to applicants presented in this section are transfers or costs incurred by foreign entities.

To determine the total cost to applicants of ESTA, CBP used the population of travelers identified in the analysis for the ESTA IFR.<sup>6</sup> For that analysis, CBP developed four methods to predict ESTA-affected travelers to the

<sup>3</sup> The complete “Regulatory Assessment” can be found in the docket for this rulemaking: <http://www.regulations.gov>.

<sup>4</sup> See U.S. Office of Management and Budget, September 17, 2003. Circular A-4 “Regulatory Analysis.” Page 15.

<sup>5</sup> See OMB Circular A-4, Page 38.

<sup>6</sup> See “The Regulatory Assessment for the Interim Final Rule for Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization.” U.S. Customs and Border Protection, June 2008. This document is available at <http://www.regulations.gov> under docket no. USCBP-2008-0003, supporting and related materials.

United States over the next 10 years using information available from the Department of Commerce, Office of Travel and Tourism Industries (OTTI), documenting historic travel levels and future projections. Method 1 employs the travel-projection percentages provided by OTTI and extrapolates them to the end of the period of analysis (OTTI projects travel only through 2013; CBP calculates a simple extrapolation to 2020). Method 2 (modified OTTI projections) presents a more pessimistic outlook on travel: all projected percentages from Method 1 are reduced

by 2 percent throughout the period of analysis. Methods 3 and 4 incorporate periodic downturns (one late in the period; one early), which are prevalent, though not necessarily predictable, in international travel. CBP used Method 1 for the fee calculation because it takes into account the most recent OTTI estimate, accounts for the 2008 downturn in air travel, and it is a midrange estimate compared to the other methods. The other methods are presented here for further information.

Because a travel authorization obtained through ESTA generally is

valid for 2 years, CBP adjusted the populations in accordance with the ESTA Fee Analysis to reflect only those travelers who will be required to apply for authorization in any given year. For the purposes of this analysis and to make the calculations more tractable, CBP assumed the fee will be charged beginning in January 2011. Exhibit 2 compares the estimated number of travelers and the estimated number of ESTA applicants ("Applicants") per year.

#### EXHIBIT 2—TOTAL TRAVELERS AND ESTA APPLICANTS

[2011–2020, in millions]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Method 1:										
Total Travelers .....	19.40	20.19	20.92	21.68	22.47	23.29	24.15	25.04	25.97	26.94
Applicants .....	15.97	16.62	17.23	17.85	18.50	19.18	19.88	20.62	21.38	22.18
Method 2:										
Total Travelers .....	18.26	18.64	18.94	19.25	19.57	19.89	20.23	20.57	20.92	21.28
Applicants .....	15.03	15.35	15.59	15.85	16.11	16.38	16.65	16.93	17.22	17.52
Method 3:										
Total Travelers .....	19.40	17.72	20.63	24.03	27.29	26.36	29.93	33.94	39.65	38.38
Applicants .....	15.97	14.59	16.99	19.79	22.48	21.71	24.67	27.98	32.69	31.65
Method 4:										
Total Travelers .....	24.04	27.29	26.33	29.94	33.93	39.62	38.29	43.62	50.60	59.28
Applicants .....	19.81	22.48	21.69	24.68	27.96	32.67	31.57	35.97	41.75	48.92

#### Costs to Travelers

CBP determined that the ESTA operational fee will be \$4.00 per application. The methodology and calculations used to determine this fee can be found in the ESTA Fee Analysis (*Explanation of the Electronic System for Travel Authorization (ESTA) Fee*, April 2010). The TPA also requires a \$10 travel promotion fee to be charged through ESTA that will be credited to the Travel Promotion Fund established by the TPA and is to be used by the Corporation for Travel Promotion, also established by the TPA, to promote international travel to the United States.

Per the legislation, this fee will be effective through September 30, 2015.

In addition to the ESTA operational and travel promotion fees, many credit card issuers charge a fee for foreign currency transactions, which is generally a percentage of the total transaction amount. Because the ESTA fees must be paid by credit card in U.S. dollars and not local currency, travelers from VWP countries will likely incur a transaction fee. For this analysis, CBP assumes all travelers will incur a transaction fee, whether they apply using the ESTA website or are registered by a carrier or travel agent who will then pass the fee on to the traveler. CBP calculated a weighted average of foreign

currency transaction fees based on market share in order to take into account not only the fee charged by each issuer, but the volume of purchases made using the cards of each issuer.

