

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4170A (21 **Del.C.** §4170A)

PROPOSED

PUBLIC NOTICE

1207 Electronic Speed Monitoring System

Pursuant to the authority provided by 21 **Del.C.** §4170A, the Delaware Department of Transportation (DelDOT) established an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State of Delaware.

The Department, through its Division of Transportation Solutions seeks to adopt this regulation to administer the ESMS program, which is established in support of DelDOT's Highway Safety Improvement Program and, in particular, its Strategic Highway Safety Plan, which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads.

Public Comment Period

DelDOT will take written comments on the proposed Regulation 1207 of Title 2, Delaware Administrative Code, from December 1, 2023 through January 2, 2024. The public may submit their comments to:

Peter Haag, P.E.
Chief of Traffic Engineering
(Peter.Haag@delaware.gov) or in writing to his attention,
Delaware Department of Transportation
Division of Transportation Solutions
169 Brick Store Landing Road
Smyrna, DE 19977

1207 Electronic Speed Monitoring System

1.0 Statement of Purpose

The purpose of these regulations is to provide for the establishment and administration of an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State of Delaware. The Delaware Department of Transportation (DelDOT), the governing body of New Castle County, or any municipality within the State may install and operate an ESMS and assess fines in accordance with 21 **Del.C.** §4170A. The ESMS program is established in support of DelDOT's Highway Safety Improvement Program (HSIP) and, in particular, its Strategic Highway Safety Plan (SHSP), which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads. The ESMS shall be installed and used to record images of a motor vehicle travelling in a work zone, or in a residence district in either New Castle County or a municipality. Work zones and residence districts were selected for implementation in part due to the presence of vulnerable road users (e.g., highway workers and other people walking or biking) which account for a growing share of roadway fatalities. To install and use ESMS, a municipality or New Castle County must pass an ordinance enabling the program. The municipality or New Castle County must also approve the road and extent of the road eligible for electronic speed monitoring. These regulations are being promulgated in accordance with 21 **Del.C.** §4170A(c), 21 **Del.C.** §4105, and 84 **Del. Laws**, c. 74, §1.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"DelDOT" means the Delaware Department of Transportation.

"ESMS" means Electronic Speed Monitoring System.

"Residence district", as defined in 21 **Del.C.** §101, means the territory contiguous to and including a highway not comprising a business district where 50 percent or more of the property on such highway for a distance of 300 feet or more is improved with residences or residences and buildings in use for business.

"Work zone", as defined in 21 **Del.C.** §4105(f)(2), means a highway construction or maintenance area.

3.0 Electronic Speed Monitoring Systems Program Requirements

- 3.1 DeIDOT may approve the installation and use of an ESMS in a DeIDOT work zone or a residence district if the conditions in subsection 3.2.1 of this regulation are met. The Delaware State Police shall have enforcement authority over the ESMS in all work zones. For ESMS used in residence districts, the police agency with jurisdiction over the road shall have enforcement authority over the ESMS. Prior to DeIDOT approval of entities requesting to use the system in residence districts, participating municipalities and New Castle County shall authorize the use of ESMS in their code or ordinance and sign a memorandum of understanding or an agreement with DeIDOT regarding the operation of the ESMS.
- 3.2 Once a road is approved for an ESMS, the use of the system will be at the discretion of the police agency with jurisdiction over the residence district or at the discretion of the Delaware State Police in a work zone where the system will be implemented.
- 3.3 The conditions for installation and operation of an ESMS are as follows:

 - 3.3.1 If in a residence district, unless in a designated work zone, a study must be provided to DeIDOT by the requesting municipality or New Castle County. DeIDOT may perform speed data collection or provide recently collected speed data along state-maintained roadways, based on available resources, and provide the information to the requesting municipality or New Castle County to be included in the required study.

