

**DEPARTMENT OF TRANSPORTATION  
DIVISION OF MOTOR VEHICLES**

Statutory Authority: 21 Delaware Code Section 302, 2715(a), 3103(a), and Chapters 27 and 31  
2 DE Admin. Code 2220

**FINAL**

**ORDER**

**2220 Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates**

Proposed Regulation 2220 based on House Bill 147, which was passed by the 144<sup>th</sup> General Assembly. The regulation establishes and clarifies procedures used to determine driver license and identification card expiration dates for immigrant and non-immigrant applicants and specifies, by immigrant status codes, those non-immigrants who are eligible for these state-issued documents. The proposed regulation was published in the Delaware *Register of Regulations* on January 1, 2008. The comment period remained open until January 31, 2008. There was no public hearing on proposed Regulation 2220.

**Summary of the Evidence and Information Submitted**

The Department received no public comments on the proposed regulation. The Division made some non-substantial changes to the proposed regulation due to the Division's implementation of the Department of Homeland Security's Systematic Alien Verification System (SAVE.) The SAVE system allows the Division to verify the legal status and authorized length of stay, thereby preventing fraud in the implementation of House Bill 147.

**Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation meets the requirements of House Bill 147 and is not in conflict with Delaware law.

**Decision and Effective Date**

Based on the provisions of 21 **Del.C.** §302, §2715(a), §3103(a) and Chapters 27 and 31, and the record in this docket, I hereby adopt Regulation 2220 and as may more fully and at large appear in the version attached hereto to be effective on February 15, 2008.

**Text and Citation**

**IT IS SO ORDERED THIS \_\_\_\_\_ day of February 2008.**

**Carolann Wicks, Secretary of Transportation**

**2220 Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates**

**1.0 Authority**

The authority to promulgate this regulation is 21 Del.C. Section 302, 21 Del.C. Section 2715(a), 21 Del.C. Section 3103(a)[, and] Chapters 27 and 31 of Title 21[, and CFR 37].

**2.0 Purpose**

This regulation establishes procedures used to implement 21 Del.C. Section 2715(a) and Section 3103(a) that mandate the expiration date on driver license and identification cards issued to temporary foreign nationals be limited to the period of time they are authorized to be in the United States. This will ensure that State identification documents will not be valid if persons have overstayed their authorized visit to this country. Permanent resident foreign nationals may be issued a full 5-year driver license or 4-year identification card. Furthermore, this regulation designates~~[by immigration status.]~~ those non-immigrants who are eligible for a Delaware-issued driver license or identification document.

### **3.0 Applicability**

This regulation establishes and clarifies procedures used to determine driver license and identification card expiration dates for immigrant and non-immigrant applicants and specifies~~[by immigrant status codes.]~~ those non-immigrants who are eligible for these State-issued documents.

### **4.0 Substance of Regulation**

#### **4.1 Definitions**

**"Lawful status"**: A person in lawful status is a citizen or national of the United States~~[is or]~~ an alien lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in a refugee status; has a valid non-immigrant status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for lawful permanent resident **[(LPR)]** or conditional permanent resident status.

**"Permanent resident foreign national"**: A lawful immigrant having permanent resident status and Department of Homeland Security (DHS) or Immigration Naturalization Service issued **[verifiable]** immigration documents confirming his/her permanent immigration status.

**"SAVE"**: ~~[refers to means]~~ the Department of Homeland Security's Systematic Alien Verification for Entitlements system or any such successor or alternative verification system authorized by the Secretary of the DHS.

**"Temporary foreign national"**: A lawful non-immigrant alien possessing unexpired passport with visa (if required) or Department of Homeland Security or Immigration and Naturalization Service (INS) document whose non-immigrant status, date of arrival in the United States and authorized length of stay in this country can be verified through a DHS database.

**["Temporary lawful status: a person in temporary lawful status is a person who: has a valid non-immigration status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for LPR or conditional permanent resident status.]**

**"United States Citizen"**: A person who has the following documents will be considered a U.S. citizen: a valid unexpired United States passport; certified copy of a birth certificate issued by a U.S. State or local office of Public Health, Vital Records, Vital Statistics or equivalent office; Consular Report of Birth Abroad issued by the DOS, Form FS-240, DS-1350 or FS-5454; Certificate of naturalization issued by DHS, Form N-550 or Form N-570; or Certificate of Citizenship, Form N-560 or Form N-561 or other documents designated by the DHS to confirm citizenship status.

