

# Rules and Regulations

Federal Register

Vol. 78, No. 59

Wednesday, March 27, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF HOMELAND SECURITY

**8 CFR Parts 1, 210, 212, 214, 215, 231, 235, 245, 245a, 247, 253, 264, 274a, and 286**

[USCBP–2013–0011; CBP Dec. No. 13–06]

RIN 1651–AA96

### Definition of Form I–94 To Include Electronic Format

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

**ACTION:** Interim final rule.

**SUMMARY:** The Form I–94 is issued by the Department of Homeland Security (DHS) to certain aliens and is used for various purposes such as documenting status in the United States, the approved length of stay, and departure. DHS generally issues the Form I–94 to aliens at the time they lawfully enter the United States. This rule adds a new definition of the term “Form I–94” that includes the collection of arrival/ departure and admission or parole information by DHS, whether in paper or electronic format. The definition also clarifies various terms that are associated with the use of the Form I–94 to accommodate an electronic version of the Form I–94. This rule also adds a valid, unexpired nonimmigrant DHS admission or parole stamp in a foreign passport to the list of documents designated as evidence of alien registration. These revisions to the regulations will enable DHS to transition to an automated process whereby DHS will create a Form I–94 in an electronic format based on passenger, passport and visa information DHS currently obtains electronically from air and sea carriers and the Department of State as well as through the inspection process.

**DATES:** *Effective date:* This interim rule is effective April 26, 2013. In the event

that CBP receives public comment that identifies a credible basis for the Agency to conclude that automation of the form I–94 should be delayed, CBP retains discretion to extend implementation for an additional thirty days. If CBP concludes that such extension is appropriate, the Agency will post the new implementation date on its Web site, [www.cbp.gov](http://www.cbp.gov), no later than April 29, 2013.

*Comment date:* Written comments must be submitted on or before April 26, 2013.

**ADDRESSES:** You may 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.
- *Mail:* Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Attention: Border Security Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on this rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Shepherd, CBP Office of Field Operations by telephone (202) 344–2073 or by email, [Suzanne.M.Shepherd@dhs.gov](mailto:Suzanne.M.Shepherd@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change. Written comments must be submitted on or before April 26, 2013. CBP will consider those comments and make any changes appropriate after consideration of those comments. CBP expects to publish a final rule, which will respond to comments received, 18 months from the close of the comment period.

### Executive Summary

The Form I–94 is issued by DHS to certain aliens upon arrival in the United States or when changing status in the United States. The Form I–94 is used to document arrival and departure and provides evidence of the terms of admission or parole. U.S. Customs and Border Protection (CBP), a component of DHS, generally issues the Form I–94 to aliens at the time they lawfully enter the United States. Aliens use the Form I–94 for various purposes such as completing employment eligibility verification (the Form I–9), applying for immigration benefits, or to present to a university to verify eligibility for enrollment. Information gathered on the Form I–94 is also used for statistical purposes.

### Transition to an Automated Form I–94

The Form I–94 is currently a paper form. For aliens arriving by air or sea, the carrier distributes the Forms I–94 to the aliens required to complete the form while en route to the United States. The alien presents the completed form to the CBP Officer at primary inspection. The officer stamps the Form I–94 and the alien’s passport, detaches the bottom portion of the form, which is the departure portion, and returns it to the alien along with the alien’s passport. The admission stamp contains the port of arrival and date of arrival and is annotated with the class of admission

and admitted-to date. The top portion of the form—the arrival portion—is sent to a data entry facility where the information on the form is entered into CBP's computer systems. The departure portion of the Form I-94 retained by the alien may be shown to government or other stakeholders when required. The alien turns in the departure portion of the Form I-94 upon departure, generally to the carrier; the carrier returns the forms to CBP.

With the implementation of the Advance Passenger Information System (APIS<sup>1</sup>) following 9/11, CBP now collects information on aliens traveling by air or sea to the United States electronically from carriers in advance of arrival. As outlined in Table 1 below, nearly all the information collected on the Form I-94 is collected electronically via APIS. CBP also now uses the Arrival and Departure Information System (ADIS), which draws information from APIS, to electronically document an alien's arrival and departure. Thus, for aliens arriving in the United States by air or sea, CBP obtains almost all of the information contained on the paper Form I-94 electronically and in advance. The few fields on the Form I-94 that are not collected via APIS are either already collected by the Department of State and transmitted to CBP or will be collected by the CBP Officer from the individual at the time of inspection. Thus, the same data elements found on the paper Form I-94 will be collected and maintained in the electronic Form I-94. This means that CBP no longer needs to collect Form I-94 information as a matter of course directly from aliens traveling to the United States by air or sea.

Therefore, CBP is transitioning to an automated process whereby CBP will create an electronic Form I-94 based on the information in its databases. This rule makes the necessary changes to the regulations to enable CBP to transition to an automated process. At this time, the automated process will apply only to aliens arriving at air and sea ports of entry.<sup>2</sup> In order to make this a seamless transition, CBP is making the electronic Form I-94 available to aliens through a Web site.<sup>3</sup> To access the Form I-94

through the Web site the traveler will need to input information from his/her passport; thus, a third party without access to the traveler's passport will not be able to access the Form I-94 from the Web site. If needed, aliens may print out a copy of the Form I-94 from the Web site and present it to third parties in lieu of the departure portion of the paper form. CBP intends to continue to provide a paper Form I-94 to certain classes of aliens, such as certain refugees, asylees, and parolees, and others as requested or whenever CBP determines the issuance of a paper form is appropriate.

Though in some cases CBP collects APIS information for travelers arriving in the United States via methods of transportation other than commercial air and sea, CBP does not consistently receive APIS information for these other methods or in some instances is unable to consistently access the information at the time the traveler presents him or herself for inspection. Thus, at this time, CBP will still need to collect Form I-94 information directly from travelers arriving by other methods of transportation. CBP anticipates expanding the automation of the Form I-94 to other methods of transportation in the future.

Because the regulations that address the Form I-94 and its uses were written at a time when a paper form was the only option to collect arrival and departure information, many of these regulations contemplate only the use of the paper form. In order to enable CBP to transition from a paper Form I-94 to a CBP-created electronic Form I-94, CBP is adding a definition of "Form I-94" in 8 CFR part 1 that allows for the collection of Form I-94 information in either paper or electronic format. The definition also clarifies various terms in 8 CFR that are associated with the use of the Form I-94 to include the electronic version of the Form I-94.

The automation provides immediate and substantial benefits to the traveling public, to carriers, to CBP and other stakeholders. This automation will eliminate most of the duplicative paper Form I-94 process and reduce wait times at passenger processing, which will facilitate entry of all travelers. The automation will eliminate the paper Form I-94 for most air and sea travelers and, with it, the 8-minute time burden; this would result in an estimated total reduction of 9.6 million Forms I-94 completed by paper, and an estimated reduction of 1,276,800 paperwork burden hours. For more information on the reduction in the paperwork burden, see the Paperwork Reduction Act section below. The automation will also

save the time and expense associated with lost Forms I-94, as travelers will simply be able to print out a new copy from the Web site if needed rather than file an I-102, as currently required, which has a fee of \$330 and a time burden of 25 minutes. CBP estimates that the time to access the Web site and print the electronic Form I-94 to be 4 minutes.

Additionally, carriers will no longer have to print, store, and distribute the forms, and CBP will not have to process them. This will result in significant cost savings (benefits) for foreign travelers, carriers, and CBP. Guidance from the Office of Management and Budget (OMB) states regulatory analyses should focus on benefits and costs that accrue to citizens and residents of the United States.<sup>4</sup> In order to make this distinction clear, CBP provides costs and benefits of this rule to foreign travelers as well as to U.S. entities. CBP anticipates the total net benefits to both domestic and foreign entities in 2013 range from \$76.5 million to \$115.5 million. Separately, CBP anticipates a net benefit in 2013 of between \$59.7 million and \$98.7 million for foreign travelers, \$1.3 million for carriers, and \$15.5 million for CBP. Net benefits to U.S. entities (carriers and CBP) in 2013 total \$16.8 million. CBP seeks comment on the potential benefits or costs of this rule for foreign travelers.

## Background

### *The Form I-94*

The DHS Form I-94 is generally issued to aliens at the time they lawfully enter the United States other than aliens traveling to the United States under the Visa Waiver Program,<sup>5</sup> or aliens who are otherwise exempt. See 8 CFR 235.1(h). The Form I-94 is also issued when an alien changes immigration status within the United States. The Form I-94 is used to document status in the United States, the authorized length of stay, and departure. Biographical information, visa and passport information, and the address and phone number where the alien can be reached while in the United States are also collected on the Form I-94. When an alien is admitted to the United States, the Form I-94 becomes the evidence of the terms of the admission. For aliens paroled into the

<sup>1</sup> For more information, please see: [http://www.cbp.gov/xp/cgov/travel/inspections\\_carriers\\_facilities/apis/](http://www.cbp.gov/xp/cgov/travel/inspections_carriers_facilities/apis/).

<sup>2</sup> Because CBP does not currently collect advance travel information from aliens arriving by land, this automation will not apply to land ports of entry at this time.

<sup>3</sup> DHS intends to publish a privacy impact assessment and make it available at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>. For more information on the privacy implications please see the *Privacy* section of this document.

<sup>4</sup> See OMB Circular A-4, page 15 ([http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory\\_matters\\_pdf/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf)).

<sup>5</sup> The Form I-94 is not required for aliens seeking admission into the United States under the Visa Waiver Program (VWP). The Form I-94W is the form required for aliens seeking admission into the United States under the VWP. In 2009, the ESTA program automated the Form I-94W in the air and sea environments.

United States, the Form I-94 reflects the duration and classification of parole.

The Form I-94 has been used for approximately 50 years by DHS, its predecessor agencies, and external stakeholders for a variety of purposes. CBP and U.S. Immigration and Customs Enforcement (ICE), components of DHS, use the form to document arrival and departure, as well as class of admission or duration of parole. U.S. Citizenship and Immigration Services (USCIS), also a component of DHS, issues Forms I-94 to aliens extending their authorized length of stay or changing their immigration status while in the United States. USCIS also uses Form I-94 information to verify lawful admission or parole when adjudicating immigration benefit requests, confirming employment authorization for employers participating in USCIS's E-Verify program, or verifying immigration status for benefit granting state and federal government agencies participating in USCIS's Systematic Alien Verification for Entitlements (SAVE) program. The Form I-94 is also used by the Social Security Administration (SSA), state agencies, such as Departments of Motor Vehicles (DMV), and public assistance agencies and organizations, to verify eligibility for benefits. The form is used by certain aliens for evidence of lawful admission or parole, as well as, where applicable, employment eligibility and eligibility for public benefits. Information collected by the Form I-94 is also provided to the Department of Commerce (DOC) for statistical purposes, including use by the DOC Office of Travel and Tourism Industries to collect monthly visitation data and for reporting of travel by country of residence to comply with the United Nations World Tourism Organization recommendation for reporting arrivals to all countries.