 - 3.3.1.1 The study must be no more than 1 year old from the date of the initial request and approved by DeIDOT.
 - 3.3.1.2 The study must document that the 85th-percentile speed on the road is 5 miles per hour or greater than the posted speed limit.
 - 3.3.1.3 The study must have been overseen by a Delaware Registered Professional Engineer, a sworn law enforcement officer, or a municipal or county official acting in their official capacity.
 - 3.3.1.4 The study must include continuous speed data, collected across a 24-hour window, at minimum.
 - 3.3.2 If in a residence district, the police agency with jurisdiction over the road must approve the road and extent of the road eligible for electronic speed monitoring prior to DeIDOT approval.
 - 3.3.3 If the road is within the boundaries of a municipality, the municipality must approve the road and extent of the road eligible for electronic speed monitoring prior to DeIDOT approval.
 - 3.3.4 The police agency with jurisdiction over the road must notify DeIDOT of the intent to use the ESMS at least 30 calendar days in advance of implementation.
 - 3.3.5 DeIDOT and the police agency with jurisdiction must provide notice on their publicly accessible websites of the intended use of the ESMS at least 14 calendar days prior to its implementation.
 - 3.3.6 Traffic control devices must be in accordance with the Delaware Manual on Uniform Traffic Control Devices, 2 **DE Admin. Code** 2402.
 - 3.3.7 The ESMS unit and enforcement area of roadway must be within the same jurisdictional boundary.

4.0 Site Selection and Approval

- 4.1 DeIDOT Work Zones

 - 4.1.1 All roadway functional classifications and all posted speed limits are eligible for use of ESMS in work zones; however, DeIDOT will implement procedures and guidelines to aid the selection of appropriate work zones at which to implement monitoring.
 - 4.1.2 If the road is within the boundaries of a municipality, approval must be obtained as described in subsection 3.3.3 of this regulation.
 - 4.1.3 The posted work zone speed limit may be equal to the normal regulatory speed limit of the roadway or may be reduced to a lower speed limit as determined by DeIDOT.
- 4.2 Residence Districts

 - 4.2.1 A study is required to be provided for each location requested for approval as described in subsection 3.3.1 of this regulation.
 - 4.2.2 If the road is also within the boundaries of a municipality, approval must be obtained as described in subsection 3.3.3 of this regulation.
 - 4.2.3 Sites requested for ESMS will be reviewed and approved by DeIDOT in the order received.
 - 4.2.4 Once installed, ESMS shall remain at the location installed for a minimum of 75 calendar days. While systems may remain at a location longer than 75 calendar days, the municipality or New Castle County may need to relocate the systems or work with the selected vendor to provide additional systems to accommodate approved requests for additional roadways or locations.

5.0 Deployment

An ESMS will be deployed to an approved location by the approved vendor once available either as a new installation or transferred from a current location. The jurisdictional police agency may have a limited number of units available to use based on the approved vendor's supply. The participating police agency may prioritize sites within their boundaries; the police agency may consider crash data in prioritizing locations where the system is to be implemented in addition to the requirements noted in subsection 3.3.1 of this regulation. Once installed, ESMS shall issue violation warnings without penalty for a 21 calendar day period following activation of the camera.

6.0 Installation

6.1 Site Considerations

- 6.1.1 The ESMS must be installed within the work zone or on the same roadway that the speed study was conducted for approval and in the vicinity of where the speeds were collected.
- 6.1.2 The technology and housing unit installation must comply with typical traffic control device requirements (e.g., Americans with Disabilities Act (ADA) compliance and geometric design policies and manuals).
- 6.1.3 The authorizing legislation establishes an end date for the Electronic Speed Monitoring program; therefore, all installations should be treated as "portable" or "temporary" traffic device installations.
- 6.1.4 The authorizing legislation requires annual reporting as described in Section 7.0 of this regulation. Data from the program will be collected and summarized to determine if any ESMS locations should become permanent installations.

6.2 Other Program Requirements

- 6.2.1 To inform motorists clearly of the posted speed limit and the ESMS enforcement area, a speed limit sign with photo enforced camera symbol or a "PHOTO ENFORCED" plaque mounted directly below must be installed in a location or locations where all motorists passing through the enforcement area would be expected to have seen the posted speed limit sign and photo enforced plaque.
- 6.2.2 Radar speed feedback signs (i.e., "YOUR SPEED" signs), must be used for motorist awareness and as speed data collection units in work zone applications of ESMS. Radar speed feedback signs may be used for motorist awareness and as speed data collection units in residence district applications of ESMS. Due to technological differences between radar speed feedback signs and the ESMS unit, a digital radar speed display may not be used in the immediate proximity of the enforcement area and must comply with DeIDOT policy.