When the average foreign currency transaction fee of 2.7 percent is applied to the ESTA fees, the total charge will be \$14.37. Exhibit 3 displays the total fees, including those charged by the credit card companies, for visitors from each country in 2011, the first full year CBP estimates that the fee will be charged. These totals are based on the populations used by CBP to calculate the fee and only reflect unique travelers who would be required to apply in 2011.<sup>7</sup>

#### EXHIBIT 3—TOTAL ESTA FEES FOR ALL TRAVELERS IN 2011

[Undiscounted]

	Method 1	Method 2	Method 3	Method 4
Australia .....	\$ 9,435,603	\$ 8,892,390	\$ 9,435,603	\$ 10,091,673
Austria .....	2,224,768	2,094,348	2,224,768	2,800,120
Belgium .....	3,317,849	3,123,469	3,317,849	4,011,893
Czech Republic .....	782,466	737,637	782,466	773,296
Denmark .....	3,441,443	3,240,839	3,441,443	4,009,018

<sup>7</sup> Because Andorra, Brunei, Monaco, Lichtenstein, and San Marino have limited historic data, no predicted growth rates, or very few visitors (only

about 1,000 each on an annual bases), they are excluded from the analysis. Travelers from these

countries will still be subject to the ESTA application fee.

## EXHIBIT 3—TOTAL ESTA FEES FOR ALL TRAVELERS IN 2011—Continued

[Undiscounted]

	Method 1	Method 2	Method 3	Method 4
Estonia .....	132,189	123,881	132,189	199,972
Finland .....	1,527,821	1,438,263	1,527,821	1,839,227
France .....	17,975,811	16,915,414	17,975,811	21,624,714
Germany .....	22,406,375	21,077,979	22,406,375	28,683,080
Greece .....	842,330	793,361	842,330	941,230
Hungary .....	612,894	576,300	612,894	708,057
Iceland .....	474,855	444,672	474,855	755,962
Ireland .....	7,114,881	6,690,302	7,114,881	9,835,632
Italy .....	11,195,318	10,529,662	11,195,318	13,987,260
Japan .....	44,835,862	42,216,569	44,835,862	58,384,185
Latvia .....	130,794	122,602	130,794	184,118
Lithuania .....	167,330	157,298	167,330	177,061
Luxembourg .....	137,535	129,371	137,535	147,108
Malta .....	69,105	64,966	69,105	61,186
Netherlands .....	9,043,867	8,513,431	9,043,867	10,595,705
New Zealand .....	2,699,106	2,544,999	2,699,106	2,790,044
Norway .....	2,611,488	2,459,019	2,611,488	2,924,101
Portugal .....	1,511,077	1,422,122	1,511,077	1,818,487
Singapore .....	1,367,203	1,287,189	1,367,203	1,667,412
Slovakia .....	349,336	329,832	349,336	291,686
Slovenia .....	261,574	246,195	261,574	283,967
South Korea .....	8,728,408	8,224,994	8,728,408	11,154,010
Spain .....	8,829,048	8,303,456	8,829,048	11,715,276
Sweden .....	5,141,050	4,839,519	5,141,050	6,103,610
Switzerland .....	3,561,371	3,352,158	3,561,371	4,320,266
UK .....	58,650,315	55,176,504	58,650,315	71,806,658
Total .....	\$229,579,076	\$216,068,741	\$229,579,076	\$284,686,015

CBP next totaled these costs to applicants over the next 10 years at a 3 and 7 percent discount rate, per guidance provided in OMB Circular A-4. Total present value of the costs to applicants over the period of analysis

could total \$1.2 billion to \$2.2 billion. Annualized costs to applicants are estimated at \$152 million to \$258 million. Method 1 was the method used to estimate the total costs and transfers due to the fee and is our primary

estimate. Again, CBP notes that the bulk of these costs to applicants are transfers from foreign travelers to the U.S. government. See Exhibit 4.

