



Wednesday, June 11, 2008

U.S. DEPARTMENT OF STATE (DOS) PUBLISHES AN INTERIM FINAL RULE TO IMPLEMENT THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA);

ESTA Will Require Electronic Pre-Registration of Visa Waiver Program (VWP) Travelers to the United States Beginning Next Year and Could Prompt Reciprocal Treatment of U.S. Citizens by VWP Countries

On Monday, June 9, 2008, the U.S. Department of State (DOS) published an interim final rule to implement the Electronic System for Travel Authorization (ESTA) for the pre-screening and electronic registration of Visa Waiver Program (VWP) Travelers to the United States. The program is scheduled to go into effect on a voluntary basis later this year, with mandatory compliance required beginning January 12, 2009.

The web-based ESTA program would require the electronic registration of VWP travelers in advance of their departure for the United States. Upon the applicant's completion of the electronic application, the applicant's data will be checked against various agency databases. If the application is approved, the resulting "clearance" will typically remain valid for up to two years, during which time the applicant may apply for admission to the United States under the Visa Waiver Program at a U.S. Port of Entry. Applicants who receive a denial from the ESTA system would be referred to the U.S. DOS web site for information on how to apply for a visa.

The DOS plans to make ESTA available for voluntary registration later this year, possibly as early as August. Should the mandatory system go into effect in January 2009 as planned, applicants who apply through the ESTA system on a voluntary basis before the requirement goes into effect may experience fewer delays in system use and will be prepared for travel for a period of up to two years before the anticipated volume of applications in 2009.

While the ESTA travel authorization will ordinarily remain valid for up to two years, any of the following events would require re-application:

1. Issuance of a new passport;
2. Change in applicant's name;
3. Change in applicant's gender;
4. Change in applicant's country of citizenship;
5. Change in circumstances surrounding the applicant's eligibility for the program.

Other types of changes, such as changes in residential address, U.S. destination address, or U.S. business contacts, would not require a new application and new ESTA approval. Rather, the ESTA system is designed to permit updates to such information via the web-based ESTA user system.

While U.S. citizens need not be concerned with obtaining ESTA program approval for return travel to the United States, ESTA will likely impact U.S. citizens indirectly. Participation in the Visa Waiver Program is based in part on reciprocal treatment of U.S. citizens by VWP Member Countries. Because the system is based on reciprocity, Member Countries may develop a system of pre-screening and registration for U.S. citizens seeking admission as visitors for business or leisure travel abroad. Rumors have already circulated that the European Union may have plans to develop and implement a similar system, which would require advance planning and electronic registration of U.S. citizens traveling to most European countries. For applicants with criminal infractions, use of the Visa Waiver Program may not be possible, and visa applications may be required.

As always, Tindall & Foster, P.C. will continue to monitor regulatory requirements impacting international travel and will make updates available via the [Tindall & Foster web site](#) and in future Email Bulletins.