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The End of the I-94 "Little White Card" is A Surprisingly Big Deal

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Travelers entering the U.S. by air and sea after April 25 no longer will fill out for immigration inspectors and receive their tear-off portion of a little white card, Form I-94. U.S. Customs and Border Protection (CBP) has announced in a new regulation about "I-94 automation" that I-94s take too much time for everyone to mess with them. Instead, travelers will receive only a passport stamp and an option to download a copy from a web site. The implications for travelers, employers, and all kinds of agencies are significant.

For at least 50 years, travelers to the U.S. have been instructed by their carriers when approaching the port of entry to fill out a little white I-94 card (for those holding visas and certain others) or a little green I-94W card (for visitors using the Visa Waiver Program--VWP-- not to be confused with the "green card" issued to U.S. permanent residents). The cards collected about 17 fields of biographical and travel information. Travelers other than U.S. citizens and permanent residents have completed and presented those cards to the immigration port inspector. The inspector made notation on the top and bottom of the card (and in the passport) reflecting the date and classification of admission and the date for departure, and tore off and stapled in the passport the bottom portion of the card. The port office sent the retained portion of the cards to the government's data entry contractor.

The card in the passport was the traveler's evidence of "registration" and immigration status in the U.S. which the traveler, including persons admitted for several years at a time in work authorizing status, presented to a wide range of institutions including employers, schools, and motor vehicle and other government agencies in verification of immigration status for various purposes. Increasingly, those agencies have used electronic means to verify electronically on government databases what the card reflected. When the traveler departed the U.S., he surrendered the card to the outbound carrier who forwarded it to the government's data entry contractor.

Meanwhile, CBP has started requiring travel carriers, at least by air and sea, to collect and pass on electronically to CBP so much data about their passengers that there is little left to collect for CBP to have what an I-94 card would have provided.

Thus, a few years ago, CBP quit using the I-94W cards for visitors entering under the Visa Waiver Program, who still receive only a stamp in the passport but nothing more. Instead, in order to do more security vetting before travel, CBP added a new requirement for VWP travelers to register online before travel to answer the kinds of questions that the I-94W previously asked (see www.cbp.gov/ESTA). This did not cause too much confusion, because few visitors have needed to prove their status within the U.S. beyond the passport stamp.

Now CBP has announced that on April 26 (or later if it decides to delay the move) it will stop using the white I-94 cards, probably rolling out the new practice port-by-port. These travelers already have completed some kind of vetting, usually in applying for a visa at a U.S. consulate abroad, so most pre-vetting is done (though it can get stale within the span of a 10-year visitor visa). CBP has decided that the I-94 cards take up too much time and handling for transportation industry, government personnel, their contractors, and for the travelers themselves. The problem is that these travelers encounter all kinds of requirements inside the U.S. to present

and have verified the evidence of their temporary U.S. immigration status with reference to the I-94 number that will not be on the passport stamp. CBP's new rule tries to address that problem.

The new rule says that the immigration inspector's stamp in the passport reflecting date, place, classification, and expiration of admission, when combined with the data in the passport itself, serves as sufficient evidence of "registration" in the U.S. in case the person is stopped by law enforcement. It is not clear why CBP did not just let the passport stamp also suffice as an I-94 card for all other purposes, allowing agencies to verify the information electronically if they need to do so, but CBP did not do that, perhaps because it would require the officer to write the I-94 number in the passport (with significant opportunity for error).

CBP has amended the regulations to redefine "I-94 card" and "presentation" of an I-94 card to mean different things for different situations. For CBP itself, the I-94 card is considered the data that CBP has collected about the admission (or a printout of that data). For air and sea travel carriers, and for travelers boarding their vessels to depart the U.S., it means just presenting the traveler himself for inspection as required, because other rules and procedures already require the carrier to provide enough information about the traveler to link back to the record of admission. But it is not clear how CBP will be sure it has properly matched a carrier's data about a departing traveler with the "I-94" from the preceding admission, since the departure information will lack the I-94 number.