## EXHIBIT 4—TOTAL PRESENT VALUE AND ANNUALIZED COSTS TO APPLICANTS OF THE ESTA FEE, 2011–2020

	Total present value (\$millions)		Annualized costs to applicants (\$millions)	
	3%	7%	3%	7%
Method 1 .....	\$1,510	\$1,295	\$172	\$179
Method 2 .....	1,338	1,159	152	159
Method 3 .....	1,672	1,398	190	195
Method 4 .....	2,208	1,829	251	258

Travelers using ESTA will incur costs in addition to the fee, including the time burden of applying for authorization and the time burden and cost to obtain a visa if authorization is denied. These costs were already addressed in the Regulatory Assessment for the June 2008 ESTA IFR and should not be considered here in order to avoid double counting these costs.

## Change in Travel Demand

While the ESTA operational and travel promotion fees are very low relative to the overall costs of international travel, it is still possible

that they could cause a reduction in the number of travelers coming to the United States from VWP countries. For this reason, CBP uses an “elasticity of demand” for long-haul international leisure and long-haul international business trips available from the published travel literature to analyze the impact of the change in cost (out-of-pocket expenses) for travelers using ESTA. Using an elasticity of demand allows CBP to get a sense of potential changes in the number of travelers in response to a change in the cost of a trip. Elasticities should not be viewed as the definitive level that demand could

decrease due to an increase in travel price. In reality, a relatively minimal charge of \$14.37 is much more likely to reduce the amount of money a traveler spends on other portions of the trip than to cause a traveler to cancel the trip altogether.

Because the elasticity of demand differs for business and leisure travelers, we first identify the portion of travel to the United States from VWP countries that can be assigned to those purposes using air traveler survey data from OTTI. CBP then uses OTTI data to identify the average cost per VWP traveler for a flight to the United States.

Airfare costs vary by purpose of travel, but range from an average \$1,406 per flight for a leisure traveler on vacation to \$2,687 per flight for a business traveler.<sup>8</sup>

To calculate the percent change in the average cost per flight, CBP divided the amount of the total charges by the original average cost per flight. CBP

then multiplied the resulting percent increase by the elasticity of demand for air travel estimated in a study by the Canadian Department of Finance, -0.265 for long-haul international business travel and -1.040 for long-haul international leisure travel, to calculate the expected percent decrease in

passenger volume.<sup>9</sup> Exhibit 5 shows the total estimated number of passengers that could potentially be lost for each of the four population projections. While the impact varies for different categories of travelers, CBP estimates that up to 0.85 percent of travelers could be lost in a given year.

#### EXHIBIT 5—TOTAL CHANGE IN VISITORS BY YEAR, 2011–2020

[Excluding intended benefits to tourism from spending the TPA revenue]

	Method 1	Method 2	Method 3	Method 4
2011 .....	– 135,337	– 127,363	– 135,337	– 167,978
2012 .....	– 140,542	– 129,715	– 123,615	– 190,212
2013 .....	– 145,501	– 131,698	– 143,820	– 182,306
2014 .....	– 150,652	– 133,728	– 167,269	– 208,382
2015 .....	– 156,005	– 135,807	– 189,536	– 235,856
2016 .....	– 50,142	– 42,808	– 56,415	– 85,365
2017 .....	– 51,936	– 43,484	– 64,418	– 81,972
2018 .....	– 53,802	– 44,177	– 72,961	– 93,111
2019 .....	– 55,742	– 44,888	– 85,111	– 108,127
2020 .....	– 57,759	– 45,615	– 81,877	– 126,441

It is important to recognize, however, the positive impacts that the Travel Promotion Fund could have on international travelers to the United States. CBP is not able to estimate or project these impacts with any degree of confidence because the program and fund are not yet in place and the details of the administration of the fund to promote travel is currently unknown. Consequently, this analysis is not making specific projections about the *overall* net increase or decrease increase in travel due to the Travel Promotion Act.

Because there are many unknown variables in this analysis, there are potential costs that CBP cannot quantify with any degree of confidence. Costs

that are important to consider, but that CBP has not quantified include potential decreases in visitor spending, and possible reciprocity by VWP countries (where these countries could develop ESTA-like systems and charge U.S. VWP travelers for applications of admissibility).

