

June 2008

## Contacts

**Washington, DC**  
1900 K Street, NW  
Washington, DC 20006-1109

[Ian P. Band](#)  
(202) 955-1913  
iband@hunton.com

[Suzan Kern](#)  
(202) 419-2075  
skern@hunton.com

[Adam J. Rosser](#)  
(202) 419-2026  
arosser@hunton.com

## DHS Introduces Electronic Authorization for the Visa Waiver Program

The Department of Homeland Security (DHS) has issued an interim final rule that establishes the Electronic System for Travel Authorization (ESTA) as part of the Visa Waiver Program (VWP).

### What is ESTA?

ESTA is a program that will enhance security by requiring all nationals or citizens of VWP countries planning to visit the United States for business or pleasure to obtain pretravel authorization via online registration. Once the application is submitted, the information collected will be queried against various law enforcement databases.

### To whom does ESTA apply?

It applies to **every** individual planning to visit the United States under the VWP, including children. It does **not** apply to those who have been or will be issued U.S. visas (for business, pleasure, employment, etc.) and plan to visit the United States using those visas. It also does **not** apply to those granted permanent resident (green card) status.

### How long does it take to obtain online authorization under ESTA?

In most cases, the authorization will be issued immediately. The responses include

**Authorization Approved, Travel Not Authorized** and **Authorization Pending**.

### How far in advance should individuals apply for ESTA?

Individuals may apply as far in advance of their travel as they wish, but should apply no less than 72 hours prior to departure to the United States. Definite travel plans to the United States are **not** required in order to apply for ESTA.

### Must individuals go through ESTA each time they visit the United States?

No. An ESTA authorization is valid for up to two years, or until the individual's passport expiration date, whichever is shorter. The authorization is also valid for unlimited visits to the United States, if the individual is otherwise admissible. New ESTA authorizations, however, are required if a new passport is issued, the person's name or gender changes, the person's country of citizenship changes or if eligibility changes (based on the ESTA questions). In addition, those holding passports valid for six months or less issued by countries that have not entered into agreements with the United States to recognize passports for six months beyond the expiration date will not receive ESTA authorization; new passports will be required in order to obtain the authorization.

**If individuals obtain ESTA authorization, are they guaranteed admission into the United States?**

No. The ESTA authorization is only a security clearance tool that allows individuals to board the aircraft to travel to the United States; it does not guarantee admission. The Customs and Border Protection (CBP) officers still must inspect applicants to determine admissibility.

**What do individuals do if their applications are not authorized for travel?**

Individuals who receive the *travel not authorized* response will need to apply

for a visitor's visa at the U.S. embassy or consulate with jurisdiction over their current residence abroad.

**When does ESTA go into effect?**

While voluntary applications can be made as early as August 1, 2008, the program does not become mandatory until 60 days after the *final* regulation is published. The final rule is anticipated in November 2008 for implementation by January 12, 2009.

**How do I apply?**

Applicants can apply by visiting <http://esta.cbp.dhs.gov> [website is under

construction] to complete the online application.

**Will other countries require U.S. citizens to go through a similar process when visiting those countries?**

As of right now, the United States is the only country requiring those permitted to travel without visas to obtain a pretravel authorization.

If you have any questions, please feel free to contact us.

© 2008 Hunton & Williams LLP. Attorney advertising materials. These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create an attorney-client or similar relationship. Please do not send us confidential information. Past successes cannot be an assurance of future success. Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon these materials.