#### *Current Paper Form I-94 Process at Airports and Seaports*

The paper Form I-94 consists of two parts, the arrival portion and the departure portion. Air and sea carriers print and store the Form I-94 and provide each alien passenger with a blank paper Form I-94.<sup>6</sup> Each alien arriving by air or sea for whom a Form I-94 is required completes both the arrival and departure portions of the form either en route or upon arrival in the United States. Each carrier is responsible for presenting a completed Form I-94 for each arriving alien to a

CBP Officer. *See* 8 CFR 231.1. In practice, the carrier accomplishes this by ensuring that each passenger presents him/herself to a CBP Officer for inspection at a U.S. port-of-entry, generally with the aid of security protocols. The Form I-94 is then presented to the CBP Officer at primary inspection, along with the alien's passport and any other applicable documents and information. After the successful completion of the inspection process, a CBP Officer stamps the alien's Form I-94 and passport. The DHS admission stamp contains the port of arrival and date of arrival, and is annotated with the class of admission and the authorized length of stay. The parole stamp contains the port of arrival and date of arrival, and is annotated with the duration of parole and parole classification. The CBP Officer retains the arrival portion of the Form I-94 and returns the departure portion and the passport to the alien. The departure portion of the form is provided to the alien to retain in his or her possession for the duration of his or her stay and to surrender upon departure. In some circumstances, an alien is required to have the Form I-94 in his or her possession at all times while in the United States. Air and sea carriers are responsible for presenting a completed Form I-94 for each departing alien passenger to a CBP Officer. *See* 8 CFR 231.2(b). If the alien is departing by commercial air or sea carrier, he or she turns in the departure portion to the airline or shipping line prior to departure. The carrier then returns the form to CBP.

The information requested on the upper portion of the I-94, the arrival portion, includes:

- Family name
- First (Given) Name
- Birth Date
- Country of Citizenship
- Sex (Male or Female)
- Passport Issuance Date<sup>7</sup>
- Passport Expiration Date
- Passport Number
- Airline and Flight number (if applicable)
- Country Where You Live
- Country Where You Boarded
- City Where Visa Was issued
- Date Issued
- Address While in the United States (number, street, city, and state)
- Telephone Number in the United States Where You Can be Reached
- Email Address

The following information currently is requested on the lower portion of the Form I-94, the departure portion:

- Family Name
- First (Given) Name
- Birth Date
- Country of Citizenship

Once an alien is admitted to the United States, the Form I-94 is evidence of the terms of the admission. For aliens paroled into the United States, the Form I-94 includes the terms of parole. CBP collects the arrival portions of the Forms I-94 daily at each port of entry and boxes and mails them to a centralized data processing center for logging/processing/scanning, and data capture. The data is then uploaded to a CBP database. DHS components have access to the database that contains the Form I-94 information, and can use this database to verify an alien's admission or parole information and immigration status. Entities outside DHS, such as SSA or state DMVs, can verify information by querying a DHS system or contacting DHS.

#### *Automation of the Form I-94 at Airports and Seaports*

The Form I-94 was established prior to advances in technology and the implementation of security measures that enable CBP to collect advance arrival and departure information about passengers electronically. For aliens arriving in or departing from the United States by air or sea, the data elements collected on the paper Form I-94 duplicate the information that CBP collects through other mechanisms. As explained in this section (including Table 1), CBP collects this information from APIS, visa information and information provided to CBP at the time of inspection.

As a result of enhanced security measures implemented by CBP subsequent to the September 11, 2001 terrorist attacks, CBP regulations require commercial vessel carriers and commercial and private air carriers to electronically transmit advance manifest information regarding their passengers, crew members, and non-crew members (cargo flights only) arriving in and departing from the United States. Passengers, crew members, and non-crew members are required to submit certain biographical information to the carriers, which the carriers then collect and submit to CBP prior to the alien's arrival in or departure from the United States. The information is transmitted to CBP through APIS (including eAPIS,<sup>8</sup> as

<sup>6</sup> CBP also prints Form I-94s, which are available at ports of entry for travelers who may need an additional blank form.

<sup>7</sup> Passport issuance date, passport expiration date, telephone number, and email address are newer fields not found on all forms currently in circulation.

<sup>8</sup> eAPIS is a CBP web-based application that provides for the collection of electronic traveler

applicable). See 19 CFR 4.7b, 4.64, 122.22, 122.49a–122.49c, 122.75a, and 122.75b.

The information transmitted to CBP by carriers using APIS consists of information that appears on the biographical data page of travel documents, such as passports issued by governments worldwide, as well as carrier information. For passengers, APIS data consists of certain biographical information and conveyance details collected via the passenger reservation and check-in processes. The information submitted for each individual onboard the aircraft or vessel includes:

- Full name (last, first, and, if available, middle)
- Date of birth
- Gender (F = female; M = male)
- Citizenship
- Country of residence
- Status on board the aircraft/vessel
- Travel document type (e.g., P = passport, A = alien registration)
- Passport number, if a passport is required, or DHS-Approved travel document number, as applicable
- Passport country of issuance, if a passport is required, or DHS-Approved travel document country of issuance, as applicable
- Passport expiration date, if a passport is required, or DHS-Approved travel document expiration date, as applicable
- Alien registration number, where applicable
- Address while in the United States

In addition to the manifest information for each individual, the air or sea carrier also must provide information about the flight or voyage. The flight or voyage information the air or sea carrier must provide that is relevant to the Form I–94 is the airline and flight number and the place of departure.

Visa information is made available to CBP by the Department of State via the Consular Consolidated Database (CCD). At the time of inspection and admission or parole, the CBP Officer is able to collect additional data, such as email address, phone number, and updated address while in the United States. Table 1 below lists the source of each data element for the electronic Form I–94.

TABLE 1—SOURCES OF DATA FOR ELECTRONIC FORM I–94

Data element	Source for electronic Form I–94
<i>Arrival Portion:</i>	
Family name .....	APIS
First (given) name .....	APIS
Birth date .....	APIS
Country of citizenship .....	APIS
Sex (male or female) .....	APIS
Passport issuance date .....	APIS
Passport expiration date .....	APIS
Passport number .....	APIS
Airline and Flight number (if applicable).	APIS
Country where you live .....	APIS
Country where you boarded	APIS
City where visa was issued	State Department via CCD.
Date visa was issued .....	State Department via CCD.
Address while in the United States.	APIS, and may be updated at time of inspection.
Telephone number while in the United States.	Officer at time of inspection.
Email address .....	Officer at time of inspection.
<i>Departure Portion:</i>	
Family name .....	APIS
First (given) name .....	APIS
Birth date .....	APIS
Country of citizenship .....	APIS

Thus, for aliens arriving in the United States by air or sea, CBP obtains almost all of the information contained on the paper Form I–94 electronically from the carriers and the Department of State and is able to collect any additional fields from the individual at the time of inspection. This means that CBP no longer needs to collect Form I–94 information from these travelers as a matter of course. Therefore, CBP is transitioning to an automated process whereby CBP will create an electronic Form I–94 based on the information in its databases, which CBP will make available to the alien through the Web site: [www.cbp.gov/I94](http://www.cbp.gov/I94). At this time, the automated process will apply only to aliens arriving at air and sea ports of entry. This is because the electronic record draws largely from APIS information submitted by air and sea carriers. CBP will continue to provide a paper Form I–94 to those who request such form, as well as to certain classes of aliens, such as certain refugees, asylees, and parolees, and whenever

CBP determines the issuance of a paper form is appropriate. For these individuals arriving by air and sea carriers, an electronic Form I–94 will also be created.

The electronic Form I–94 will be created during the inspection process at the time of admission or parole when the CBP Officer pulls information from the traveler’s APIS record and any CCD record, and enters any additional data obtained during the inspection process. The same data elements found on the paper Form I–94 will be collected and maintained in the electronic Form I–94. Any information the officer would have written or stamped on the paper form at the time of admission or parole can be entered into the electronic form. The departure record is created from APIS using the Arrival and Departure Information System (ADIS) to match the departure to the correct arrival record.

Alien travelers will be able to access and print their electronic Form I–94 via the Web site CBP has established for this purpose: [www.cbp.gov/I94](http://www.cbp.gov/I94). Travelers to whom an electronic Form I–94 has been issued will be able to log on to the Web site using identifying information and print a copy of the electronic Form I–94. In order to access the Form I–94 from the Web site, the traveler will be required to enter information from his or her passport; thus, a third party without access to the traveler’s passport will not be able to access the Form I–94 from the Web site. The printout from the Web site will be the functional equivalent of the departure portion of the paper form and will contain the same information as the departure portion of the paper form. CBP will continue to stamp the traveler’s passport at the time of inspection and any admission or parole and will annotate the stamp with the class of admission or parole and duration of admission or parole. CBP will distribute a tear sheet to each alien who is issued an electronic Form I–94 at the time of inspection with information about the Web site and procedures for obtaining a printout to the alien upon arrival in the United States.

Aliens who may be required to present the Form I–94 to a third party for some purpose, such as employment or benefit eligibility, may present the printout from the Web site. For example, nonimmigrants who are employment authorized incident to status (see, e.g., nonimmigrants listed at 8 CFR 274a.12(b)) may print a copy of their electronic Form I–94 for evidence of employment authorization. The printout is the equivalent of the paper Form I–94 acceptable to present to

manifest information for international travel both in to and out of the United States. eAPIS collects and passes electronic manifests to APIS.

employers to comply with the Employment Eligibility Verification form (Form I-9) requirements. As discussed in detail in the 12866 section below, because so many parties at various levels of government and outside of the government use the Form I-94, we cannot estimate the number of aliens who use the Form I-94 for these purposes. For the 12866 analysis, we assume that all non-B-1/B-2 travelers (about 26 percent of the total) will need to use the Form I-94 for some purpose. See INA section 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B); 8 CFR 274a.2(b)(1)(v)(A)(5) and (b)(1)(v)(C)(8).

As described more fully in the section entitled “*Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)*,” the elimination of the paper Form I-94 in the air and sea environments has many benefits. Carriers will no longer have to print, store, and distribute the paper form to its alien passengers or collect the form when the alien departs. These aliens will not have to complete the form when arriving in the United States or turn in the form when they depart the United States. Additionally, an alien will have the convenience of being able to access his or her form electronically, and will be able to print a new copy if one is lost, or to print multiple copies if needed. CBP will not have to collect the forms, stamp them, return the departure portion to the alien and manually enter the Form I-94 information into its database. This streamlines CBP’s inspection process. The effect will be the elimination of most of the duplicative paper Form I-94 process and the reduction of wait times at passenger processing, which will facilitate entry of all travelers.