**["Verify" means procedures to ensure: (1) the source document is genuine and has not been altered (i.e. "document authentication") and (2) the identity data contained on the document is valid ("data verification").]**

#### **4.2 Basic Immigration Terms and Concepts**

##### **4.2.1 Visa**

4.2.1.1 Citizens of foreign countries (aliens) generally need visas to enter the United States. A visa is permission to apply to enter the United States. It is a document which is affixed to a page in the passport. The Department of State embassies and consulates abroad issue visas to foreign nationals. A visa does not permit entry to the United States. It simply indicates the application has been reviewed by a United States consular officer and that the officer determined this person is eligible to travel to a United States port-of-entry for a specific purpose. The immigration officer at the port-of-entry decides whether to allow aliens to enter and how long they may stay in this country.

4.2.1.2 **[Most]** Canadian citizens and **[many]** citizens from Visa Waiver Program countries may **[come to enter]** the United States without a visa if they meet certain requirements. As of October 26, 2004, visa waiver travelers from all 27 Visa Waiver Program countries must present either a machine-readable passport issued by their home country[, ~~or~~] have a visa[, or enter the United States under the Western Hemisphere Travel Initiative].

4.2.1.3 There are two categories of United States visas: immigrant and non-immigrant.

4.2.1.3.1 *Immigrant visas* are for people who intend to live permanently in the United States

4.2.1.3.2 *Non-immigrant visas* are for people with permanent residence outside the United States but who wish to be in the United States on a temporary basis, for tourism, medical treatment, business, temporary work, study, etc.

4.2.2 Visa Issue and Visa Expiration Dates

4.2.2.1 The visa issue date and expiration date are shown on the visa. Depending on the alien's nationality, visas may be issued for any number of entries, from as little as one entry to multiple (unlimited) entries, for the same purpose of travel. The visa remains valid from the date it is issued until the date it expires, or travel for the same purpose, when the visa is issued for multiple entries. For example, tourists with a multiple entry visa can travel to the United States many times without having to apply for a visa before each entry.

4.2.2.2 If an alien overstays the end date of his/her authorized stay, then this action will automatically void or cancel his/her visa. However, if the alien has filed an application in a timely manner for extension of stay or a change in status and that application is pending and not frivolous, and if he/she did not engage in unauthorized employment, then this normally does not automatically cancel his/her visa.

4.2.3 Visa Expiration Date as Opposed to the Authorized Length of Stay

The expiration date for the visa should not be confused with the authorized length of stay in the United States. The United States immigration inspector at port-of-entry determines the length of stay and records this information on the Arrival-Departure Record, Form I-94 or I-94W for the Visa Waiver Program. The visa expiration date has nothing to do with the authorized length of stay in the United States for any given visit. **[An applicant's legal status and authorized length of stay is verified using SAVE.]**

4.2.4 Authorized Length of Stay

The United States immigration inspector may enter a date or "D/S" (duration of status) on the alien's I-94. In most cases, a specific date will be shown on the I-94 which means the alien must leave this country by that date. Some students, exchange program participants, and certain temporary workers (e.g., foreign diplomats) will be admitted for "duration of status." They may remain in the United States as long as they continue their courses of study or remain in the exchange program or qualifying employment.

4.3 **[Verifying]** Delaware Driver License and Identification Card Expiration Dates

4.3.1 Permanent resident foreign nationals may be issued a Delaware driver license that expires five (5) years after issuance or a Delaware identification card that expires four (4) years after issuance as long as the applicant has lawful status in the United States throughout the period the driver license or identification card is valid. **[The applicant should have A a] Permanent Resident Card, Form I-551[. ~~must be renewed every 10 years and those with conditional resident status must apply for renewal every two (2) years. The Division will limit the expiration date on driver license and identification cards to ensure the State issued documents expire on or before the date the permanent resident card or conditional resident status card expires to ensure the applicant retains his/her legal status in this country.]~~**

4.3.2 **[Temporary lawful status:]** A temporary foreign national's driver license or identification card will expire on the last day the **[non-]immigrant** is authorized to stay in the United States or the date determined by Delaware statute (21 **Del.C.** Section 2715 or Section 3103), whichever date is more restrictive. If the supporting immigration documents and/or USCIS databases do not designate an authorized length of stay in the United States or the authorized length of stay is annotated "duration of status[;]" or "indefinite,]" the Delaware driver license or identification card expiration date will be one year from the date of document issuance[, **unless supporting documents establish a program end date].**

4.3.3 The Delaware driver license or identification card expiration date may not exceed the date the applicant's legal status in this country expires.

