

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
Statutory Authority: 21 Delaware Code, Section 4101(d) (21 Del.C. §4101(d))

FINAL

Electronic Red Light Safety Program

ORDER

Summary Of Evidence

The Secretary of the Department of Safety and Homeland Security (hereinafter referred to as "Secretary") intends to promulgate regulations that will regulate the administration of the Electronic Red Light Safety Program (hereinafter referred to as "Program") in unincorporated areas of the State of Delaware. The Program through the use of traffic light signal monitoring systems will impose monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals.

Notice for public comment and a public hearing were properly noticed and a public hearing was held on November 22, 2004 in the second floor conference room of the Department of Safety and Homeland Security Building, Dover, DE. No comments were received either in writing or at the public hearing. The attendance sheet, record of public comment and documents received are attached to this Order.

Findings Of Fact

Based on the evidence and information, the Secretary finds the following facts:

1. The public was given proper notice and the opportunity to provide the Secretary with comments, in writing, and at a public hearing. The Department received no comments.
2. 73 **Del. Laws**, c. 350 provides for the establishment of a red light safety program in unincorporated areas of the State of Delaware. Additionally, authority for the promulgation of the Electronic Red Light Safety Program regulations (hereinafter referred to as "Regulations") is found at 21 **Del.C.** §4101(d).
3. The Regulations will provide for an effective, efficient and reasonable means of administering the Program.
4. The Regulations are necessary for the implementation of the Program as directed under 73 **Del. Laws**, c. 350 in unincorporated areas of the State of Delaware.
5. It is in the best interest of the citizens of the State of Delaware that the Regulations which provide for the administration of the Program in unincorporated areas of the State of Delaware are promulgated.

DECISION

The Secretary hereby adopts the Regulations as proposed and a copy of the Regulations as adopted is attached to this Order. The effective date of this Order shall be January 11, 2005.

IT IS SO ORDERED this ____ day of _____, 2004.

The Honorable David B. Mitchell, J.D.

Electronic Red Light Safety Program (ERLSP)

1.0 Statement of Purpose

The purpose of these regulations are 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. 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.

3.0 Nestor Traffic Systems, Inc.

The Department of Transportation has selected Nester 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.

4.0 Fines

The owner or operator of a vehicle that commits a violation by failing to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal monitoring system, shall be subject to a civil assessment in the amount of \$75.

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.

7.0 Exemptions

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

- 7.1 Emergency vehicles with active emergency lights;
- 7.2 Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
- 7.3 Vehicles under police escort; and
- 7.4 Vehicles in a funeral procession.

8.0 Notice of Violation Content

A Notice of Violation shall contain:

- 8.1 A civil violation number;
- 8.2 The name and address of the registered owner of the vehicle that committed the violation;
- 8.3 The registration number of the motor vehicle involved in the violation;
- 8.4 The violation charges;
- 8.5 The location where the violation occurred;
- 8.6 The date and time of the violation;
- 8.7 The date the notice of violation is mailed;
- 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;
- 8.9 The amount of the civil assessment imposed and the date by which the civil assessment should be paid;
- 8.10 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
- 8.11 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.

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.

9.2 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.

9.3 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.

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

9.5 Upon receipt of an affidavit by the State of Delaware or Nestor Traffic Signals, Inc., 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 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.

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.

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.

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