Because the Form I-94 is used for various purposes, CBP has been working closely with other DHS components and other government stakeholders to ensure that the transition to the automated Form I-94 is as smooth as possible and done in a manner that addresses the needs of these stakeholders. For the past year, CBP has been meeting regularly with stakeholders, including U.S. Government agencies, DMVs, and universities, on all aspects of automating the Form I-94 to ensure that stakeholders are prepared for the additional acceptance of the electronic Form I-94. For stakeholders that rely on the Form I-94 for immigration status verification or other purposes, a benefit of automation is that the electronic version of the Form I-94 is immediately available to them through their connections to CBP’s database. By contrast, with the paper form, there is

typically a lag time of approximately five business days or longer between arrival, data entry, and the availability of the records on the CBP database. CBP anticipates that most stakeholders will not require a change to their operations as a result of this automation. Government stakeholders will continue to access an alien’s Form I-94 information in the same way that they currently do: Through their connection to CBP’s database. For stakeholders who now access the Form I-94 information when the alien presents his or her form, the process will also not meaningfully change; the alien will now simply present a printout from the Web site rather than the departure portion of a paper Form I-94. CBP seeks comments from these stakeholders on the above assumptions.

#### *Regulatory Change: New Form I-94 Definition*

Many provisions in 8 CFR refer to the Form I-94 and its use. However, because these regulations were written at a time when a paper form was the only option to collect arrival and departure information, many of these regulations contemplate only the use of the paper form. In order to enable CBP to transition from a paper Form I-94 to a CBP-created electronic Form I-94, CBP is adding a definition of “Form I-94” in 8 CFR part 1 that allows for the collection of Form I-94 information in either paper or electronic format. It provides that “[t]he term *Form I-94*” “includes the collection of arrival/ departure and admission or parole information by DHS, whether in paper or electronic format, which is made available to the person about whom the information has been collected, as may be prescribed by DHS.” 8 CFR 1.4.

As discussed earlier, CBP, USCIS, ICE, and other government agencies use the Form I-94 in a variety of ways, many of which are specified in 8 CFR. For example, the form is included in the list of acceptable documentation that may be presented to employers to demonstrate employment authorization during the employment eligibility verification process (Form I-9). The Form I-94 is also necessary for completing USCIS forms requesting immigration benefits, such as the Application to Register Permanent Residence or Adjust Status (Form I-485), or when seeking the admission of an alien for the duration of an unexpired period of a previous admission.<sup>9</sup> Therefore, the definition of

“*Form I-94*” also clarifies the various terms in 8 CFR that are associated with the use of the Form I-94 to include the electronic version of the Form I-94. For example, the definition specifies that “presentation” of the Form I-94 includes providing a printout of the electronic record. “Issuance” of the Form I-94 includes the creation of the electronic Form I-94 for a traveler. To comply with regulations requiring the alien to turn in the departure portion of the Form I-94 at the time of departure, the definition provides that in the case of an alien with an electronic Form I-94, he or she must comply with any DHS departure controls. The carrier providing departure conveyance must submit departure information to CBP for each departing alien.

As described in the section entitled “*Current paper Form I-94 process at airports and seaports*,” sections 231.1 and 231.2 of the DHS regulations require air and sea carriers to submit a completed Form I-94 for each arriving alien and to submit the departure portion of this Form I-94 for each departing alien. Because these sections concern the carriers rather than the nonimmigrant aliens directly, the terms “present,” “submit,” and “submission” used elsewhere in the DHS regulations pertaining to the Form I-94 are employed somewhat differently in sections 231.1 and 231.2. Thus, the definitions of these terms for the purposes of sections 231.1 and 231.2 are tailored to this unique situation. For purposes of section 231.1, the terms “present” or “submission” of the Form I-94 includes ensuring that each passenger presents him/herself to a CBP Officer for inspection at a U.S. port-of-entry. This definition reflects the carriers’ current practice for arriving passengers, as also discussed in the section on “*Current paper Form I-94 process at airports and seaports*.” For the purposes of section 231.2, the terms “present,” “submit,” or “submission” of the Form I-94 include ensuring that each passenger is available for inspection by a CBP Officer upon request.

CBP is also amending section 264.1(b) to add to the list of documents that constitute evidence of registration of a valid, unexpired nonimmigrant DHS admission or parole stamp in a foreign passport. Additionally, for clarity, CBP is amending provisions throughout 8 CFR to include a reference to the new definition immediately following the

<sup>9</sup> Seeking admission for the duration of an unexpired period of a previous admission is referred to as automatic revalidation. Pursuant to 8

CFR 214.1 and 22 CFR 41.112, automatic revalidation applies to unexpired nonimmigrant visas of aliens who have been out of the United States for thirty days or less in a contiguous territory.

first use of the term “Form I–94” in a section. This is to ensure that those reading these provisions are aware that the new definition exists.

**Statutory and Regulatory Requirements**

*Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)*

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation.

This rule results in substantial cost savings (benefits) for travelers, carriers, and CBP. CBP anticipates the total net benefits to both domestic and foreign entities in 2013 range from \$76.4 million to \$115.5 million.<sup>10</sup> Separately, CBP anticipates a net benefit in 2013 of between \$59.7 million and \$98.7 million for foreign travelers, \$1.3 million for carriers, and \$15.5 million for CBP. Net benefits to U.S. entities (carriers and CBP) in 2013 total \$16.8 million. The following discussion provides an assessment of costs, benefits, and net impacts of the rule.

**1. Baseline Condition**

A Form I–94 is generally provided during the inspection process at the time of admission or parole for any alien who is not arriving in the United States under the Visa Waiver Program, unless otherwise exempt. When arriving by air and sea, the carrier provides the form to the alien while en route to the United States. The alien typically completes the form while en route to the United States. The Form I–94 takes the alien approximately 8 minutes to fill out, according to CBP’s Paperwork Reduction Act time burden estimate.

<sup>10</sup> OMB Circular A–4 states regulatory analyses should focus on benefits and costs that accrue to citizens and residents of the United States ([http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory\\_matters\\_pdf/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf); see “Scope of Analysis” section on page 15). In order to make this distinction clear, CBP has shown the costs and benefits to foreign travelers as well as impacts to U.S. entities.

Upon arrival at the airport or seaport, the alien presents the completed Form I–94 to the CBP Officer for inspection. The officer tears the form at the perforation, stamps the lower portion, and returns it to the alien. The officer sends the top portion of the form to a centralized facility where all Forms I–94 are entered into CBP’s systems. The alien later returns the lower portion of the Form I–94 to the carrier when departing the United States, who in turn returns it to CBP.

A third party, such as a university or a local or state government benefit-granting agency, may require an alien to present evidence of admission or parole to the United States. In these cases, the alien may present the bottom portion of the Form I–94, which was returned to them when they were admitted, paroled, or granted their immigration status. Aliens may also choose to present Form I–94 to establish employment eligibility and identity or eligibility for certain public benefits.

If an alien loses the bottom portion of the Form I–94, he or she may file Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, with USCIS to request a replacement. The form has a Paperwork Reduction Act burden of 25 minutes and a fee of \$330. According to the USCIS, 17,700 Forms I–102 are filed each year. CIS expects this to decrease to 8,804 in fiscal year 2013 and 5,771 in subsequent years.<sup>11</sup> The 2013 numbers are higher because the projection is done on a fiscal year basis and includes several months before this rule is in effect. For the purpose of this analysis, we assume that rule will result in only 5,771 Forms I–102, which is a reduction of 11,929 from the current estimate.

According to the Office of Immigration Statistics (OIS),<sup>12</sup> about 46.4 million aliens entered the United States using a Form I–94 or equivalent in 2010. Of these, about 18.2 million entered under the Visa Waiver Program (VWP). These aliens do not use a Form I–94 and are therefore unaffected by this rule,<sup>13</sup> so we exclude them from this

<sup>11</sup> Source: Communication with USCIS on February 8, 2013.

<sup>12</sup> Source: 2010 Yearbook of Immigration Statistics. Table 28. <http://www.dhs.gov/files/statistics/publications/yearbook.shtm>

<sup>13</sup> In addition to automating the I–94, this rule adds a valid, unexpired nonimmigrant DHS admission or parole stamp to the list of documents that constitute evidence of registration. Thus, upon implementation of this rule, such a stamp could serve as evidence of registration for Visa Waiver Program travelers and for travelers arriving by land who would otherwise be required to comply with any registration requirement under the INA. However, the addition of the passport stamp to the list of documents that constitute evidence of registration does not have an economic impact on

analysis. Additionally, OIS figures include all modes of transportation. This rule affects only aliens arriving by air and sea, so we must exclude those arriving by land. We therefore subtract the number of aliens entering the U.S. at land border ports using a Form I–94 in 2010. According to CBP’s Office of Field Operations, about 11.5 million aliens arriving from Mexico and 1.3 million arriving from Canada entered the United States at the land border using a Form I–94 in 2010. We subtract these from the total, leaving 15,360,126 non-VWP aliens who arrived in the U.S. by air or sea using a Form I–94 in 2010.

We next estimate the number of I–94 travelers in future years. To do this, we use the traveler projections developed by the Office of Travel and Tourism Industries (OTTI) within the U.S. Department of Commerce. The OTTI forecasts travel for most countries through 2016. The vast majority of travelers from most countries arrive by air and sea, so we assume that air traveler growth rates are the same as those for the total traveler population. For Mexico and Canada, we subtract the number of I–94 travelers arriving by land in 2010 before applying the projected growth rates.<sup>14</sup> We apply the OTTI projected growth rates to the number of Forms I–94 by country we obtained from OIS. We present the total number of projected Forms I–94 for each year from 2010–2016 in Exhibit 1 below.

**EXHIBIT 1—PROJECTED I–94 AIR AND SEA TRAVELERS**

2010 .....	15,360,126
2011 .....	16,586,753
2012 .....	17,868,246
2013 .....	19,339,773
2014 .....	20,875,058
2015 .....	22,672,552
2016 .....	24,495,264

We next estimate the costs and benefits of this rule for all affected parties. For the purposes of this analysis only, we assume the rule went into effect on January 1, 2013. To the extent the rule goes into effect after this date, costs and benefits will be lower. The period of analysis for this rule is 2012 to 2016, the last year for which OTTI has projected annual U.S. visitor growth rates.

travelers. Therefore, this analysis focuses on the changes to the I–94.

<sup>14</sup> For the purposes of these projections, we assume that aliens arriving from Mexico and Canada at land borders are Mexican and Canadian citizens. There are a small number of citizens of other countries who enter the U.S. at land borders. Because the number for each country is small, the effect on the projections is minimal.