7.0 Reporting

- 7.1 DeIDOT shall be responsible for preparing an annual report on the ESMS as implemented statewide. The report must include the following:
 - 7.1.1 Where and when the system was used. The approved vendor shall maintain a log of ESMS locations and activation and shut-down dates.
 - 7.1.2 Citation data. The approved vendor shall maintain a log of ESMS violations by location, date, and time.
 - 7.1.3 Crash data. DeIDOT shall monitor crashes at a minimum 0.1 miles upstream and downstream of each enforcement area (or to the end of roadway or to outside the influence area of the nearest intersection with a state-maintained roadway, if less than 0.1 miles), for 1 year before enforcement, during enforcement, and up to 1 year after enforcement ends.
 - 7.1.4 Speed data. Readily available speed data should be used when possible. However, speed data is unlikely to be "readily available", thus, speed data collected as part of the site approval process, described in subsection 3.3.1 of this regulation, may be used as "before enforcement" speed data. Data collected from the enforcement units may be used for "after enforcement" speed data.
 - 7.1.5 Financial data, including expenditures and revenues. All financial data and itemized transactions for ESMS locations in residence districts is the sole responsibility of the municipality or New Castle County and the selected vendor.
- 7.2 Police agencies shall cooperate with DeIDOT regarding the collection of data necessary to prepare the annual report. In the event a police agency does not provide the requested information in a timely manner to DeIDOT, the police agency will no longer be eligible for use of ESMS.

8.0 System Approved Vendor

- 8.1 DeIDOT utilizes a supporting approved vendor to provide enforcement monitoring systems and assist in administering the program. The approved vendor is 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, any person involved in the administration or enforcement of the program may not own any interest or equity in the approved vendor used by DeIDOT to support the administrative elements of the program. Any such person with an ownership or equity interest in such approved vendor must divest from this ownership or investment no later than 90 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.

8.2 To participate in the program, and in accordance with 29 Del.C. §6904, municipalities and New Castle County shall utilize "piggyback" agreements with DeIDOT's selected vendor for speed monitoring as well as collections activities.

9.0 Fines

9.1 Violation notices are sent to the registered owner of the vehicle that fails to comply with the posted speed limit or posted work zone speed limit, as evidenced by information obtained from an ESMS and shall be subject to a civil offense rather than a criminal offense. The present violation fine structure is established under 11 Del.C. §4169(c). Assessments defined under 11 Del.C. §4105, 11 Del.C. §4101, 11 Del.C. §9016, and 10 Del.C. §8505 shall only be assessed for violations occurring in a work zone.

9.2 The base fine for a vehicle that fails to comply with the posted speed limit or posted work zone speed limit, as evidenced by information obtained from an ESMS, is \$20 for first offense and \$25 for each subsequent offense pursuant to 21 Del.C. §4169(c).

9.2.1 A subsequent violation, before being punishable as such, shall have been committed within 24 months after the commission of the prior offense.

9.2.2 Violations occurring in work zones are considered separate from violations occurring in residence districts for the purposes of determining if a subsequent violation occurred.

9.2.3 Prior non-electronic moving violations issued by an officer are considered separate from ESMS violations for the purposes of determining if a subsequent violation occurred.

9.3 Additional speeding fines per mile per hour (mph) in excess of the posted speed limit pursuant to 21 Del.C. §4169(c) are as follows:

9.3.1 \$1.00 per mph if the recorded speed was between 11 and 15 mph over the posted speed limit or posted work zone speed limit for the first offense and \$2.00 per mph for subsequent offenses.

9.3.2 \$2.00 per mph if the recorded speed was between 16 and 19 mph over the posted speed limit or posted work zone speed limit for the first offense and \$3.00 per mph for subsequent offenses.