It matters that CBP matches the admission and departure records, because a traveler who overstayed by 180 days can become inadmissible for future trips. Since CBP says the website data about an admission will disappear from view once it is matched with a departure, it seems that the only way a traveler can try to confirm CBP's match of an admission and departure is to check the website after departure and confirm the disappearance of the admission record. Prudent travelers will continue to retain independent proof of departure, including travel records, and be prepared to present that evidence in seeking future admission if accused of a past overstay. And the new "I-94 automation" has not cured the lack of any exit tracking process for land departures.

For travelers, to "present an I-94 card" now includes presenting a printout of the data CBP collected electronically in its database leading up to the traveler's admission. The trick for travelers now is whether and when and how to obtain that card or printout. CBP says in the "preamble" to its regulation (but not in the rule itself) that it will provide an actual I-94 card to whoever asks for it. (CBP does not say whether travelers who request that will or will not be sent to a longer queue for inspection). But few travelers will think to ask for it.

The other alternative, described in a "tear sheet" that CBP will hand every traveler completing inspection, is for the traveler to go to a CBP web site, at www.cbp.gov/i94, to key in 7 points of data about the traveler and the admission (first and last name, date of birth, passport number and country of issuance, and date and class of admission) to access and print the I-94 data, which will constitute an I-94 card. The data about an admission will be available on the site until the traveler departs, and then it will disappear (but still be visible within CBP systems).

This sounds simpler than it will turn out. True, most HR managers and I-9 verification representatives for employers have internet access and can help a worker in the I-9 process print out the I-94 "card" that is needed for the "List A" "document" consisting of passport and I-94. CBP may well train its officers to go ahead and offer an actual card at the port to H-2A and H-2B workers who may be destined for work at employers who might not have internet access. CBP already says it will take the initiative to offer an I-94 to refugees, applicants for asylum, and parolees. Others will have to find a computer with internet access and a printer. But many employer representatives and Department of Motor Vehicle or Social Security Administration workers will be clueless about this process for years to come in verifying employment of their occasional worker or verifying status of their driver license or social security number applicant who is using a visa status.

One advantage to the new system will be that the I-94 will be more immediately available for employment "E-Verify" and government agency "SAVE" verification, which previously had to wait a few weeks or months for CBP's contractor to enter the data from internally collected paper cards. Now it should take only a couple of days for the CBP data to become mirrored on the E-Verify/SAVE database. But of significant concern is that CBP officers have been known to make mistakes in completing their part of I-94 cards and their own electronic system about the admission. This has caused "mismatch" problems in a wide array of E-Verify and SAVE program electronic verifications. Some employers have tracked error rates close to 20% oI-94s. Now those errors will become invisible, and it seems that travelers face a serious risk of not being able to access their I-94 "card" in the web-based system if the officer made an error in data entry or did not catch an error made by someone earlier in the data collection process involving air and sea carriers, because the 7 fields of data entered by the traveler would not match the CBP record. For this reason, we recommend that EVERY traveler request an I-94 card at the time of admission, referring in the request to the many promises made to the traveling public in this regard in its Federal Register notice.

CBP could reduce the worry of travelers if it would make the I-94 web-based database instantly updating, so that a traveler could check the database to confirm the availability and correctness of the record using a personal device before leaving the inspection area. But unfortunately CBP has not stated how "real time" the database will be updated, and CBP generally does not allow use of electronic devices in the inspection areas, much less make public computers available.

Travelers who encounter inaccessibility or errors in their I-94 record after leaving the port will need to personally visit a CBP deferred inspection unit.

One side benefit to travelers is that if they lose their I-94 card relating to an admission after April 25, they can go back into the database and print another one, saving the $330 fee and application one previously had to make to USCIS to request a replacement or saving the hassle and wait of a Freedom of Information Act request to CBP. Unfortunately this probably will not benefit travelers who were admitted to the U.S. before April 25, 2011, and a record will disappear from the web-based system once the traveler departs the U.S.

It is curious that USCIS went forward with its recent changes to the Form I-9 and Handbook for Employers (M-274, see our prior alert) in the last two weeks without waiting to incorporate this major change. Technically, nothing on the face of I-9 requirements has changed, but it would have made sense to infuse into the Handbook instructions to employers about downloading and printing an I-94 "card" for I-9 verification.