2. Costs

We now examine the costs of this rule to CBP. CBP seeks comments on the assumptions discussed below. If implemented, the costs of this rule will be borne by both CBP and aliens traveling to the United States. This rule would automate the paper Form I-94 in the air and sea environments.<sup>15</sup> Almost all of the traveler information collected on the Form I-94 is redundant because CBP already obtains the same information electronically from other sources. In advance of the implementation of this rule, CBP has linked its data systems to use the information from these alternate sources to create an electronic Form I-94 during the admissions process. CBP will create the electronic Form I-94 by pulling information from the traveler's APIS record and any CCD record and by entering any additional data obtained during the inspection process. This electronic process will also allow stakeholders that currently have access to CBP's databases to continue to have access to traveler information electronically. CBP estimates the cost to link data systems and to fully automate the Form I-94 to be about \$1 million in calendar year 2012. In addition, it estimates the cost to develop the secure Web site to be about \$321,000 in 2012. CBP anticipates spending \$92,000 per year in operations and maintenance costs for these systems. In total, CBP anticipates this rule will cost the agency \$1,321,000 in 2012 and \$92,000 in following years.

We next examine the costs of this rule that will be borne by travelers to the United States. While most travelers do not use the Form I-94 for any reason once they are admitted or paroled to the United States, others do make use of the form to demonstrate lawful admission or parole to the United States to universities, DMVs, or some other party. Aliens may also choose to present a Form I-94 to establish employment eligibility and identity, or eligibility for certain public benefits. To accommodate this need for a Form I-94, CBP will make an electronic Form I-94 available to aliens on a secure Web site. Travelers will receive written information on how to access the Web site upon their arrival to the United States. Aliens may log into the Web site using 7 pieces of basic identifying information that is either known to the traveler (their first name, last name and date of birth) or readily available on their passport (passport

number, country of issuance, date of entry, and class of admission). CBP estimates that it will take the traveler 4 minutes to log into the Web site using identifying information and print the electronic form. This is less time than the paper Form I-94's 8 minute time burden for entering the 17 data elements. This 4 minute estimate does not include the time it takes to travel to a location with computer and Internet access; that cost is treated separately later in this section. In addition, CBP will continue to make the paper Form I-94 available at ports of entry to certain classes of aliens and upon request, though CBP does not anticipate that many travelers will request the paper form.

To estimate the costs to travelers to access their Form I-94 electronically, we must first determine the number of aliens who will access the Web site, the number who do not have ready access to the Internet, the distance they would have to travel to access the Internet, and the average wage rate for all aliens entering the United States by air or sea. First, we assess the number of aliens who will access the Web site. Exhibit 2 shows the number of travelers who entered the United States by air or sea in 2010 sorted by various categories of admission.<sup>16</sup> The majority of Form I-94 visitors to the United States—about 74 percent—are tourists and business travelers entering on B-1/B-2 visas. These visitors do not have a need for their Form I-94 now that the passport stamp will serve as evidence of alien registration. While in the U.S., these B-1/B-2 visa travelers may use their foreign driver's license, so there is no need for them to apply for a U.S. driver's license. They are ineligible for employment or enrollment in a university while traveling on a B-1/B-2 visa. They are generally not eligible for public benefits without a change in status. If B-1/B-2 travelers change their status with USCIS, they will receive a paper Form I-94. Therefore, for the purposes of this analysis, we assume that no B-1/B-2 travelers will need to access the Web site.

EXHIBIT 2—2010 AIR AND SEA I-94S BY CLASS OF ADMISSION

	Number	Percentage
Tourists and Business Travelers (B-1/B-2) .....	11,352,569	73.9

<sup>15</sup> A small number of Forms I-94 will still be used for certain aliens such as refugees, applicants for asylum, parolees, and those who request a paper Form I-94.

<sup>16</sup> Source: CBP analysis of data from 2010 Yearbook of Immigration Statistics. Table 28. <http://www.dhs.gov/files/statistics/publications/yearbook.shtm>

EXHIBIT 2—2010 AIR AND SEA I-94S BY CLASS OF ADMISSION—Continued

	Number	Percentage
Students .....	1,526,786	9.9
Temporary workers .....	1,523,039	9.9
Other/Unknown	624,181	4.1
Diplomats .....	333,550	2.2
Total .....	15,360,126	.....

Because so many parties at various levels of government and outside of the government use the Form I-94, CBP cannot estimate how many aliens who are not B-1/B-2 travelers will access the Web site. As noted above, CBP will continue to make the paper Form I-94 available at ports of entry upon request. Those with a need for a Form I-94 and who face obstacles to electronic access of their Form I-94 may request a paper I-94 upon arrival at the port of entry. Because we do not know how many people need a physical copy of their Form I-94 or how many face obstacles to accessing their electronic I-94, for the purposes of this analysis, we assume that every traveler, other than B-1/B-2 travelers, who currently receives a paper Form I-94 will log into the Web site to print off their electronic Form I-94. In 2010, we estimate this to be 4,007,557 travelers. To the extent that some of these aliens do not access the Web site, costs will be lower.

We next estimate the number of aliens who do not have ready access to the Internet while in the United States and would need to travel to access their electronic Form I-94. We assume that students and diplomats have ready access to the Internet at their schools or places of business, respectively. Also, as noted above, CBP will continue to make the paper Form I-94 available at ports of entry upon request. Those with a need for a Form I-94 and who face obstacles to accessing their electronic Form I-94 may request a paper I-94 upon arrival at the port of entry.

Temporary workers come to the United States for varying lengths of time to fill positions where there is a shortage of labor in the United States. These positions can be in very highly technical occupations, such as computer programming, but can also be in less technical occupations, such as agricultural labor. Because this category of admission includes such a wide range of workers, we cannot say with certainty that all temporary workers have ready access to the Internet while in the United States. Similarly, we do not know how accessible the Internet is for those in the "Other/Unknown"

category. The aliens least likely to have Internet access are those working as temporary agricultural laborers. According to the U.S. Department of Agriculture (USDA), approximately 62 percent of farms have Internet access.<sup>17</sup> The primary use for the electronic Form I-94 for these workers is to demonstrate employment eligibility to their employers. Until the workers present a copy of their electronic Form I-94 to their employer, they are not able to work. The employers have spent a considerable amount of money bringing the employee to the country to work. Allowing the employee to use the Internet to access their electronic Form I-94 will allow the employee to begin working sooner. Because this incremental use of the Internet is virtually costless to the employer and the employer would benefit from their employee's prompt access to their electronic Form I-94, we assume that employers with Internet access will allow their employees to use their Internet connection to access their electronic Forms I-94.<sup>18</sup> As stated previously, 62 percent of farms have Internet access. For the purposes of this analysis, we assume that 38 percent (100 percent minus 62 percent) of travelers in the "Temporary Workers" and "Other/Unknown" categories (815,944 travelers in 2010) would need to travel to access their electronic Form I-94. CBP seeks comment on these assumptions. Once again, we note that CBP will continue to make the paper Form I-94 available at ports of entry upon request. CBP intends to have a considerable outreach effort in place by the time that this rule is effective including outreach to airlines and travelers to communicate that requesting a paper Form I-94 continues to be an option. Those with a need for a Form I-94 and who face obstacles to electronic access of their Form I-94 may request a paper I-94 upon arrival at the port of entry. To the extent that they request paper I-94s, the number of aliens who will need to travel to a place

where they can access the Internet will be lower.

Now that we have estimated the number of aliens who do not have ready access to the Internet, we need to develop an assumption for how long it takes to travel to a location where they can access the Internet. Based on our online review of Internet services provided by public libraries, we found public libraries provide public access to computers and the Internet, though many charge a nominal fee for printing. There are 16,698 public libraries in the United States.<sup>19</sup> According to the Department of Education, 94 percent of households live within 10 miles of a public library and 83 percent live within 5 miles of one.<sup>20</sup> Because of the large number of locations nationwide that provide access to the Internet and the fact that CBP will continue to make the paper Form I-94 available at ports upon request, we believe most aliens will have to travel only a short distance to access the Internet. We estimate that round-trip travel to a public library to access a computer terminal will be 20 miles and will take 60 minutes of an alien's time, which includes the time to enter the library and locate an available computer and any wait time to access a computer. In this analysis, we assume that users pay \$0.25 to print their electronic Form I-94 based on a review of available online printing fees charged at public libraries.

We next estimate the value of time for those travelers affected by this rule. Federal agencies typically estimate a monetary value of time used or saved as a result of their regulatory actions. This allows agencies to estimate the additional costs and benefits of their regulatory actions on affected parties. The U.S. Department of Transportation (DOT) provides guidance on the value of time to use for economic analysis.<sup>21</sup> This guidance provides point estimates as well as ranges for values of time for travelers based on average wage rate analysis for different categories of travel. According to DOT estimates, the value of travel time is more than twice as high for air travelers than for those traveling by surface modes, which can be explained by the relatively high cost of

air travel. We note that these DOT estimates are intended to be used to analyze actions that will reduce the time spent traveling. A person's value of time while traveling may differ from their value of reducing travel time. In most instances, this rule will not reduce the time spent traveling because the Form I-94 is typically completed while en route to the United States, but rather reduces the time spent on paperwork while traveling. The traveler will now be able to spend this time on leisure or business activities such as reading or drafting documents. CBP believes that using the DOT values of travel time in this situation is the most appropriate estimate because it reflects the higher values of time for air travelers. Further, we note that to the extent a person's value of time while traveling is different than their value of reducing travel time, this difference is likely encompassed in the DOT plausible range for the value of travel time. We request comments on the value of time used in this analysis.

As a primary estimate, we use the DOT's point estimate for the value of time for all-purpose air travel, which includes both personal and business travel. This point estimate is \$42.10. We also use the DOT's range for all-purpose travel to show a range of low and high estimates. This range is from \$34.80 to \$52.20. We apply these values of time to the travelers in our analysis.<sup>22</sup>

However, we recognize that those who must travel to access the internet are a special case of travelers and probably have different values of time than the average air traveler. As previously discussed, the aliens least likely to have internet access are those working as temporary agricultural laborers. To estimate the value of time for these aliens, we use the wage rate for H-2A temporary workers. H-2A workers are seasonal agricultural workers. According to the Department of Labor, H-2A workers have an average wage rate of \$9.50 per hour.<sup>23</sup> We recognize that there are other classes of temporary workers, notably H-1B visa holders, who likely have higher wage rates. However, these workers are predominantly in specialized occupations such as medicine and computer programming and are likely to have ready access to the internet.

Now that we have estimated the number of aliens who will log into

<sup>22</sup> We use this travel value of time framework to estimate the costs and savings of this rule, since affected aliens previously completed the paper form I-94 while travelling.

