

Notice of First Public Comment Period
LSA Document #24-85

WORKSITE SAFETY AUTOMATED ENFORCEMENT PROGRAM

PURPOSE OF NOTICE

The Indiana Department of Transportation (INDOT) is soliciting public comment on the addition of rules at [105 IAC 18](#) concerning the worksite safety automated enforcement program to: provide requirements to rebut the presumption an owner was the operator; establish the burden of proof standard; address record retention; clarify the number of worksite speed control systems operated; and ensure compliance with state law. INDOT seeks comment on the affected citations listed and any other provisions of Title 105 that may be affected by this rulemaking.

CITATIONS AFFECTED: [105 IAC 18](#)

AUTHORITY: [IC 8-23-2-6](#); [IC 8-23-32-21](#)

OVERVIEW

Basic Purpose and Background

The purpose of the rule is to implement the work zone safety enforcement pilot program established under [IC 8-23-32](#). The program allows for INDOT to use a work speed control system, where workers are present on a road or bridge on an interstate system or U.S. route, to take photographs or a recorded image of the rear of a vehicle exceeding the worksite speed limit by at least eleven (11) miles per hour. The law creates a rebuttable presumption that the owner of a motor vehicle that is the subject of a photograph or recorded image was operating the vehicle when the photograph or image was obtained through the worksite speed control system. The rule, in part, establishes what information is required to rebut the presumption, including the burden of proof standard, as well as how joint ownership of a motor vehicle will be addressed. Failure to rebut the presumption will result in a warning or civil penalty against the owner of the motor vehicle for the violation of the worksite speed limit as set forth in [IC 8-23-32-18](#). Because requirements will be imposed on the traveling public, the proposed rule is needed to inform motorists of what evidence is required to rebut the presumption that the owner of the motor vehicle was not the operator of the motor vehicle at the time of the violation of the worksite speed limit that caused the issuance of a citation. The rule also clarifies that INDOT may not operate and monitor more than four (4) worksites at any given time in a year. Lastly, the rule addresses record retention under the new statute.

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

John McGregor
Indiana Department of Transportation
Traffic Management Center
8620 East 21st Street
Indianapolis, IN 46219
(317) 899-8617
jmcgregor@indot.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENTS

At this time, INDOT is soliciting public comments on the proposed rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #24-85
ATTN: Marjorie Millman
Legal Operations Director
Indiana Government Center North
100 North Senate Avenue, Room 758
Indianapolis, IN 46204

(2) By electronic mail to rulemakingcomments@indot.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(3) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than April 2, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Department of Transportation, 100 North Senate Avenue, Room 758, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the office of the Indiana Department of Transportation.

If INDOT does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

ADDITIONAL DOCUMENTS

Regulatory Analysis: [20240228-IR-105240085RAA](#)

Notice of Public Hearing: [20240228-IR-105240085PHA](#)

PROPOSED RULE

SECTION 1. [105 IAC 18](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 18. WORKSITE SAFETY AUTOMATED ENFORCEMENT PROGRAM

Rule 1. Definitions

[105 IAC 18-1-1](#) Applicability

Authority: [IC 8-23-2-6](#); [IC 8-23-32-21](#)

Affected: [IC 9-13-2-105](#); [IC 9-13-2-200](#); [IC 8-23-32](#)

Sec. 1. The definitions in this rule apply throughout this article.

(Indiana Department of Transportation; [105 IAC 18-1-1](#))

[105 IAC 18-1-2](#) "Citation" defined

Authority: [IC 8-23-2-6](#); [IC 8-23-32-21](#)

Affected: [IC 8-23-32](#)

Sec. 2. "Citation" means a notice of violation of the worksite speed limit and assessment of a civil penalty issued by the Indiana department of transportation for a traffic violation, which requires the owner to respond.

(Indiana Department of Transportation; [105 IAC 18-1-2](#))

[105 IAC 18-1-3](#) "Motor vehicle" defined

Authority: [IC 8-23-2-6](#); [IC 8-23-32-21](#)

Affected: [IC 8-23-32](#) ; [IC 9-13-2-105](#)

Sec. 3. "Motor vehicle" has the meaning set forth in [IC 9-13-2-105\(a\)](#).

(Indiana Department of Transportation; [105 IAC 18-1-3](#))

[105 IAC 18-1-4](#) "Owner" defined

Authority: [IC 8-23-2-6](#); [IC 8-23-32-21](#)

Affected: [IC 8-23-32-4](#)

Sec. 4. "Owner" has the meaning set forth in [IC 8-23-32-4](#).

