

# CBP Implements Automation of the I-94 Arrival Record Card

**March 28, 2013**

The Customs and Border Protection (CBP), which conducts inspections at U.S. borders, published a final rule in the Federal Register on March 27, 2013 eliminating the completion of the paper form of the I-94 card. Traditionally, an arriving foreign national completes the I-94 card prior to inspection at a U.S. sea or air port of entry. The top portion of the form, which provides a foreign national's arrival information, is sent to a CBP data entry facility, while the bottom portion, used for recording departure, is stamped by the CBP officer and affixed to the passport. The I-94 card evidences the foreign national's nonimmigrant status and shows critical information such as the port of entry, date of entry, authorized period of stay and class of admission.

The new rule will be implemented April 30, 2013. However, CBP is staggering its implementation in 4-week increments with the air and sea ports of entry at Charlotte, NC; Orlando, FL; Las Vegas, NV; and Chicago IL to be the first to eliminate the paper completion of the I-94 forms. CBP indicated it will be providing a complete chart listing the implementation timeline for all ports of entry on its Web Site shortly. CBP's new rule redefines the Form I-94 to include the collection of arrival/departure and admission or parole information in paper or electronic format. It replaces the paper I-94 card with an admission stamp received during inspection at the time of entry. The stamp placed in the passport of a nonimmigrant will include the port of entry, date of entry, authorized period of stay and class of admission.

## **New Arrival Procedure**

Nonimmigrants arriving at U.S. air and sea ports will have their information captured by the Advance Passenger Information System (APIS). The APIS is a Web-based system used by commercial carriers and private aviation services to electronically update CBP with notices of arrival, departure and traveler manifests. CBP will use the Arrival and Departure Information System (ADIS) which garners information from APIS to record electronically a foreign national's arrival and departure. CBP also will use the Department of State's Consular Consolidated Database to gather visa information on foreign nationals. Effective April 30, 2013, nonimmigrants arriving at air and sea ports will only be issued a stamp in their passport and CBP will create an electronic record for arriving nonimmigrants using information drawn from the above databases. The electronic record will be available at [www.cbp.gov/I94](http://www.cbp.gov/I94), also effective April 30, 2013 when the law is implemented. CBP stated that up to two (2) years of I-94 card history will be available on the I-94 Web Site and sample electronic I-94 cards will be available for viewing when the site goes live at the end of April. Furthermore, CBP believes that once implemented, the electronic record will be available immediately upon leaving the CBP inspection area, but that it is at the discretion of the port to correct any mistakes that are discovered by the foreign national prior to leaving the airport.

Those arriving at a land border, with certain exceptions, will generally continue to receive a valid I-94 card, as will certain classes of arrivals, including asylees, parolees and refugees.

### **Why Eliminate the I-94?**

According to its March 27, 2013 update, CBP is taking at least 10 days, but sometimes up to 11 weeks, to enter foreign visitor travel information into its I-94 database and approximately \$15 million per year to print, store, distribute, gather and enter I-94 data. Besides the cost savings of eliminating the I-94, CBP expects to reduce database errors through this electronic nonimmigrant admissions process that will utilize information provided in the nonimmigrant visa application submitted to U.S. consulates and APIS.

### **Impact on U.S. Employers and Nonimmigrants**

The elimination of the paper I-94 card will likely inconvenience not just nonimmigrants but U.S. employers as well. Employers must become familiar with the new electronic copy of the I-94 card available to foreign nationals on the CBP's Web Site and, more likely than not, many Human Resources personnel will inevitably end up assisting the newly-hired foreign nationals in accessing and printing the electronic I-94 card from the CBP Web Site since it is required to complete the I-9 Form as part of the employment verification process.

Employers may also experience delays in employees starting their employment, as mistakes on the electronic I-94 likely will require a visit to Deferred Inspections, rather than being addressed immediately at the port of entry with the inspecting CBP Officer. Furthermore, errors are likely to occur because, as CBP stated in a recent teleconference, when there is an inconsistency between the information on a foreign national's visa and his/her passport, the system will defer to the visa. This could be problematic because rectifying an incorrectly issued U.S. visa is likely more difficult than correcting a mistake in one's passport once the individual is in the U.S.

In addition, the elimination of the paper I-94 may affect the issuance of Social Security Numbers to qualified nonimmigrants since the Social Security Administration (SSA) relies on the I-94 as evidence of employment authorization. CBP stated that outreach efforts have been made to educate the SSA as to the new process and electronic document; however, CBP is not certain whether the SSA will require the entry stamp in the passport and/or the electronic I-94 card for employment authorization prior to issuing a Social Security Number.

State motor vehicle bureaus also will need to be briefed as to the electronic I-94 card and CBP has started reaching out to some DMVs, but it remains to be seen how many DMVs will be educated as to the new process prior to the implementation of the rule.

### **Advice to travelers**

**Since the I-94 is vital to securing a driver's license, Social Security Number and evidencing employment authorization, we advise every traveler to log on to [www.cbp.gov/I94](http://www.cbp.gov/I94) immediately upon entry to verify that the information contained therein is accurate. Although cell phone use generally is not permitted within the Inspections area, if the traveler has a smart phone we recommend checking the accuracy of the electronic I-94 prior to departing the airport. Should an error occur, CBP has the discretion to rectify it immediately at the point of entry. If CBP declines or is unable to do so, the sooner an error is identified the sooner the foreign national can take steps to correct it. For specific instructions or assistance, please contact the Immigration Group at Proskauer.**

### **Conclusion**

Even though CBP's goal is to reduce errors as well as costs, errors are inevitable during the admission process. Interestingly, the new process appears to shift the burden of entering data from CBP to the Department of State at the time of visa issuance, and to the foreign national in securing hard copy documentation to evidence lawful status. It remains to be seen whether this shift will result in fewer errors.

Although this transition likely will cause confusion for travelers to the US, CBP is following trends within the business community to reduce costs by reducing paper. Ultimately, travelers, employers, USCIS, state motor vehicles departments and the Social Security Administration will adapt.