



U.S. Customs and  
Border Protection

NOV 25 2011

MEMORANDUM FOR: Directors, Field Operations  
Office of Field Operations  
(b) (6), (b) (7)(C)  
Director, Preclearance Operations  
FROM: Executive Director (b) (6), (b) (7)(C)  
Admissibility and Passenger Programs  
(b) (6), (b) (7)(C)  
SUBJECT: ESTA and Visa Waiver Program (VWP) Passenger Processing

Compliance with the Electronic System for Travel Authorization (ESTA) requirement in the air environment has remained high – consistently at or better than 99.5 percent. Given the high compliance rate and carriers and the traveling public’s awareness of the requirement, it is an appropriate time to transition to the next enforcement phase. Effective upon receipt the guidelines outlined below will supersede the previous guidance memo dated January 20, 2010, *Electronic System for Travel Authorization Enforced Compliance – Port Procedures*.

(b) (7)(E)

(b) (7)(E) If resources and time permit, officers should assist the applicant in applying for an ESTA in CBP (b) (7)(E) via the ESTA website at <https://esta.cbp.dhs.gov>.

If the application is approved and the applicant is otherwise admissible, CBP may admit the applicant accordingly. If the ESTA application is denied, the applicant is subject to refusal under section 217 of the Immigration and Nationality Act (INA). (b) (7)(E)

(b) (7)(E) (b) (7)(E)

If the ESTA application is denied, but the port determines there are compelling reasons to allow the alien entry due to (b) (7)(E) the port may

(b) (7)(E) The port must promptly notify the (b) (7)(E) of this action (b) (7)(E)

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If the port determines there are compelling reasons to allow the alien entry due to (b) (7)(E) (b) (7)(E) the port may exercise discretion (b) (7)(E)

The port must notify the (b) (7)(E) (b) (7)(E)

VWP applicants must not be refused admission based solely on ESTA status.

VWP applicants with denied ESTAs or without ESTAs should not be refused admission based solely (b) (7)(E) a (b) (7)(E) Refusals of admission must be based on (b) (7)(E)

In addition, pursuant to Title 8 Code of Federal Regulations (CFR) section 217.4(a), the proper procedure for denying admission to VWP applicants is a VWP Refusal.

Ability to WD at Preclearance Ports

VWP applicants in the Preclearance environment traveling without an ESTA will be permitted to voluntarily withdraw (WD) their applications for admission prior to submitting an ESTA application. If the ESTA application is denied, guidelines outlined above should be followed.

VWP applicants arriving by land with denied ESTAs must not be admitted under the VWP until (b) (7)(E) concurrence is received.

Currently, there is no penalty for applying at a land border port without an ESTA because ESTA is not required for entry at land ports of entry. However, a VWP applicant at a land port of entry who previously (b) (7)(E)

As outlined above, the port may exercise discretion to grant a port parole where appropriate, and must notify the (b) (7)(E) (b) (7)(E)

VWP applicants arriving by sea.

Authorization via ESTA for VWP travel is required for arrivals in the maritime environment. However, sea carriers do not yet have the capability of determining ESTA status in an automated response, and are not subject to penalties pursuant to section 273 INA for transporting VWP applicants to the United States who are not compliant with the ESTA requirement.

**Carrier Fines**

(b) (7)(E)  
[Redacted]  
If the applicant is ultimately admitted under the VWP, initiating a (b) (7)(E)  
[Redacted]  
(b) (7)(E)  
[Redacted]

If you have questions or require additional information, please contact (b) (6), (b) (7)(C),  
Director, Electronic System for Travel Authorization at (b) (6), (b) (7)(C).

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**Date:** November 16, 2011  
**Topic:** ESTA and Visa Waiver Program Passenger Processing  
**Headquarters POC:** (b) (6), (b) (7)(C)  
**Office:** Electronic System for Travel Authorization

Due to high compliance with the Electronic System for Travel Authorization (ESTA) requirement for Visa Waiver Program (VWP) travel and in an effort to enhance and streamline the ESTA program, VWP traveler processing is being simplified. Effective immediately:

1. (b) (7)(E)

- (b) (7)(E) If resources and time permit, assist the applicant with applying for an ESTA in CBP (b) (7)(E) via the ESTA website at <https://esta.cbp.dhs.gov>.
  - If the application is approved and the applicant is otherwise admissible, the person may be admitted as (b) (7)(E) or (b) (7)(E) for 90 days.
  - If the ESTA application is denied, (b) (7)(E)
  - (b) (7)(E)
    - If the ESTA application is denied and the port of entry determines that the traveler is otherwise eligible for entry, CBP may exercise discretion (b) (7)(E) (b) (7)(E)  
The port must notify the (b) (7)(E) (b) (7)(E)

2. (b) (7)(E)

- A VWP applicant arriving with a (b) (7)(E)
- If the port of entry determines that the applicant is (b) (7)(E) (b) (7)(E) (b) (7)(E)

3. VWP applicants must not be refused admission solely based on ESTA status.

- VWP applicants with denied ESTAs or without ESTAs (b) (7)(E) (7)(E)
- Refusals of admission must be based on applicable grounds of inadmissibility pursuant to

INA statute and regulations.

- Pursuant to Title 8 Code of Federal Regulations (CFR) section 217.4(a), the proper procedure for denying admission to VWP applicants is a VWP Refusal.

**4. Ability to WD in Preclearance Ports**

- (b) (7)(E)
- If (b) (7)(E) [ (b) (7)(E) ]

**5. VWP applicants arriving by land with (b) (7)(E)**

Currently, ESTA is not required for entry at land borders. However, any VWP applicant who (b) (7)(E) (b) (7)(E) and may be subject to refusal under Sec 217 INA. (b) (7)(E)

**6. VWP applicants arriving by sea**

Authorization via ESTA for VWP travel is required for arrivals in the maritime environment. However, sea carriers do not yet have the capability of determining ESTA status electronically and are not liable for fines pursuant to section 273 INA for transporting VWP applicants to the United States who are not compliant with the ESTA requirement.

**Carrier Fines**

CBP must initiate a carrier fine pursuant to section 273 of the INA (b) (7)(E) . If the applicant is ultimately admitted under the VWP, (b) (7)(E) (b) (7)(E) t.