<sup>23</sup> Source: Calculated from Department of Labor data: available at <http://www.foreignlaborcert.doleta.gov/quarterlydata.cfm>. Accessed on May 8, 2012.

<sup>17</sup> Source: "Farm Computer Usage and Ownership," United States Department of Agriculture National Agricultural Statistics. August 2011. Available at: <http://usda01.library.cornell.edu/usda/current/FarmComp/FarmComp-08-12-2011.pdf>.

<sup>18</sup> It is also possible that some employers without Internet access will help transport their employees to a location with Internet access. Employers have expended considerable effort to sponsor temporary workers and they may view this as part of the cost of using foreign temporary workers. However, as the burden of demonstrating employment eligibility is on the worker, we assume that the worker must bear any travel costs to obtain their electronic Form I-94. To the extent that the employer is able to provide more efficient access to the Internet, costs will be lower.

<sup>19</sup> Source: American Library Association. <http://www.ala.org/tools/libfactsheets/alalibraryfactsheet01> Accessed May 7, 2012.

<sup>20</sup> Source: Department of Education: Households' Use of Public and Other Types of Libraries: 2002. Derived from Table 19. Available at <http://harvester.census.gov/imls/pubs/Publications/2007327.pdf>.

<sup>21</sup> Source: U.S. Department of Transportation: "Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis." September 28, 2011. Table 5. Available at <http://ostpxweb.dot.gov/policy/reports.htm>.



CBP's Web site to print their electronic Form I-94, the time it takes to access that Web site, the number of people who will need to travel to access the internet, the time it will take to travel to and from an internet access site, and the values of time for these groups, we can calculate this rule's cost to these travelers. We first address the cost to log into CBP's

electronic Form I-94 Web site. Once again, CBP estimates that it will take travelers 4 minutes to access and print their electronic Form I-94, and that it costs them \$0.25 per page to print their electronic Form I-94. Exhibit 3 shows the 2013-2016 travelers' costs for accessing and printing their electronic Forms I-94. The findings in Exhibit 3

assume that all travelers, except B-1/B-2 travelers, will access and print their electronic Forms I-94.<sup>24</sup> As shown, in 2013, traveler costs of time to access electronic I-94s and their cost to print it would range from \$13.0 million to \$18.8 million, with a primary estimate of \$15.4 million.

EXHIBIT 3—TRAVELER COSTS OF TIME TO ACCESS AND COST TO PRINT ELECTRONIC I-94 \*

	2013	2014	2015	2016
I-94s .....	5,047,681	5,448,390	5,917,536	6,393,264
DOT—Low (\$) .....	34.80	34.80	34.80	34.80
DOT—Primary (\$) .....	42.10	42.10	42.10	42.10
DOT—High (\$) .....	52.20	52.20	52.20	52.20
Time Cost—Low (\$) .....	11,710,620	12,640,265	13,728,684	14,832,372
Time Cost—Primary (\$) .....	14,167,158	15,291,815	16,608,551	17,943,761
Time Cost—High (\$) .....	17,565,929	18,960,397	20,593,026	22,248,559
Printing Cost (\$) .....	1,261,920	1,362,098	1,479,384	1,598,316
Total Cost—Low (\$) .....	12,972,540	14,002,362	15,208,068	16,430,688
Total Cost—Primary (\$) .....	15,429,078	16,653,912	18,087,935	19,542,077
Total Cost—High (\$) .....	18,827,850	20,322,495	22,072,410	23,846,875

\* Estimates may not total due to rounding.

We next address the travel cost for those aliens who do not have ready access to the internet. Once again, we assume that 38 percent of travelers in the "Temporary Workers" and "Other/Unknown" categories (see exhibit 2)

would need to travel 20 miles and 60 minutes to access their electronic Form I-94, that their values of time are best characterized by the average H2A wage rate. For the cost of travel, we use the IRS standard mileage rate for business

travel of 55.5 cents per mile.<sup>25</sup> Exhibit 4 shows the 2013-2016 aliens' travel costs to access the internet. As shown, in 2013, total travel costs would be \$21.2 million.

EXHIBIT 4—TRAVEL COSTS\*

	2013	2014	2015	2016
Affected Aliens .....	1,028,876	1,110,553	1,206,180	1,303,148
H2A Wage Rate (\$) .....	9.50	9.50	9.50	9.50
Time Cost (\$) .....	9,774,321	10,550,254	11,458,708	12,379,907
Mileage Cost (\$) .....	11,420,523	12,327,139	13,388,595	14,464,944
Total Travel Cost (\$) .....	21,194,844	22,877,393	24,847,303	26,844,850

\* Estimates may not total due to rounding.

To summarize, both CBP and aliens would bear costs as a result of this rule. CBP would bear costs to link its data systems and to build a Web site so aliens can access their electronic Forms I-94. Aliens arriving as diplomats and students would bear costs when logging into the Web site and printing electronic I-94s. Using the primary estimate for a traveler's value of time, these costs average \$3.06 per diplomat and student traveler in 2013. The temporary workers

and aliens in the "Other/Unknown" category (see Exhibit 2) bear costs when logging into the Web site, traveling to a location with public internet access, and printing a paper copy of their electronic Form I-94. These costs average \$23.66 per traveler in 2013 for the temporary worker and "Other/Unknown" category of travelers. Exhibit 5 summarizes the 2012-2016 costs of this rule. As shown, costs for this rule for 2013 would range from \$34.2 million to \$40.1 million. In

our primary estimate, costs for this rule are \$36.7 million in 2013. Less than one percent of these costs are incurred by the U.S. entities. These are CBP's costs for automating the electronic Form I-94 and developing the Web site travelers will use to access their electronic Form I-94. In 2013, CBP's costs are \$92,000. CBP seeks comment on these costs and their underlying assumptions.

EXHIBIT 5—COST SUMMARY (\$)\*

	2012	2013	2014	2015	2016
CBP Costs .....	1,321,000	92,000	92,000	92,000	92,000
Traveler Costs:					

<sup>24</sup> The annual estimates of I-94s in Exhibit 3 are based on projections for all travelers, except B-1/B-2 travelers, developed by the Office of Travel and

Tourism Industries within the U.S. Department of Commerce.

<sup>25</sup> Source: Internal Revenue Service. IR-2011-116, December 9, 2011. Available at <http://www.irs.gov/newsroom/article/0,,id=250882,00.html>.

EXHIBIT 5—COST SUMMARY (\$)—Continued

	2012	2013	2014	2015	2016
Website Access Costs—Low .....	0	11,710,620	12,640,265	13,728,684	14,832,372
Website Access Costs—Primary .....	0	14,167,158	15,291,815	16,608,551	17,943,761
Website Access Costs—High .....	0	17,565,929	18,960,397	20,593,026	22,248,559
Printing Costs .....	0	1,261,920	1,362,098	1,479,384	1,598,316
Travel Time Costs .....	0	9,774,321	10,550,254	11,458,708	12,379,907
Mileage Costs .....	0	11,420,523	12,327,139	13,388,595	14,464,944
Total Traveler Costs—Low .....	0	34,167,384	36,879,756	40,055,371	43,275,539
Total Traveler Costs—Primary .....	0	36,623,922	39,531,305	42,935,239	46,386,927
Total Traveler Costs—High .....	0	40,022,694	43,199,888	46,919,713	50,691,725
Grand Total Costs—Low .....	1,321,000	34,259,384	36,971,756	40,147,371	43,367,539
Grand Total Costs—Primary .....	1,321,000	36,715,922	39,623,305	43,027,239	46,478,927
Grand Total Costs—High .....	1,321,000	40,114,694	43,291,888	47,011,713	50,783,725

\*Estimates may not total due to rounding.

3. Benefits

If implemented, this rule would have benefits for CBP, carriers, and travelers to the United States. We first examine the benefits of this rule for CBP. Currently, CBP returns the bottom portion of the Form I-94 to the traveler and retains the top portion of the form. The information on the top portion of the form is entered into CBP systems for use by CBP and other agencies. CBP also gets this information electronically from other sources. CBP has linked its data systems so that CBP can create an electronic Form I-94. Therefore, there is no longer any need to continue entering the data from the paper Form I-94 for air and sea travelers into CBP systems. CBP spends approximately \$17.8 million per year on contract support for this task. CBP will still need to spend approximately \$2.4 million to enter data from the paper Forms I-94 collected at the land border and the few that will continue to be collected at airports and seaports. We therefore estimate that this rule would save CBP \$15.4 million a year in contract costs.

CBP processing would also become more efficient as a result of this rule. Currently, when the traveler gives the completed Form I-94 to the CBP Officer at inspection, the officer reviews the form for errors and makes corrections as needed. The officer then stamps the top

and bottom portions of the form with an admission or parole stamp, writes the classification and duration of admission or parole and staples it to the traveler's passport. This rule would eliminate this process for most travelers. To the extent that eliminating the paper Form I-94 will reduce processing times, CBP will be able to focus its resources on other areas, improving security and expediting the processing of passengers. CBP will monitor the processing times as a result of this rule to ensure that resources are allocated efficiently. CBP's final rule will include information regarding current processing times that reflect the use of the automated I-94.

We next examine the printing savings this rule will generate for CBP and carriers. Currently, both CBP and carriers print and store Forms I-94. CBP prints forms for use in primary and secondary passenger inspections when the traveler has not filled out a form in advance or when the traveler has made an error in filling out the form. In FY 2011, CBP spent \$153,306 printing the Form I-94 for air and sea travelers. If this rule is implemented, CBP would no longer need to print the Form I-94 for most of these travelers,<sup>26</sup> which would eliminate this expense.

Carriers print the forms for their passengers to complete before their arrival in the United States. To estimate printing costs for carriers, CBP obtained

an estimate of total Form I-94 printing and storage costs from a major airline. We increased this cost proportionally based on annual international inbound passenger volumes to estimate the entire industry cost. Based on this methodology, CBP estimates that carriers spend \$1,344,450 annually to print and store the Form I-94. If this rule is implemented, carriers would no longer need to print and store the Form I-94, which would eliminate this expense.

We next estimate the value of air and sea travelers' time savings resulting from the elimination of the paper Form I-94. Currently, travelers spend 8 minutes filling out the Form I-94 while in transit to the United States. If implemented, this rule would eliminate the paper Form I-94 for air and sea travelers and, with it, their 8-minute time burden.<sup>27</sup> We again apply the DOT range of plausible values of time for air travelers, as well as their point estimate for this value, to these aliens. Exhibit 7 shows the 2013–2016 travelers' reduction in time burden resulting from no longer needing to fill out the paper Form I-94. As shown, in 2013, the value of the reduction in time burden would range from \$89.7 million to \$134.6 million. In our primary estimate, the reduction in time burden would be \$108.6 million in 2013.

