

US immigration
Electronic System for Travel Authorization (ESTA) program
Winter 2008

On June 9, 2008 The Department of Homeland Security (DHS) Bureau of Customs and Border Protection (CBP) published an interim final rule regarding changes to the Visa Waiver Program (VWP) to implement the Electronic System for Travel Authorization (ESTA) program, arguably the biggest change in the twenty year history of the VWP. The most significant of these changes is the requirement for all VWP travelers to register on line before travelling on the VWP.

Background

Originally enacted in 1986 as a three year pilot program for the waiver of a nonimmigrant visa for visits to the U.S., the VWP has evolved to become the predominate form of entry to the U.S. for business visitors and tourists from most countries in Western Europe, Oceania and Japan. To be designated under the VWP, a country must meet a statutory rate of nonimmigrant visa refusals for citizens and nationals, must have a program to issue machine readable tamper-resistant passports and must agree to report or make available to the U.S. information about the theft or loss of passports. In addition, the U.S. must determine that the country's designation would not negatively affect U.S. law enforcement and security issues. There are currently 34 VWP designated countries, including the U.K.

Electronic System for Travel Authorization

Created by DHS as required by the "Implementing Recommendations of the 9/11 Commission Act of 2007," ESTA will collect biographical information from VWP travelers which will be used to evaluate, *before travel* to the U.S., the visitor's eligibility to enter the U.S. Since August 2008, VWP travelers have been able to apply for ESTA on a voluntary basis. As of January 12, 2009, all VWP travelers must receive clearance under ESTA before traveling to the U.S. visa free.

Like the I-94W form which is normally completed by a VWP traveler en route or on arrival to the U.S., the ESTA online application requires the VWP traveler to provide DHS with biographical information (full name, date of birth, country of citizenship), passport information and travel information (including address where the individual will stay in the U.S.) and to answer a series of questions as to the individual's admissibility, including, among other things, whether the individual has a communicable disease, is a drug abuser or addict, has been arrested or convicted for an crime involving moral turpitude or a drug offence, is seeking to work in the U.S. or has ever been deported or previously removed from the U.S.

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Travel to the U.S. on or after January 12, 2009

DHS recommends that VWP travelers submit information for ESTA at least 72 hours prior to travel to the U.S. ESTA authorization may be valid for up to two years or the length of the applicant's passport validity, whichever is less. Once an individual has valid ESTA, he may continue to travel to the U.S. as a visitor for business or pleasure throughout its validity. However, prior to each entry, the traveler must login to the ESTA website to update travel itinerary and in addition, travelers must make a new ESTA application if at any time during the current ESTA's validity they acquire a new passport, change their name or change any other identifying biographical information.

Similar to those traveling to the U.S. with visas, a valid ESTA does not guarantee admission to the U.S., but simply authorizes the individual to board an airline or sea carrier for travel to the U.S. CBP at port of entry will continue to make the final determination as to admissibility.

If you have questions about this briefing or issues with obtaining ESTA approval, please contact Anastasia Tonello on +1 (212) 661 5401 or Paul Samartin on +44 (0) 20 7710 0718.

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