(Indiana Department of Transportation; [105 IAC 18-1-4](#))

[105 IAC 18-1-5](#) "Worksite" defined

Authority: [IC 8-23-2-6](#); [IC 8-23-32-21](#)

Affected: [IC 8-23-32](#); [IC 9-13-2-200](#)

Sec. 5. "Worksite" means a location or an area on which a:

- (1) public purpose construction or maintenance activity is being performed on a highway; or**
- (2) private purpose construction or maintenance activity authorized by a government agency is being performed on a highway.**

A worksite includes lanes of the highway leading up to the area on which the activity is being performed, beginning at the point where appropriate signs directing vehicles to merge from one (1) lane into another lane are posted. A worksite may include both directions of the highway, the median, or on and off exit ramps where work is being performed.

(Indiana Department of Transportation; [105 IAC 18-1-5](#))

Rule 2. Rebut Presumption Requirements

[105 IAC 18-2-1](#) Requirements to rebut presumption; burden of proof

Authority: [IC 8-23-2-6](#); [IC 8-23-32-17](#)

Affected: [IC 8-23-32-17](#)

Sec. 1. (a) An owner of a motor vehicle may rebut the presumption that they were operating the motor vehicle through a worksite at the time a photograph or recorded image was obtained through a worksite speed control system if any of the following apply:

(1) The owner of the motor vehicle was not driving the motor vehicle at the time the speed limit was exceeded. The owner must provide credible sworn testimony or an affidavit, under the penalties of perjury, which includes:

- (A) a statement that the owner of the motor vehicle was not driving the motor vehicle through the worksite at the time the worksite speed limit was exceeded;**
- (B) the name, age, address, and telephone number of the operator of the motor vehicle at the time the worksite speed limit was exceeded; and**
- (C) the citation number.**

(2) The motor vehicle was reported stolen before the worksite speed limit was exceeded and had not been recovered before that time. The owner must provide credible sworn testimony or an affidavit, under the penalties of perjury, which includes:

- (A) the date the motor vehicle was stolen;**
- (B) the date and time the motor vehicle was reported stolen to law enforcement, which must be before the time the worksite speed limit was exceeded;**
- (C) a statement that the motor vehicle was stolen and had not been recovered at the time the**

worksite speed limit was exceeded;

(D) the citation number; and

(E) an attached copy of the police report.

(3) The registered owner of the motor vehicle was not the actual owner of the motor vehicle at the time the speed limit was exceeded. The registered owner must provide credible sworn testimony or an affidavit, under the penalties of perjury, which includes:

(A) a statement that the registered owner of the motor vehicle was not the actual owner of the motor vehicle driven through the worksite at the time the speed limit was exceeded;

(B) the date the title of the motor vehicle was transferred from the registered owner's name;

(C) the citation number; and

(D) an attached copy of documentation that shows the title transfer of the motor vehicle to another owner.

(b) The presumption under subsection (a) may be overcome if the owner of the motor vehicle is able to prove by clear and convincing evidence they were not operating the motor vehicle through the worksite at the time the photograph or recorded image was obtained.

(Indiana Department of Transportation; [105 IAC 18-2-1](#))

[105 IAC 18-2-2](#) Joint ownership

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-32](#)

Sec. 2. If a motor vehicle is owned by more than one (1) person, a citation shall be sent to each registered owner of the motor vehicle. If the owner or owners provide documentation or evidence under section 1(a), each joint owner operator of the motor vehicle at the time the worksite speed limit was exceeded shall be responsible for the citation.

(Indiana Department of Transportation; [105 IAC 18-2-2](#))

Rule 3. Worksites

[105 IAC 18-3-1](#) Worksites

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-32](#)

Sec. 1. The Indiana department of transportation may operate and monitor not more than four (4) worksites at any given time in a single calendar year.

(Indiana Department of Transportation; [105 IAC 18-3-1](#))

Rule 4. Record Retention

[105 IAC 18-4-1](#) Record retention

Authority: [IC 8-23-2-6](#)

Affected: [IC 8-23-32](#)

Sec. 1. (a) The Indiana department of transportation (department) shall destroy personal identifying information and photographs or recorded images collected under the pilot program not later than two (2) years after the date the information and photographs or recorded images are collected unless:

(1) that period has not yet expired to exhaust the appellate remedies; or

(2) under a court order.

(b) After the period stated or ordered in subsection (a), the department shall retain the following statistical information:

- (1) The date of a violation.**
- (2) The speed exceeded.**
- (3) The amount of a fine or penalty imposed.**
- (4) The location or locations of a violation.**
- (5) Whether an incident occurred in the worksite where an automated traffic control system was operated.**

(Indiana Department of Transportation; [105 IAC 18-4-1](#))

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An [html](#) version of this document.