**[4.3.4 Verification procedure: Because lawful status can change over time, the period of admission will be primarily determined by documents themselves, but with the use of the SAVE system, which can best identify a person's lawful period of admission. However, if SAVE is not operational when**

**the applicant is being issued an identification document, use the documents presented in place of the SAVE and verify the SAVE data a later date when SAVE is again available. To verify data through the SAVE, the applicant must present an immigration document containing an alien registration number or I-94 number.]**

#### 4.4 Fees

4.4.1 All driver license and identification card applicants will pay the standard fees in effect at the time of application (in accordance with 21 Del.C. Sections 2715 and Section 3103) which are currently \$25 for a 5-year license and \$20 for a 4-year identification card) even though the expiration dates may be limited based upon immigration status.

4.4.2 Should a non-citizen's lawful status or immigration document expiration date be extended, the driver license or identification card will be reissued, for no additional fee, to reflect the new authorized length of stay in this country. Adjust the State-issued document's expiration date to match the authorized length of stay in this country, not to exceed the expiration date established by statute in accordance with 21 Del.C. Section 2715 or Section 3103.

4.4.3 A non-citizen applicant may opt to renew his/her driver license for a full five (5) years or identification card for a full four (4) years in lieu of extending the expiration dates of his/her originally issued documents provided he/she pays the appropriate document fee. The new expiration date will be based upon current statute provided the immigrant's authorized length of stay in the country is not exceeded.

#### 4.5 DHS and INS Immigration documents

4.5.1 Since every alien over the age of 18 is required to carry his/her immigration documents at all times, Division staff will confirm the immigration status of all non-United States citizens upon initial issuance, renewal and re-issuance of all driver licenses and identification cards. All non-United States citizen driver license and identification card applicants must present the appropriate Immigration and Naturalization Service (INS), United States Citizenship and Immigration Services (USCIS), or other U.S. governmental documents which indicate their current immigration status or application status. The document presented must be valid and not expired. Non-United States citizens must **[prove verify]** his/her legal presence in this country before Delaware will issue a driver license, learner's permit, transfer an out-of-state driver license, or issue an identification card.

4.5.2 The following list of commonly used immigration documents may be used to **[determine verify]** an alien's immigration status and authorized length of stay in the United States. A complete list of immigration documents will be updated and circulated to the staff under separate memorandums.

4.5.2.1 Non-immigrant visa. Arrival-Departure Record, Form I-94 (white card) with unexpired passport and visa or I-94W (green card) for the Visa Waiver Program and unexpired foreign passport. The I-94 functions vary to authorize travel, residency, employment or education opportunities within the United States. This document must be accompanied by supporting documentation in accordance with the status descriptions established by the Department of Homeland Security. If the non-immigrant's authorized length of stay is not annotated on the I-94, verify document with a USCIS office or its database.

4.5.2.2 Students. Foreign students having non-immigrant F-1/F-2, or M-1 visa classification should have an I-20 Certificate of Eligibility for Non-immigrant Student Status form along with their unexpired foreign passport and I-94 card. J-1/J-2- visa holders must present a valid DS-201[9] or IAP-66.

4.5.2.3 Refugee, asylee and parolee classifications must be accompanied by additional documentation and I-94 stating their immigration status.

4.5.2.4 Permanent Residents. Permanent resident foreign nationals have a Permanent Resident Card (I-551) with a machine-readable immigrant visa with the unexpired foreign passport.

4.5.2.5 I-94 stamped with "processed for I-551."

4.5.2.6 Attached unexpired temporary I-551 visa.

4.5.2.7 Valid I-551 Resident Alien or Permanent Resident card. Border Crosser cards and USA B-1/B-2 visa BCC cards are not acceptable.