#### Benefits of the Regulation

This rule allows CBP to comply with the TPA's express mandate that the Secretary establish a fee for the use of the ESTA system and also establish a \$10 travel promotion fee. The benefits of ESTA include enhanced security, cost savings associated with advanced determination of inadmissibility, and costs forgone by travelers, such as visa fees. These are discussed in the ESTA

IFR Regulatory Assessment and are not considered here to avoid double-counting.

As noted above, the United States travel and tourism may benefit from increased international travelers based on promotion efforts made possible by the Travel Promotion Fund.

#### A–4 Accounting Statement

Note that the transfers listed in the A–4 Accounting Statement below are only for the ESTA fees (\$14.00), and do not include the currency conversion charge (\$0.37). This \$0.37 charge is paid by foreign entities to foreign entities and is not included in this accounting statement of impacts to the U.S. economy.

#### CLASSIFICATION OF EXPENDITURES, 2011–2020

[2010]

	3% Discount rate	7% Discount rate
Costs:		
Annualized monetized costs .....		
Annualized quantified, but un-monetized costs.		
Qualitative (un-quantified) costs .....		
Transfers .....		
Benefits:		
Annualized monetized benefits .....		
Annualized quantified, but un-monetized benefits.		

<sup>8</sup> U.S. Office of Travel and Tourism Industries. 2008. "Overseas Travelers to the United States." Table 26.

<sup>9</sup> Gillen, David W., William G. Morrison and Christopher Stewart. "Air Travel Demand Elasticities: Concepts, Issues and Measurement."

Canada Department of Finance, October 6, 2008. Available at [http://www.fin.gc.ca/consultresp/Airtravel/airtravStdY\\_-eng.asp](http://www.fin.gc.ca/consultresp/Airtravel/airtravStdY_-eng.asp).

CLASSIFICATION OF EXPENDITURES, 2011–2020—Continued  
[2010]

	3% Discount rate	7% Discount rate
Qualitative (un-quantified) benefits .....	Allows compliance with the TPA's express mandate to establish a fee for the use of the ESTA system and also establish a \$10 travel promotion fee.	Allows compliance with the TPA's express mandate to establish a fee for the use of the ESTA system and also establish a \$10 travel promotion fee.
Transfers .....	\$168 million from foreign visitors to the U.S. government.	\$175 million from foreign visitors to the U.S. government.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603(a)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for any proposed rule.

Since a general notice of proposed rulemaking is not necessary, a regulatory flexibility analysis is not required. Nonetheless, DHS has considered the impact of this rule on small entities. This rule directly regulates individuals, and individuals are not considered small entities. Some small entities may be indirectly impacted to the extent that business travelers work for small businesses. However, the combined charge (the ESTA fees and the credit card transaction fee) of \$14.37 is only 0.3 percent of the average cost of a business trip as estimated by OTTI (\$5,231).<sup>10</sup> Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the U.S. private sector, of \$100 million (adjusted for inflation) or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the

relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

### G. Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. These regulations are being issued without prior public notice and comment procedures pursuant to the APA, as described above. For this reason, CBP obtained temporary, emergency approval from OMB, in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) for the portion of OMB clearance 1651–0111 that was affected by this rule. CBP will solicit public comments when CBP submits a request for permanent OMB approval. The estimated burden hours related to ESTA for OMB Control Number 1651–0111 are as follows:

*Estimated Number of Respondents:* 18,900,000.

*Estimated Time per Response:* 15 minutes (0.25 hours).

*Estimated Total Annual Burden Hours:* 4,725,000 hours.

The burden hours in this collection have been updated to reflect new traveler levels predicted in 2011. Additionally, a portion of these travelers is new ESTA applicants, while a portion is repeat travelers. Only the new applicants or applicants whose authorization has expired will be required to pay the new fees. As noted above, approximately 16 million

applicants will need to pay the fee annually (Method 1), for a total cost of \$230 million. This is based on the average estimated number of respondents paying the combined charge (the ESTA fees and the credit card transaction fee) annually  $(16,000,000) \times \$14.37 = \$229,920,000$ .

### H. Privacy Interests

DHS published an ESTA Privacy Impact Assessment (PIA) for the Interim Final Rule announcing ESTA on June 9, 2008. Additionally, at that time, DHS prepared a separate System of Record Notice (SORN) which was published in conjunction with the IFR on June 9, 2008. DHS has updated the ESTA PIA and SORN and both are available for viewing on CBP's Web site at <http://www.foia.cbp.gov/>.