EXHIBIT 7—REDUCTION IN TIME BURDEN\*

	2013	2014	2015	2016
I-94s .....	19,339,773	20,875,058	22,672,552	24,495,264
DOT—Low (\$) .....	34.80	34.80	34.80	34.80
DOT—Primary (\$) .....	42.10	42.10	42.10	42.10
DOT—High (\$) .....	52.20	52.20	52.20	52.20
Benefit—Low (\$) .....	89,736,549	96,860,267	105,200,642	113,658,027
Benefit—Primary (\$) .....	108,560,595	117,178,657	127,268,592	137,500,084

<sup>26</sup> CBP will still print a small number of forms for use at airports and seaports for certain aliens such as refugees, asylees, parolees, and those who request a paper Form I-94.

<sup>27</sup> For those with a need to access their electronic Form I-94, this burden relief is partially offset by the 4 minute time burden to access the Web site.

The costs for this access are discussed in the costs section above.

## EXHIBIT 7—REDUCTION IN TIME BURDEN\*—Continued

	2013	2014	2015	2016
Benefit—High (\$) .....	134,604,823	145,290,401	157,800,962	170,487,040

\* Estimates may not total due to rounding.

We next examine the savings to aliens who need a replacement Form I-94. If aliens lose the bottom portion of their Form I-94, they may file Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, with USCIS to request a replacement. The form has a Paperwork Reduction Act burden of 25 minutes

and a fee of \$330. As stated earlier, currently 17,700 Forms I-102 or filed annually and this rule would reduce that amount by 11,929. If this rule is implemented, these travelers would be able to access their electronic Form I-94, which would save these individuals 25 minutes and \$330.<sup>28</sup> We calculate the value of this time savings using USCIS's

hourly wage estimate for Form I-102 filers of \$30.44.<sup>29</sup> Exhibit 8 shows the time and fee cost savings for those who would have otherwise needed to file an I-102 from 2012 to 2016. As shown, in 2013 the value of this time and fee savings would be \$4.2 million. CBP seeks comment on these assumptions.

## EXHIBIT 8—I-102 COST SAVINGS\*

	2013	2014	2015	2016
I-102 Reduction .....	11,929	11,929	11,929	11,929
Time Burden .....	25	25	25	25
USCIS hourly wage (\$) .....	30.44	30.44	30.44	30.44
Time Savings (\$) .....	151,299	151,299	151,299	151,299
Fee Savings (\$) .....	3,936,570	3,936,570	3,936,570	3,936,570
Total Savings (\$) .....	4,087,869	4,087,869	4,087,869	4,087,869

\* Estimates may not total due to rounding.

In summary, CBP, carriers, and aliens would accrue benefits as a result of this rule. CBP would save contract and printing costs. Carriers would save printing costs. All aliens would save the 8-minute time burden for filling out the paper Form I-94 and certain aliens who lose the Form I-94 would save the \$330 fee and 25 minute time burden for filling out the Form I-102. Because we

do not expect B-1/B-2 travelers to use the Web site to access their electronic Form I-94, the benefits associated with the Form I-102 accrue only to non-B-1/B-2 travelers. Using the primary estimate for a traveler's value of time, the time burden savings for all travelers is \$5.61 per traveler. In addition, those non-B-1/B-2 travelers who no longer need to use a Form I-102 would achieve

an additional time and fee savings of \$342.68 per traveler. Exhibit 9 summarizes the benefits of this rule to each party. As shown, benefits for this rule for 2013 would range from \$110.7 million to \$155.6 million. In our primary estimate, the benefits of this rule would be \$129.5 million in 2013. CBP seeks comment on these benefits and their underlying assumptions.

## EXHIBIT 9—BENEFIT SUMMARY (\$)\*

	2013	2014	2015	2016
CBP Benefits:				
CBP Contract Savings .....	15,400,000	15,400,000	15,400,000	15,400,000
CBP Printing Savings .....	153,360	153,360	153,360	153,360
Total CBP Benefits .....	15,553,360	15,553,360	15,553,360	15,553,360
Carrier Printing Savings .....	1,344,450	1,344,450	1,344,450	1,344,450
Traveler Benefits:				
I-94 Time Savings—Low .....	89,736,549	96,860,267	105,200,642	113,658,027
I-94 Time Savings—Primary .....	108,560,595	117,178,657	127,268,592	137,500,084
I-94 Time Savings—High .....	134,604,823	145,290,401	157,800,962	170,487,040
I-102 Time Savings .....	151,299	215,863	215,863	215,863
I-102 Fee Savings .....	3,936,570	3,936,570	3,936,570	3,936,570
Total Traveler Benefits—Low .....	93,824,418	100,948,137	109,288,511	117,745,896
Total Traveler Benefits—Primary .....	112,648,464	121,266,526	131,356,462	141,587,954
Total Traveler Benefits—High .....	138,692,692	149,378,271	161,888,832	174,574,910
Grand Total Benefits—Low .....	110,722,228	117,845,947	126,186,321	134,643,706
Grand Total Benefits—Primary .....	129,546,274	138,164,336	148,254,272	158,485,764

<sup>28</sup> As discussed in the costs section, we estimate a 4 minute time burden for travelers who need to access their electronic Form I-94. See the cost section for a complete discussion of the costs of accessing the Web site as well as the cost to travel to a location where they can access the Web site, where necessary.

<sup>29</sup> USCIS estimates are based on BLS data for occupational employment statistics. The latest supporting statement for the I-102 is available at [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201206-1615-003](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201206-1615-003). This supporting statement uses an older wage estimate of \$30.74. USCIS has since updated the

wage rates used in their supporting statements to \$30.44 based on more recent BLS statistics. These estimates will be used in the next renewal of the I-102 information collection report.

EXHIBIT 9—BENEFIT SUMMARY (\$)—Continued

	2013	2014	2015	2016
Grand Total Benefits—High .....	155,590,502	166,276,081	178,786,642	191,472,720

\* Estimates may not total due to rounding.

4. Net Benefits

Exhibit 10 compares the costs of this rule to the benefits, both in total and for each party affected. As shown, in 2013,

CBP has a net benefit of \$15.5 million, carriers have a net benefit of \$1.3 million, and travelers have a net benefit of between \$59.7 million and \$98.7 million. In our primary analysis, the net

benefit to travelers is \$76.0 million in 2013. Total 2013 net benefits range from \$76.5 million to \$115.5 million. In our primary analysis, the total net benefits are \$92.8 million in 2013.

EXHIBIT 10—NET BENEFITS\*

	2012	2013	2014	2015	2016
CBP .....	- 1,321,000	15,461,360	15,461,360	15,461,360	15,461,360
Carriers .....	0	1,344,450	1,344,450	1,344,450	1,344,450
Travelers—Low .....	0	59,657,034	64,068,381	69,233,140	74,470,358
Travelers—Primary .....	0	76,024,542	81,735,221	88,421,223	95,201,026
Travelers—High .....	0	98,669,998	106,178,383	114,969,119	123,883,185
Grand Total—Low .....	- 1,321,000	76,462,844	80,874,191	86,038,950	91,276,168
Grand Total—Primary .....	- 1,321,000	92,830,352	98,541,031	105,227,033	112,006,836
Grand Total—High .....	- 1,321,000	115,475,808	122,984,193	131,774,929	140,688,995

\*Estimates may not total due to rounding.

Exhibits 11 and 12 present the net benefits of this rule, discounted at the 3 and 7 percent discount rates. Exhibit 13 presents annualized net benefits at

the 3 and 7 percent discount rates. Annualized net benefits range from \$65.6 million to \$101.7 million. In the primary analysis, annualized net

benefits range from \$79.8 million to \$81.6 million, depending on the discount rate used.

EXHIBIT 11—NET BENEFITS DISCOUNTED AT A 3 PERCENT RATE  
[2012 Dollars]\*

	2012	2013	2014	2015	2016
CBP .....	- 1,321,000	15,011,029	14,573,815	14,149,335	13,737,218
Carriers .....	.....	1,305,291	1,267,273	1,230,362	1,194,526
Travelers—Low .....	.....	57,919,450	60,390,594	63,358,131	66,165,948
Travelers—Primary .....	.....	73,810,235	77,043,285	80,917,945	84,584,879
Travelers—High .....	.....	95,796,115	100,083,309	105,213,030	110,068,605
Grand Total—Low .....	- 1,321,000	74,235,771	76,231,682	78,737,828	81,097,693
Grand Total—Primary .....	- 1,321,000	90,126,555	92,884,373	96,297,642	99,516,623
Grand Total—High .....	- 1,321,000	112,112,435	115,924,397	120,592,727	125,000,350

\*Estimates may not total due to rounding.

EXHIBIT 12—NET BENEFITS DISCOUNTED AT A 7 PERCENT RATE  
[2012 Dollars]\*

	2012	2013	2014	2015	2016
CBP .....	- 1,321,000	14,449,869	13,504,551	12,621,075	11,795,398
Carriers .....	.....	1,256,495	1,174,295	1,097,472	1,025,674
Travelers—Low .....	.....	55,754,237	55,959,805	56,514,865	56,813,079
Travelers—Primary .....	.....	71,050,974	71,390,707	72,178,057	72,628,407
Travelers—High .....	.....	92,214,952	92,740,311	93,849,048	94,509,889
Grand Total—Low .....	- 1,321,000	71,460,602	70,638,651	70,233,412	69,634,151
Grand Total—Primary .....	- 1,321,000	86,757,338	86,069,553	85,896,604	85,449,479
Grand Total—High .....	- 1,321,000	107,921,316	107,419,157	107,567,595	107,330,961

\*Estimates may not total due to rounding.

EXHIBIT 13—ANNUALIZED NET BENEFITS DISCOUNTED AT 3 PERCENT AND 7 PERCENT\*

	3 Percent	7 Percent
CBP .....	11,903,588	11,636,069
Carriers .....	1,059,434	1,038,002
Travelers—Low .....	52,539,528	51,294,997

EXHIBIT 13—ANNUALIZED NET BENEFITS DISCOUNTED AT 3 PERCENT AND 7 PERCENT\*—Continued

	3 Percent	7 Percent
Travelers—Primary .....	67,065,877	65,473,972
Travelers—High .....	87,163,978	85,091,457
Grand Total—Low .....	65,502,550	63,969,068
Grand Total—Primary .....	80,028,899	78,148,043
Grand Total—High .....	100,126,999	97,765,529

\*Estimates may not total due to rounding.

