

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)

Summary of the Evidence and Information Submitted

The Secretary of the Department of Safety and Homeland Security sought to update the existing regulations governing the Electronic Red Light Safety Program, as part of the general regulatory overview required by Executive Order No. 36.

Notice for public comment was properly noticed in 17 DE Reg. 182, August 1, 2013.

The Department received comments from the American Automobile Association, Mid-Atlantic, making several suggestions. These included using standardized warning signs alerting motorists of the system locations, making sure the vendor is paid an amount that does not correlate to the number of citations issued, a confirmation statement in the citation stating that the system was operating correctly at the time of the citation, and a suggestion about where any funds generated from the system should be directed.

The Department of Transportation is currently handling a Request for Proposals for a new vendor contract for the ERLSP. It will take the AAA comments into account while developing and negotiating the new contract.

Gary Myers, Esquire also commented on the statutory requirements that any potential location for the placement of the enforcement systems was subject to objection by the area's state representative or senator. While that statutory requirement remains in place, no member of the General Assembly has ever exercised this option.

Other comments from members of the public were directed primarily at the circumstances of the citations they received, and not at the content of the proposed regulatory changes.

Findings of Fact

The Secretary finds that it is appropriate to amend the existing ERLSP regulations as proposed, to incorporate the programmatic changes to the Program since the original regulations were adopted.

Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the Existing ERLSP regulations as proposed.

Text and Citation

The text of 2 DE Admin. Code 1205 shall be in the form attached as Exhibit "A".

Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED THIS DAY OF 2013.

Lewis D. Schilliro, Secretary

Department of Safety & Homeland Security

1205 Electronic Red Light Safety Program (ERLSP)

1.0 Statement of Purpose

The purpose of these regulations are is to provide for the establishment and administration of a program in unincorporated areas of the State of Delaware imposing monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals 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

There shall be up to 10 locations in unincorporated areas of the State of Delaware where traffic light signal monitoring systems shall be installed and operated. 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.

3.0 Nestor Traffic Systems, Inc. System Vendor

The Department of Transportation has selected Nestor Traffic Systems, Inc. to provide traffic light signal monitoring systems for unincorporated areas of the State of Delaware and to assist in administering the Electric Red Light Safety Program in unincorporated areas of the State of Delaware. Nestor Traffic Systems, Inc. and its employees may participate in the administration of the Electronic Red Light Safety Program. 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.

4.0 Fines

The owner or operator of a vehicle that commits a violation by failing to comply ~~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 assessment in the amount of \$75. 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.

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

An employee of the Delaware State Police shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred. If a determination is made that a violation has occurred, a Notice of Violation shall be sent to the registered owner of the vehicle that committed the 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.

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.

8.0 Notice of Violation Content

8.1 A Notice of Violation shall contain:

8.1 A civil violation number;

8.21.1 The name and address of the registered owner of the vehicle that committed the violation;

8.31.2 The registration number of the motor vehicle involved in the violation;

8.41.3 The violation charges;

8.51.4 The location where the violation occurred;

8.61.5 The date and time of the violation;

8.71.6 ~~The date the notice of violation is mailed~~ Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation;

8.8 ~~Four images that demonstrate proof of a violation. This shall include:~~

8.8.1 ~~An image showing the vehicle behind the stop line, light is red;~~

8.8.2 ~~An image showing vehicle within intersection, light is red;~~

8.8.3 ~~An image showing a close up of the license plate; and~~

8.8.4 ~~An image showing the rear of vehicle, with license plate;~~

8.91.7 The amount of the civil assessment imposed and the date by which the civil assessment should be paid;

8.101.8 ~~Information advising an owner or operator of a vehicle regarding the manner, time and place by which liability as alleged in a Notice of Violation may be contested and warning that the failure to pay the civil assessment or to contest liability within 30 days of the mailing of the Notice of Violation is an admission of liability and may result in a judgment being entered against the owner or operator and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles; and~~ 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 the denial of the registration or the renewal of any of the owner's vehicles; and

8.141.9 ~~Notice concerning a person's ability to rebut the presumption that he or she was the operator of the vehicle at the time of the alleged violation and the means for rebutting the presumption. 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.~~

9.0 Affidavits

9.1 If the registered owner of a vehicle whom has received a notice of violation contends that he/she was not the operator of the vehicle at the time of the violation, he/she ~~will be required to submit an affidavit denying that he/she was an operator and shall provide the name and address of the operator at the time of the violation. 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:~~

9.21.1 ~~If the registered owner is a leasing company that rents/leases vehicles, that leasing company must provide by affidavit the name and address of the person or entity who rented/leased or otherwise had care, custody, or control of the vehicle at the time of the violation. 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~~

9.31.2 ~~If a vehicle, or its plates were stolen at the time of the alleged violation, the registered owner must provide an affidavit denying he/she was an operator and provide a certified copy of the police report/log reflecting such theft. 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.~~

9.42 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within 30 days of the mailing ~~issue~~ date of the Notice of Violation.

9.53 Upon receipt of an affidavit by the State of Delaware or ~~Nester Traffic Signals, Inc.~~ the system vendor, the newly implicated person will be mailed a notification informing him/her of the violation.

10.0 Payment of Civil Assessment

A person electing to pay a the civil assessment should ~~make payment by check or money order to ERLSP. Payment should be made by mail to: P.O. Box 2018, Winchester, VA 22604 or at such other address as specified on the Notice of Violation~~ follow the process as outlined on the Notice of Violation.

11.0 Procedures to Contest a Violation

~~A hearing to contest a violation will be heard in the Justice of the Peace Court for the State of Delaware. A person receiving a Notice of Violation may request a hearing to contest a violation by sending such request to the address provided with or on the Notice of Violation within 30 days of the date the Notice of Violation was sent to the owner or operator of the vehicle. If a request for a hearing is not made within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle, that person or entity has waived the right to contest the 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.~~

12.0 Failure to Pay Civil Assessment

~~If the owner or operator of a vehicle does not pay a civil assessment within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle or does not successfully contest a violation, the Division of Motor Vehicles may refuse to register and/or deny the renewal of the registration of any of the owner's vehicles. Additionally, the Department of Transportation may pursue a civil action, including seeking judgment and execution on a judgment against the owner or operator of the vehicle. 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 (1/1/05)

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