### List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

### Amendments to Regulations

■ For the reasons stated in the preamble, DHS is amending part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217) as follows:

### PART 217—VISA WAIVER PROGRAM

■ 1. The authority citation for Part 217 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 2. Section 217.5 is amended by revising paragraph (a) and adding a new paragraph (h) to read as follows:

#### § 217.5 Electronic System for Travel Authorization.

(a) *Travel authorization required.* Each nonimmigrant alien intending to travel by air or sea to the United States under the Visa Waiver Program (VWP) must, within the time specified in paragraph (b) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the VWP via the Electronic System for Travel Authorization (ESTA), from CBP. In order to receive a travel authorization,

<sup>10</sup> U.S. Office of Travel and Tourism Industries. 2008. "Overseas Travelers to the United States." Table 26.



each nonimmigrant alien intending to travel to the United States by air or sea under the VWP must provide the data elements set forth in paragraph (c) of this section to CBP, in English, in the manner specified herein, and must pay a fee as described in paragraph (h) of this section.

\* \* \* \* \*

(h) *Fee.* (1) Until September 30, 2015, the fee for an approved ESTA is \$14.00, which is the sum of two amounts: a \$10 travel promotion fee to fund the Corporation for Travel Promotion and a \$4.00 operational fee to at least ensure recovery of the full costs of providing and administering the system. In the event the ESTA application is denied, the fee is \$4.00 to cover the operational costs.

(2) Beginning October 1, 2015, the fee for using ESTA is an operational fee of \$4.00 to at least ensure recovery of the full costs of providing and administering the system. ESTA applicants must pay the ESTA fee through the Treasury Department's Pay.gov financial management system.

**Janet Napolitano,**  
*Secretary.*

[FR Doc. 2010-19700 Filed 8-6-10; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2010-0709; Airspace  
Docket No. 09-AGL-28]

**RIN 2120-AA66**

#### **Amendment of VOR Federal Airways V-8, V-14, V-38, V-47, V-279, and V-422 in the Vicinity of Findlay, OH**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the legal description of the VHF Omnidirectional Range (VOR) Federal Airways V-8, V-14, V-38, V-47, V-279, and V-422 in the vicinity of Findlay, OH. The FAA is taking this action because the Findlay VHF Omnidirectional Range/Tactical Air Navigation (VORTAC), included as part of the V-8, V-14, V-38, V-47, V-279, and V-422 route structure, is being renamed the Flag City VORTAC.

**DATES:** *Effective Date:* 0901 UTC, November 18, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual

revision of FAA Order 7400.9 and publication of conforming amendments.

#### **FOR FURTHER INFORMATION CONTACT:**

Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

#### **SUPPLEMENTARY INFORMATION:**

##### **The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the legal description of six VOR Federal Airways in the vicinity of Findlay, OH. Currently, V-8, V-14, V-38, V-47, V-279, and V-422 have Findlay, OH, [VORTAC] included as part of their route structure. The Findlay VORTAC and the Findlay Airport share the same name and facility identifier (FDY), but are not co-located and are greater than 5 nautical miles apart. To eliminate the possibility of confusion, and a potential flight safety issue, the Findlay VORTAC will be renamed the Flag City VORTAC and assigned a new facility identifier (FBC). All VOR Federal Airways with Findlay, OH, [VORTAC] included in their legal description will be amended to reflect the Flag City, OH, [VORTAC] name change. The name change of the VORTAC will coincide with the effective date of this rulemaking action.

Additionally, this action makes administrative corrections to the V-8 and V-14 legal descriptions. Specifically, the V-8 description is amended to reflect the termination point "DC" as "Washington, DC", and the V-14 description is amended to reflect the navigation aid "DRYER" as "Dryer". These administrative corrections have no operational impact to the existing airways.

Since this action merely involves editorial changes in the legal descriptions of VOR Federal Airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the legal description of six VOR Federal Airways in the vicinity of Findlay, OH.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The domestic VOR Federal Airways listed in this document will be published subsequently in the Order.

#### **Environmental Review**

There are no changes to the lateral limits. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts, and the National Environmental Policy Act.

#### **List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

#### **Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.