

§217.6

(1) The alien is issued a new passport;
(2) The alien changes his or her name;

(3) The alien changes his or her gender;

(4) The alien's country of citizenship changes; or

(5) The circumstances underlying the alien's previous responses to any of the ESTA application questions requiring a "yes" or "no" response (eligibility questions) have changed.

(f) *Limitations.* (1) *Current authorization period.* An authorization under ESTA is a positive determination that an alien is eligible, and grants the alien permission, to travel to the United States under the VWP and to apply for admission under the VWP during the period of time the travel authorization is valid. An authorization under ESTA is not a determination that the alien is admissible to the United States. A determination of admissibility is made only after an applicant for admission is inspected by a CBP Officer at a U.S. port of entry.

(2) *Not a determination of visa eligibility.* A determination under ESTA that an alien is not eligible to travel to the United States under the VWP is not a determination that the alien is ineligible for a visa to travel to the United States and does not preclude the alien from applying for a visa before a United States consular officer.

(3) *Judicial review.* Notwithstanding any other provision of law, a determination under ESTA is not subject to judicial review pursuant to 8 U.S.C. 217(h)(3)(C)(iv).

(4) *Revocation.* A determination under ESTA that an alien is eligible to travel to the United States to apply for admission under the VWP may be revoked at the discretion of the Secretary.

(g) *Compliance date.* Once ESTA is implemented as a mandatory program, 60 days following publication by the Secretary of a notice in the FEDERAL REGISTER, citizens and eligible nationals of countries that participate in the VWP planning to travel to the United States under the VWP must comply with the requirements of this section. As new countries are added to the VWP, citizens and eligible nationals of those countries will be required to obtain a

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travel authorization via ESTA prior to traveling to the United States under the VWP.

[73 FR 32452, June 9, 2008]

§217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I-775, Visa Waiver Pilot Program Agreement.

(b) *Termination of agreements.* The Commissioner, on behalf of the Attorney General, may terminate any carrier agreement under this part, with 5 days notice to a carrier, for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed 15 days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon 15 days' written notice to the other party.

[62 FR 10352, Mar. 6, 1997]

§217.7 Electronic data transmission requirement.

(a) An alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port of entry will not be admitted under the Visa Waiver Program unless an appropriate official of the carrier transporting the alien electronically transmitted to Customs and Border Protection (CBP) passenger arrival manifest data relative to that alien passenger in accordance with 19 CFR 4.7b or 19 CFR 122.49a. Upon departure from the United States by sea or air of an alien admitted under the Visa Waiver Program, an appropriate official of the transporting carrier must electronically transmit to CBP departure manifest data relative to that alien passenger in accordance with 19 CFR 4.64 and 19 CFR 122.75a.

(b) If a carrier fails to submit the required electronic arrival or departure manifests specified in paragraph (a) of