While this is a large net benefit to travelers as a whole, it is important to note that the net benefits do not accrue uniformly across all travelers. We next examine the effect of this rule on each type of traveler. Exhibit 14 summarizes the costs and benefits per traveler for each class of alien discussed in this analysis. B-1/B-2 travelers will no longer need to fill out the paper Form I-94, saving them 8 minutes. As discussed earlier, we assume that no B-1/B2 travelers will need to access their electronic Form I-94 via the Web site. Because we assume they do not use the Form I-94, B-1/B-2 travelers also do not file Form I-102 to replace their lost Form I-94. Therefore they will not accrue benefits from no longer needing to file Forms I-102. The net effect of this

rule to each B-1/B-2 traveler is a benefit of \$5.61 per traveler.

Travelers who are students and diplomats would no longer need to fill out a paper Form I-94. They would need to access the Web site and print their Form I-94, but would not need to travel to a location with internet access. The net effect of this rule to travelers who are students and diplomats is a benefit of \$2.56 per traveler. In addition, those students and diplomats who would otherwise need to file a Form I-102 and pay the \$330 fee to obtain a replacement Form I-94 would receive an additional benefit of \$342.68 as a result of this rule.

Temporary workers and aliens in the “Other/Unknown” category would no longer need to fill out a paper Form I-

94. They would need to access the Web site and print their Form I-94, and some would need to travel 20 miles and 30 minutes round-trip to reach a location with internet access. The net effect of this rule to temporary workers and aliens in the “Other/Unknown” category is a cost of \$18.04 per traveler. We reiterate that those with obstacles to accessing their electronic I-94s may request a paper I-94 at the airport or seaport upon arrival in the United States. In addition, those temporary workers and aliens in the “Other/Unknown” category who would otherwise need to file a Form I-102 and pay the \$330 fee to obtain a replacement Form I-94 would receive an additional benefit of \$342.68 as a result of this rule.<sup>30</sup>

EXHIBIT 14—ANNUAL EFFECT OF RULE BY CLASS OF ALIEN (\$) \*

	Percentage of total number of aliens	8 minute time cost savings	Cost of time to access & cost to print electronic form I-94	Travel costs	Net impact**
Tourists and Business Travelers (B-1/B-2) .....	73.9	5.61	0	0	5.61
Students .....	9.9	5.61	-3.06	0	2.56
Temporary workers .....	9.9	5.61	-3.06	-20.60	-18.04
Other/Unknown .....	4.1	5.61	-3.06	-20.60	-18.04
Diplomats .....	2.2	5.61	-3.06	0	2.56

\*Estimates may not total due to rounding.

\*\* In addition to this net impact, a small number of non-B-1/B-2 travelers will experience savings resulting from no longer needing to file a Form I-102. The primary estimate of Form I-102 cost savings to non-B-1/B-2 travelers is \$342.81 per traveler. We do not include the Form I-102 cost savings in the net impact column of Exhibit 14 because few non-B-1/B-2 travelers will benefit from this compared to the overall population of non-B-1/B-2 travelers impacted by the rule. Based on data from USCIS, we estimate that 16,853 Form I-102s per year will no longer need to be filed as a result of this rule. This is less than one percent of the annual population of non-B-1/B-2 travelers affected by the rule (16,853 Form I-102s ÷ 5,047,681 non-B-1/B-2 travelers in 2013 < 1%).

Annualized costs and benefits to U.S. entities are presented in the following accounting statement, as required by OMB Circular A-4.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2012-2016

[\$2012]

	3% Discount rate	7% Discount rate
U.S. Costs:		
Annualized monetized costs .....	\$0.352 million .....	\$0.372 million.
Annualized quantified, but non-monetized costs .....	None .....	None.
Qualitative (non-quantified) costs .....	None .....	None.
U.S. Benefits:		
Annualized monetized benefits .....	\$13.7 million .....	\$14.0 million.

<sup>30</sup> CBP intends to have a considerable outreach effort in place by the time that this rule is effective

including outreach to airlines and travelers to

communicate that requesting a paper Form I-94 continues to be an option.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2012–2016—Continued  
 [2012]

	3% Discount rate	7% Discount rate
Annualized quantified, but non-monetized benefits .....	None .....	None.
Qualitative (non-quantified) benefits .....	Reduced primary inspection processing times.	Reduced primary inspection processing times.

We estimate annualized costs to U.S. entities as a result of this rule to be \$0.352 million to \$0.372 million. These are CBP’s costs for automating the Web site travelers will use to access their electronic Form I–94. Monetized benefits of this rule of \$13.7 million to \$14.0 million to U.S. entities (CBP and carriers) represent reduced Form I–94 printing and storage costs and reduced data entry contract costs. Non-quantified benefits of this rule include the reduced processing time that could result as a result of the automation of the Form I–94. This rule also imposes monetized costs and benefits for travelers. However, because these are attributable solely to foreign individuals, we do not include them in the accounting statement.

5. Regulatory Alternatives

We consider two alternatives to this rule: eliminating the paper Form I–94 in the air and sea environments entirely and providing the paper Form I–94 to all travelers who are not B–1/B–2 travelers. If CBP were to eliminate the paper Form I–94 entirely in the air and sea environment, there are certain classes of vulnerable aliens who would be harmed. Under the rule, refugees, applicants for asylum, and parolees will be provided a paper Form I–94. These aliens have an immediate need for the Form I–94 and cannot wait to access their electronic Form I–94 from the Web site. These aliens represent a very small portion of overall international travel and providing them with a paper Form I–94 and entering the information into CBP data systems is not a significant cost to CBP. In addition, under this rule, CBP will continue to provide a paper Form I–94 to those travelers who request it. CBP is providing this flexibility as a way to minimize the effect on those who face obstacles to accessing their electronic Form I–94. As CBP does not expect many aliens to request a paper Form I–94, the cost to CBP for printing and data entry is minimal. Eliminating the paper Form I–94 option for refugees, applicants for asylum, parolees, and those travelers who request one would not result in a significant cost savings to CBP and

would harm travelers who have an immediate need for an electronic Form I–94 or who face obstacles to accessing their electronic Form I–94.

A second alternative to the rule is to provide a paper Form I–94 to any travelers who are not B–1/B–2 travelers. Under this alternative, travelers would receive and complete the paper Form I–94 during their inspection when they arrive in the United States. The electronic Form I–94 would still be automatically created during the inspection, but the CBP Officer would need to verify that the information appearing on the form matches the information in CBP’s systems. In addition, CBP would need to write the Form I–94 number on each paper Form I–94 so that their paper form matches the electronic record. As noted earlier, 25.1 percent of aliens are non-B–1/B–2 travelers. Filling out and processing this many paper Forms I–94 at airports and seaports would increase processing times considerably. At the same time, it would only provide a small savings to the individual traveler. As noted in the Net Benefits section, the net cost of this rule to temporary workers and to those in the “Other/Unknown” category of aliens is only \$18.04 per traveler and the rule has a net benefit to those arriving as students or diplomats.

*The Regulatory Flexibility Act*

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule primarily regulates individuals and individuals are not considered small entities. In addition, the individual travelers may obtain a paper Form I–94 upon request, which would eliminate the impacts of this rule for those travelers. Employers who have internet access may choose to allow their employees to use their internet

connection to access the employee’s electronic Form I–94, but they are not required to do so and are therefore not directly regulated by this rule. To the extent an employer chooses to assist an employee with accessing the internet and printing an I–94, this impact would not rise to being an economically significant impact under the RFA. This rule also regulates air and sea carriers by eliminating the need for them to provide the paper Form I–94 to their passengers. This rule would impact all small carriers that transport passengers to the United States. We therefore conclude that this rule will have an impact on a substantial number of small entities. As stated in the economic impact analysis above, we estimate that carriers spend \$1.3 million a year printing and storing forms for their passengers, based on 2011 passenger volumes. In 2011, 16,586,753 Forms I–94 provided by carriers were filed at airports and seaports. Dividing these figures, we estimate that carriers spent 8 cents per form in printing and storage costs. Under this rule, carriers would no longer need to print and store the Forms I–94, thus eliminating these costs. According to a 2008 study by the Department of Commerce’s Office of Travel and Tourism Industries,<sup>31</sup> the average ticket price for an international traveler traveling to the United States is \$1,484. The cost to the carrier of printing a Form I–94 is less than one hundredth of one percent of the revenue a carrier receives from the average passenger. We therefore do not believe that this rule will have a significant economic impact on small entities. We also note that any impact to small carriers would be purely beneficial. CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities. CBP welcomes comments on this conclusion.

*Administrative Procedure Act*

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b))

<sup>31</sup> U.S. Office of Travel and Tourism Industries. 2008. “Overseas Travelers to the United States.” Table 26.

and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to this prior notice and comment requirement for “rules of agency organization, procedure, or practice” 5 U.S.C. 553(b)(A).

This interim final rule is a procedural rule promulgated for “agency housekeeping” and efficiency purposes. CBP believes that will not affect the substantive rights or interests of the public.

Once effective, the rule will change “the manner” in which arriving aliens present information to CBP, but will not “alter the rights or interests” of those aliens as they seek admission to the United States. Such arriving aliens will no longer be required to complete and submit the paper Form I-94. Instead, the information previously collected by the paper I-94 will now be automatically populated into a new electronic format, which will be printable from CBP’s Web site: [www.cbp.gov/i94](http://www.cbp.gov/i94).

The rule neither affects the substantive criteria by which CBP officers inspect aliens upon arrival nor the nature of the information at CBP’s disposal.

*Privacy*

CBP will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule, and will be issuing a Privacy Impact Assessment (PIA), which will fully outline how CBP will ensure compliance with Privacy Act protections. The PIA will examine the privacy impact of the Form I-94 automation process as it relates to DHS’s Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS’s mission to preserve, protect, and secure. The PIA will address such issues as the security, integrity, and sharing of data, use limitation, and transparency. The PIA will be made available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

*Paperwork Reduction Act*

The collection of information regarding the CBP Form I-94 (Arrival/

Departure Record) was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651-0111. This OMB Control Number also includes the Electronic System for Travel Authorization (ESTA), ESTA fee, and Form I-94W, all of which are unaffected by this rule. In addition, information for the electronic Form I-94 will be comprised of information already collected for APIS under approval 1651-0088. 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.

The automation of the paper Form I-94 for commercial aircraft and vessel passengers in accordance with this Interim Final Rule would result in an estimated reduction of 9.6 million Forms I-94 completed by paper, and an estimated reduction of 1,276,800 burden hours. The remaining estimated burden associated with the Form I-94, which would be for aliens arriving at the land border, is as follows:

*Estimated Number of Respondents:* 4,400,000.

*Estimated Number of Total Annual Responses:* 4,400,000.

*Estimated Time per Response:* 8 minutes.

*Estimated Total Annual Burden Hours:* 585,200.