4.5.2.8 Valid I-766, I-688A, I-688B photo Employment Authorization card or I-688 photo Temporary Resident card.

4.5.3 United States citizens must present one of the following documents to prove citizenship: a valid unexpired United States passport; certified copy of a birth certificate issued by a United States, State or local office of Public Health, Vital Records, Vital Statistics or equivalent office; Consular Report of Birth Abroad issued by Department of State, Form FS-240, DS-1350 or FS-5454; Certificate of naturalization issued by DHS, Form N-550 or Form N-570; or Certificate of Citizenship, Form N-560 or Form N-561, or other documents designated by DHS to

confirm citizenship status. Once verified, citizens do not have to reconfirm their citizenship status when renewing or being re-issued a driver's license or identification card document. Except for birth certificates issued by the State, all other documents can be electronically verified through SAVE.

#### 4.6 Electronically Verify Immigration Document Data

4.6.1 The Department of Homeland Security Systematic Alien Verification or Entitlements System (SAVE), if available, or any such successor or alternative verification system will be used by Division staff to verify an immigrant or non-immigrant legal status, name, date of birth, arrival date and authorized length of stay in this country. Federal government documents used to establish citizenship can also be verified using SAVE.

4.6.2 Should a discrepancy exist between the data in SAVE and immigration documents provided by the driver license or identification card applicant, the applicant will be denied a State-issued document and referred to the United States Citizenship and Immigration Service (USCIS) office to rectify the discrepancy.

#### 4.7 Duration of Status (D/S) Procedures

Students, exchange program participants, and certain temporary workers (e.g., foreign diplomats) may be admitted for "duration of status." The State-issued identification document will expire on the date the education, exchange, or worker program terminates or on the date established by 21 Del.C. Section 2715 or Section 3103, whichever is more stringent. If the applicant is unable to provide a firm date when the program ends, the driver license's or identification card's expiration date will be one (1) year from the date of the application and renewable as long as the applicant provides documentation showing he/she is still enrolled in the program. Note: Foreign diplomat driver licenses are issued by the U.S. Department of State and not by the State of Delaware.

4.8 Ineligible Immigration Statuses. Those applicants who are legally in the United States under the following immigration status or holding invalid or expired documents are not eligible for a Delaware-issued driver license or identification card, even if they have established residency in this State:

4.8.1 Those with invalid or expired immigration or passport documents.

4.8.2 Those I-94 holders without a valid INS or USCIS stamp.

4.8.3 Immigration status A-1. Ambassador, public minister, career diplomatic or consular officer and dependents are ineligible, because an "A" status may only be issued a driver's license from the United States State Department.

4.8.4 Immigration status A-2 for other foreign government officials or employees and dependents unless they are foreign military official and/or their dependents. Foreign military members and their dependents must provide a valid passport, I-94, visa, or assignment orders to be eligible.

4.8.5 Immigration status B-1. Visitor for business.

4.8.6 Immigration status B-2. Visitor for pleasure (tourist.)

4.8.7 Immigration status C-1. Alien in transit through the United States.

4.8.8 Immigration status C-2. Alien in transit to United Nations Headquarters district. Travel limited to 25 miles radius of Columbus Circle in New York.

4.8.9 Immigration status C-3. Foreign government official coming to the United Nations, dependents, attendants, servants, or other personal employees of official in transit through United States.

4.8.10 Immigration status D-1. Alien crew members.

4.8.11 Immigration status G-1. Resident representative of a foreign government to an international organization, plus staff and dependents.

4.8.12 Immigration status WB. Visitor for business (visa waiver program.)

4.8.13 Immigration status WT. Visitor for pleasure (tourist in visa waiver (program).)

4.9 Amending this Regulation. The Division of Motor Vehicles is authorized to publish memorandums to the staff identifying specific immigration documents and forms currently being used by the United States Citizenship and Immigration Services (USICS) regulate immigration procedures and to establish procedures for managing new USCIS programs without revising this regulation. Changes to the ineligibility status list in Section 4.8 must be made by amending this regulation.

## **5.0 Severability**

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portions shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

## **6.0 Effective Date**

The following regulation shall be effective 10 days from the date the order is signed, and it is published in final form in the Register of Regulations in accordance with 29 Del.C. Section 10118(e).

**11 DE Reg. 1261 (03/01/08) (Final)**