9.3.3 \$3.00 per mph if the recorded speed was 20 mph or more over the posted speed limit or posted work zone speed limit for the first offense and \$4.00 per mph for subsequent offenses.

9.4 For violations occurring in a work zone, the sum total of the base fine plus the additional speeding fine is doubled pursuant to 21 Del.C. §4105(f).

9.5 For violations occurring in a work zone the following surcharges will be levied:

9.5.1 A Transportation Trust Fund Surcharge equal to 50% of the sum total of the base fine, the additional speeding fine, and the work zone fine, pursuant to 11 Del.C. §4101, which requires fines or fees levied for violations of Title 21 to include an additional 50% surcharge assessment.

9.5.2 A Violent Crimes Fund Surcharge of \$15 pursuant to 11 Del.C. 4101(h).

9.5.3 An Ambulance Fund Surcharge of \$10 pursuant to 11 Del.C. 4101(j).

10.0 Violation Criteria

For a violation to occur, a motor vehicle must exceed the posted speed limit or posted work zone speed limit by 11 miles per hour or more in the residence district or work zone.

11.0 Determination of Violation

The technology for electronic enforcement utilizes a specialized camera, which detects the movement of vehicles through a defined area of roadway. Sensors detect the speed of the vehicle through the area. If the speed is above the violation criteria, the technology records this movement while simultaneously taking a photograph 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.

12.0 Exemptions

- 12.1 Emergency vehicles with active emergency lights and vehicles yielding the right-of-way to emergency vehicles are exempt from receiving a notice of violation.
- 12.2 No other exemptions are provided for in Delaware Code and no other exemptions will be considered as defenses to the issuance of a violation.

13.0 Notice of Violation Content

- 13.1 A Notice of Violation must contain:
 - 13.1.1 The name and address of the registered owner of the vehicle that committed the violation;
 - 13.1.2 The registration number of the motor vehicle involved in the violation;
 - 13.1.3 The violation charges;
 - 13.1.4 The location where the violation occurred;
 - 13.1.5 The date and time of the violation;
 - 13.1.6 Copies of 2 or more photographs, or microphotographs, or other recorded images, taken as proof of the violation, which also include the distance traveled between the 2 photographs as well as the time gap between the 2 photographs;
 - 13.1.7 The amount of the civil penalty imposed and the date by which the civil penalty shall be paid;
 - 13.1.8 The length of time and location for contesting liability and notice that the failure to pay the civil penalty 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 the denial of the registration or renewal of registration of any of the owner's vehicles; and
 - 13.1.9 Notice of the summonsed person's ability, via an enclosed affidavit form, to rebut the presumption under Section 13.0 of this regulation that the summonsed person was the operator of the vehicle at the time of the violation and the manner of rebutting said presumption.

14.0 Affidavits

- 14.1 If the registered owner of a vehicle who has received a notice of violation contends that the registered owner was not the operator of the vehicle at the time of the violation, 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:
 - 14.1.1 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
 - 14.1.2 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 speed limit or work zone speed limit in order to yield the right-of-way to an emergency vehicle.
- 14.2 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within 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.
- 14.3 Upon receipt of an affidavit by the State of Delaware or the system approved vendor, the newly implicated person will be mailed a notification of the violation.

15.0 Payment of Civil Assessment

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

16.0 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 20 days of the issue date. Upon timely receipt of a hearing request, a civil hearing will be scheduled and the defendant will be notified of the hearing date by first class mail. Costs for this hearing may not be assessed against the prevailing party. Jurisdiction for adjudicating alleged violations would be in the Justice of the Peace Court and there would only be a right of appeal to the Court of Common Pleas if the penalty exceeds \$100.

17.0 Failure to Pay Civil Assessment

Failure to pay the civil assessment may result in the refusal by the Division of Motor Vehicles to renew the registration

of the motor vehicle which committed the violation as well as the driver's license of the owner or operator of the motor vehicle. See 21 Del.C. §4170A(i) and House Bill 244 of the 151st General Assembly.

27 DE Reg. 416 (12/01/23) (Prop.)