CBP will make the electronic Form I-94 available to aliens on a secure Web site. Passengers may log into the Web site using 7 pieces of basic identifying information that is either known to the traveler (their first name, last name and date of birth) or readily available on their passport (passport number, country of issuance, date of entry, and class of admission). This information will be used only to grant the passenger access to the Web site. CBP estimates that it will take the traveler 4 minutes to log into the Web site using identifying information and print the electronic form. Because so many parties at various levels of government and outside of the government use the Form I-94, CBP cannot estimate how many aliens who are not B-1/B-2 travelers will access the Web site.

Because we do not know how many people need a physical copy of their Form I-94 or how many face obstacles to accessing their electronic I-94, for the purposes of this analysis, we assume that every traveler, other than B-1/B-2 travelers, who currently receives a paper Form I-94 will log into the Web site to print off their electronic Form I-94. In 2013, we estimate this to be 5,047,681 travelers. We request comments on the number of travelers that will access the Web site and will amend this number accordingly in the final rule. The estimated burden associated with the Web site, is as follows:

*Estimated Number of Respondents:* 5,047,681.

*Estimated Number of Total Annual Responses:* 5,047,681.

*Estimated Time per Response:* 4 minutes.

*Estimated Total Annual Burden Hours:* 336,512

The automation of the paper Form I-94 for commercial aircraft and vessel passengers in accordance with this Interim Final Rule would result in an estimated reduction of 10,918 million Forms I-102 filed, and an estimated reduction of 4,541.89 burden hours. The collection of information regarding the Form I-102 was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1615-0079. The remaining estimated burden associated with the Form I-102, which would be for aliens arriving at the land border, is as follows:

*Estimated Number of Respondents:* 6,782.<sup>32</sup>

*Estimated Number of Total Annual Responses:* 6,782.

*Estimated Time per Response:* 25 minutes.

*Estimated Total Annual Burden Hours:* 2,821.31.

The Exhibit 15 summarizes the difference in the burden for the current process and the future process. As OMB Control Number 1651-0111 includes ESTA and I-94W, we include those burden hours for informational purposes. We note that these burden hours are unaffected by this rule.

EXHIBIT 15 PRA—BURDEN EFFECTS OF THE RULE

	Collection	Respondents	Burden hours
Pre-IFR .....	I-94 .....	14,000,000	1,862,000
	Website .....	0	0
	I-102 .....	17,700	7,363

<sup>32</sup> As discussed earlier, CBP uses a slightly different figure in its regulatory analysis because

the analysis is based on a calendar year basis which USCIS’s estimates are on a fiscal year basis.

EXHIBIT 15 PRA—BURDEN EFFECTS OF THE RULE—Continued

	Collection	Respondents	Burden hours
IFR	ESTA	19,140,000	4,785,000
	I-94W	100,000	333,147
	I-94	4,400,000	586,667
	Website	5,047,681	336,512
	I-102	6,782	2,821
Difference	ESTA	19,140,000	4,785,000
	I-94W	100,000	13,333
	I-94	-9,600,000	-1,275,333
	Website	5,047,681	336,512
	I-102	-10,918	-4,542
	ESTA	0	0
	I-94W	0	0

Comments concerning the accuracy of this cost estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Attention: Border Security Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229.

CBP has included a copy of the current paper Form I-94 on the docket for this rulemaking in the supporting documents section. CBP seeks comments on whether the instructions included on the form are sufficient or whether they should be revised for clarity in light of the automation. Comments on the instructions should be submitted to CBP as described in the ADDRESSES portion of this rule above.

**List of Subjects**

*8 CFR Part 1*

Administrative practice and procedure, Immigration.

*8 CFR Part 264*

Aliens, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

For the reasons discussed in the preamble and under the authority of 8 U.S.C. 1103, CBP amends 8 CFR chapter 1 as set forth below.

**PART 1—DEFINITIONS**

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

**Authority:** 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Pub. L. 107-296, 116 Stat. 2135; 6 U.S.C. 1 *et seq.*

■ 2. Add § 1.4 to part 1 to read as follows:

**§ 1.4 Definition of Form I-94**

The term *Form I-94*, as used in this chapter I, includes the collection of arrival/departure and admission or parole information by DHS, whether in paper or electronic format, which is made available to the person about whom the information has been collected, as may be prescribed by DHS. The following terms, when used in the context of the *Form I-94*, are clarified as to their meaning to accommodate the collection of such information in an electronic format.

(a) The terms “annotate,” “note,” “indicate on,” “stamp,” and “endorse,” unless used in part 231 of this chapter, include, but are not limited, to DHS amending, including or completing information in its electronic record of admission, or arrival/departure. For purposes of part 231, the term “endorse” includes but is not limited to the submission of electronic departure data to CBP.

(b) The terms “completed,” “completely executed” and “completed and signed” include, but are not limited to, DHS completing its collection of information into its electronic record of admission, or arrival/departure.

(c) The terms “issuance” and “given” include, but are not limited to, the creation of an electronic record of admission, or arrival/departure by DHS following an inspection performed by an immigration officer.

(d) The term “original I-94” includes, but is not limited to, any printout or electronic transmission of information from DHS systems containing the electronic record of admission or arrival/departure.

(e) The terms “present,” “presentation,” or “submission” of a Form I-94, unless they are used in § 231.1 or § 231.2 of this chapter, include, but are not limited to, providing a printout of information from DHS systems containing an electronic record of admission or arrival/departure. For purposes of § 231.1 of

this chapter, the terms “present” or “submission” of the Form I-94 includes ensuring that each passenger presents him/herself to a CBP Officer for inspection at a U.S. port-of-entry. For the purposes of § 231.2 of this chapter, the terms “present,” “submit,” or “submission” of the Form I-94 includes ensuring that each passenger is available for inspection by a CBP Officer upon request.

(f) The term “possession” with respect to a Form I-94 includes, but is not limited to, obtaining a copy or printout of the record of an electronic evidence of admission or arrival/departure from the appropriate CBP systems.

(g) The terms “surrendering,” “turning in a Form I-94,” and “departure I-94” includes, but is not limited to, complying with any departure controls under 8 CFR part 215 that may be prescribed by CBP in addition to the submission of electronic departure data to CBP by a carrier.

\* \* \* \* \*

**PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES**

■ 3. The general authority for part 264 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1201, 1303—1305; 8 CFR part 2.

\* \* \* \* \*

§§ 210.4, 212.1, 212.4, 212.6, 214.1, 214.2, 214.6, 214.7, 214.14, 215.8, 231.1, 231.2, 235.1, 245.15, 245.21, 245.23, 245.24, 245a.1, 245a.2, 245a.4, 245a.15, 247.12, 253.1, 274a.2, and 286.9 [Amended]

■ 4. In the following locations, add “(see § 1.4)” after the first mention of the term “I-94”:

- a. § 210.4(d)(3);
- b. § 212.1(q)(1)(vi);
- c. § 212.4(g);
- d. § 212.6(b)(2)(iii);
- e. § 214.1(b)(1)(iv);
- f. § 214.2(b)(2);



- g. § 214.6(g)(1);
  - h. § 214.7(c)(2)(i);
  - i. § 214.14(c)(5)(i)(A);
  - j. § 215.8(a)(1);
  - k. § 231.1(b)(1);
  - l. § 231.2(b)(1);
  - m. § 235.1(f)(1)(ii);
  - n. § 245.15(h)(4);
  - o. § 245.21(g)(3);
  - p. § 245.23(e)(1)(vi);
  - q. § 245.24(d)(6);
  - r. § 245a.1(d)(2);
  - s. § 245a.2(b)(8);
  - t. § 245a.4(b)(2)(i)(F);
  - u. § 245a.15(b)(2)(i);
  - v. § 247.12(a);
  - w. § 253.1(a);
  - x. § 274a.2(b)(1)(v)(A)(5); and
  - y. § 286.9(b)(1).
- 5. In § 264.1, add a note to the end of paragraph (b) to read as follows:

**§ 264.1 Registration and fingerprinting.**

\* \* \* \* \*

(b) \* \* \*

**Note to paragraph (b):** In addition to the forms noted in this paragraph (b), a valid, unexpired nonimmigrant DHS admission or parole stamp in a foreign passport constitutes evidence of registration.

**Janet Napolitano,**  
*Secretary.*

[FR Doc. 2013-06974 Filed 3-26-13; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 505

#### Army Privacy Act Program

**AGENCY:** Department of the Army, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army is amending its rule on notification of the Army Litigation Division when complaints citing the Privacy Act are filed in order to correct the mailing address in § 505.12. The address for notifying the Army Litigation Division of cases citing the Privacy Act and filed in a U.S. District Court has changed.

**DATES:** *Effective Date:* This rule is effective March 27, 2013.

**FOR FURTHER INFORMATION CONTACT:** MAJ Lisa R. Bloom, 703-693-1009, email: [lisa.bloom@us.army.mil](mailto:lisa.bloom@us.army.mil).

**SUPPLEMENTARY INFORMATION:**

#### A. Background

In the August 10, 2006, issue of the *Federal Register* (71 FR 46052), the Department of the Army issued a final rule. This final rule corrects the mailing

address for the Army Litigation Division. The Army Litigation Division moved to Fort Belvoir in September 2011.

#### B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule change does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

#### C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule change does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of \$100 million or more.

#### D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule change does not have an adverse impact on the environment.

#### E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule change does not involve collection of information from the public.

#### F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule change does not impair private property rights.

#### G. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 and Executive Order 13563 this rule change is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

#### H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 that Executive Order does not apply.

#### I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 that Executive Order does not apply because the rule change will not have a substantial effect 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.

**Kevin K. Robitaille,**

*COL, JA, Chief, U.S. Army Litigation Division.*

#### List of Subjects in 32 CFR Part 505

Privacy, Enforcement actions.

For reasons stated in the preamble 32 CFR part 505 is amended as follows:

#### PART 505—ARMY PRIVACY ACT PROGRAM

■ 1. The authority citation for part 505 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Revise paragraph (b) (1) of § 505.12 to read as follows:

#### § 505.12 Privacy Act enforcement actions.

\* \* \* \* \*

(b) \* \* \*

(1) When a complaint citing the Privacy Act is filed in a U.S. District Court against the Department of the Army, an Army Component, a DA Official, or any Army employee, the responsible system manager will promptly notify the Army Litigation Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060.

\* \* \* \* \*

[FR Doc. 2013-06968 Filed 3-26-13; 8:45 am]

**BILLING CODE 3710-08-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 518

#### The Freedom of Information Act

**AGENCY:** Department of the Army, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army is amending its rule on notification of the Army Litigation Division when a request is made for a record related to pending litigation involving the United States in order to correct the mailing address in § 518.15 and § 518.18. The address for notifying the U.S. Army Litigation Division of record requests