

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code, Section 4101(d) (21 **Del.C.** §4101(d))
2 **DE Admin. Code** 1205

FINAL

ORDER

1205 Electronic Red Light Safety Program (ERLSP)

NATURE OF THE PROCEEDINGS

At **25 DE Reg. 1041** (May 1, 2022), the Delaware Department of Safety and Homeland Security (DSHS), Office of Highway Safety, pursuant to 21 **Del. C.** §4101(d), and in accordance with 29 **Del. C.** §10115, published notice of intent to revise its regulations to enhance judicial efficiency. At the same time, DSHS submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del. C.** Ch. 104. DSHS solicited written comments from the public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the *Delaware Register of Regulations*. The public comment period was open from May 1, 2022 through June 3, 2022. During this period, DSHS did not receive any written responses.

FINDINGS OF FACT

The public was given the required notice of DSHS's intention to adopt the proposed revised regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No written responses were received during the comment period. Thus, DSHS finds that the proposed revised regulations should be adopted as submitted by DSHS.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by DSHS pursuant to 21 **Del. C.** §4101(d). The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, DSHS does hereby ORDER this 15th day of June 2022 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 15th day of June 2022.

Delaware Department of Safety and Homeland Security

Nathaniel McQueen Jr., Secretary

1205 Electronic Red Light Safety Program (ERLSP)

1.0 Statement of Purpose

The purpose of these regulations is to provide for the establishment and administration of an Electronic Red Light Safety Program (ERLSP) at qualifying intersections across the State of Delaware. The Delaware Department of Transportation (DelDOT) and/or the governing body of any city or county may install and operate traffic light signal violation monitoring systems and assess fines accordingly. The Program shall use recognized safety and crash criteria in determining whether and where to add any new enforcement locations to the Program, and in any event shall continue to confirm that any such new locations are not objected to by the incumbent state Senator and Representative for the districts in which such locations are proposed. These regulations are being promulgated in accordance with 21 **Del.C.** §4101(d) and 73 **Del. Laws**, c. 350, sec. 92.

2.0 Locations of Traffic Light Signal Monitoring Systems

DelDOT is specifically directed to identify intersections with high crash incidents as potential candidates for the placement of electronic red light camera systems. If a camera installation is performed on state-maintained streets or roads by an entity other than DelDOT, the Department must first approve such installation. In addition, the Department must approve the engineering of any new cameras installed. All intersections using a traffic control photographic system or other traffic light signal violation monitoring system must adhere to the exact duration of the yellow light change interval. This time period must be no less than the yellow light change interval duration specified in the design manual developed by the Department of Transportation.

17 DE Reg. 549 (11/01/13)

3.0 System Vendor

The Department of Transportation utilizes a supporting vendor to provide enforcement monitoring systems and assist in administering the ERLSP. System vendors are selected through an open competitive procurement process which allows for the government and the taxpayer to benefit from improved quality at lower pricing. To assure integrity and propriety, no person involved in the administration or enforcement of the Program shall own any interest or equity in the vendor used by the department to support the administrative elements of the Program. Any such person with an ownership or equity interest in such vendor must divest from this ownership or investment no later than ninety days after the effective date of this act. This restriction applies to anyone with either direct involvement in the administering or enforcement of the Program and those in any supervisory capacity above such persons.

17 DE Reg. 549 (11/01/13)

4.0 Fines

Violation notices are sent to the registered owner of the vehicle that fails to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal monitoring system, and shall be subject to a civil offense rather than a criminal offense. At the time of this revision, the present violation fine of \$112.50 is calculated using two components: a base fine of \$75.00 and a surcharge of \$37.50. The \$75.00 fee is authorized by 21 Del.C. §4101(d)(2). The \$37.50 surcharge originates from 11 Del.C. §410, which requires fines or fees levied for violations of Title 21 to include an additional 50% surcharge assessment.

17 DE Reg. 549 (11/01/13)

5.0 Violation Criteria

For a violation to occur, the front of a vehicle must be behind the stop line marked on the pavement at the time the traffic light signal turns red and must then continue into the intersection while the traffic light signal is red.

6.0 Determination of Violation

The technology for electronic enforcement utilizes a specialized camera, coupled with a traffic signal. The device detects the movement of vehicles into the intersection after a signal turns red. The technology video tapes this movement while simultaneously taking a picture of the violator's license plate to identify the vehicle. A trained technician, such as a law enforcement officer, employed by a state agency or entity designated by a state agency for this purpose inspects the evidence. Using this information, a violation notice is generated and sent to the registered owner of the vehicle.

17 DE Reg. 549 (11/01/13)

7.0 Exemptions

7.1 The following vehicles are exempt from receiving a notice of violation:

- 7.1.1 Emergency vehicles with active emergency lights;
- 7.1.2 Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
- 7.1.3 Vehicles under police escort; and
- 7.1.4 Vehicles in a funeral procession.

17 DE Reg. 549 (11/01/13)

8.0 Notice of Violation Content

8.1 A Notice of Violation shall contain:

- 8.1.1 The name and address of the registered owner of the vehicle that committed the violation;
- 8.1.2 The registration number of the motor vehicle involved in the violation;

- 8.1.3 The violation charges;
- 8.1.4 The location where the violation occurred;
- 8.1.5 The date and time of the violation;
- 8.1.6 Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation;
- 8.1.7 The amount of the civil assessment imposed and the date by which the civil assessment should be paid;
- 8.1.8 Information advising the summonsed person of the manner, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person ~~and/or~~ or the denial of the registration or the renewal of any of the owner's vehicles; and
- 8.1.9 Notice of the summonsed person's ability to rebut the presumption that the summonsed person was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.

17 DE Reg. 549 (11/01/13)

9.0 Affidavits

- 9.1 If the registered owner of a vehicle whom has received a notice of violation contends that ~~he/she~~ the registered owner was not the operator of the vehicle at the time of the violation, ~~he/she~~ the registered owner must furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner:
 - 9.1.1 Furnishes an affidavit by regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates had been reported to the police as stolen prior to the time of the alleged violation; or
 - 9.1.2 Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation or that the owner failed to comply with the traffic signal either in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession.
- 9.2 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within ~~30~~ 90 days of the issue date of the Notice of Violation or no later than 10 days prior to a hearing if one is requested, whichever date is earlier.
- 9.3 Upon receipt of an affidavit by the State of Delaware or the system vendor, the newly implicated person will be mailed a notification ~~informing him/her~~ of the violation.

17 DE Reg. 549 (11/01/13)

10.0 Payment of Civil Assessment

A person electing to pay the civil assessment should follow the process as outlined on the Notice of Violation.

17 DE Reg. 549 (11/01/13)

11.0 Procedures to Contest a Violation

A person receiving a Notice of Violation may request a hearing to contest the violation by notifying in writing the entity designated on the summons, within 30 days of the issue date. Upon timely receipt of a hearing request, a civil hearing shall be scheduled and the defendant notified of the hearing date by first class mail. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.

17 DE Reg. 549 (11/01/13)

12.0 Failure to Pay Civil Assessment

If the owner or the operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles may refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.

8 DE Reg. 1029 (01/01/05)

17 DE Reg. 549 (11/01/13)

