

Regulatory Analysis
LSA Document #24-85**I. Description of Rule**

The purpose of the rule is to implement the work zone safety enforcement pilot program created by HEA 1015 (I.C. 8-23-32). The program allows for INDOT to utilize 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 which exceeds the worksite speed limit by at least eleven (11) miles per hour. The law creates a rebuttable presumption that the owner of 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. Pursuant to the statute, the owner of the vehicle may submit information as determined by the department to rebut the presumption that the owner was not the operator of the motor vehicle at the time the photograph or recorded image was taken by the worksite speed control system. INDOT is implementing the rule, in part, to establish what information is required to rebut the presumption, including the burden of proof standard, as well as how joint ownership of 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 I.C. 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. I.C. 8-23-32-17(d) provides that "the owner may submit information as determined by the department to rebut the presumption" that the owner of the motor vehicle is liable for violating the worksite speed limit. Operationally, guidance is needed for any appeals which may occur, so the hearing officers and the public know the burden and requirements placed upon the owner of the motor vehicle to present a viable defense.

The rule also clarifies that INDOT may not operate and monitor more than four worksites at any given time in a year. Not only does this elucidate the legislative intent, but it provides notice to the public of INDOT's objective to monitor multiple worksites throughout the year.

Lastly, the rule addresses record retention under the new statute. Because INDOT is tasked with reporting to the interim study committee, INDOT needs some information obtained from the program to comply with this requirement. Furthermore, I.C. 8-23-32-19 mandates an appellate process under [IC 4-21.5 et seq.](#), which will require the preservation of records for use by the parties through the exhaustion of appeal processes. The rule explains the exceptions for retention of certain records to comply with the statutory requirements and to ensure that all information is retained pursuant to court orders and for appeals.

INDOT has rulemaking authority under [IC 8-23-2-6](#) and [IC 8-23-32-21](#). This rule does not add any additional civil penalties that are not currently set forth in I.C. 8-23-32-18.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule: 30 days after filing with the publisher

b. Estimated Fiscal Impact on State and Local Government/Sources of Expenditures or Revenue Affected by the Rule

This rule may have a limited impact on state agencies or local government. If the presumption is rebutted pursuant to chapter 3 of the rule and INDOT is not able to collect the civil penalty from the operator identified by the vehicle owner, less revenue will be generated from the civil penalties to go into the State General Fund. In other states, appeals accounted for only one to two percent of the total volume of citations.

If an employee, agent or contractor of a state agency or local government is driving a government-issued motor vehicle and violates the worksite speed limit as prescribed in the law, the civil penalty described in this new law will be issued to the owner listed on the vehicle registration, which is assumed to be the governmental entity that issued the vehicle to the driver. Each governmental entity has its own chargeback and HR discipline policies that apply in these situations that already exist to address other traffic-related offenses and incidents, and some governmental entities may elect to appeal and provide the evidence

required pursuant to this rule to overcome the presumption that the owner of the vehicle was the driver responsible for the citation. In these situations, the cost impact to governmental entities (as owners of the vehicles) is the same as the cost impact to motorists and is set forth below in Section VI, Cost Analysis. Those state agencies and local units of government (e.g. law enforcement) who provide government-issued vehicles to employees for employment and personal use would likely be the agencies most affected by this rule. It is anticipated that the greatest expenditures for state and local governments are likely to occur during the initial implementation of the pilot program when motorists are not accustomed to the program.

III. Impacted Parties

Owners and operators of motor vehicles which travel on interstates and/or U.S. Highways through worksites and exceed worksite speed limits by at least eleven (11) miles per hour are impacted by the new law and, thus, impacted by the proposed rule. Owners listed on the registrations of vehicles that are driven through worksites at high rates of speed when workers are present in violation of I.C.18-23-32, *et.seq.* and consequently, receive a citation pursuant to the requirements of this law are impacted. To avoid enforcement of the citation, the law requires that these owners file an appeal and submit proof sufficient to rebut the presumption that the owner was the driver. This rule merely meets the statutory requirement imposed on INDOT to define the types of proof that the owner or operator is required to provide during an appeal. Failure to meet the burden of proof will result in the citation being upheld.

IV. Changes in Proposed Rule

This rule is the direct result of new legislation. No prior rule or law existed, nor is there any current policy in place.

V. Benefit Analysis

The intent of this rule is to address the statutory duty placed upon INDOT to determine what information the recipient of a citation must present on appeal in order to rebut the presumption that an owner of a motor vehicle was the operator of the motor vehicle at the time of the violation of the worksite speed limit occurred. If the owner of the motor vehicle is successful in its defense, no civil penalty will be imposed on the owner. This results in a cost savings to the owners of the motor vehicle.

The rule also allows businesses, including small businesses, families (if joint owners) and individuals a chance to advise who the responsible party is for the citation and avoid any liability for the violation. For businesses, state agencies and local units of governments, this rule will give them the opportunity to promote public safety and address any use issues or policies of company vehicles.

It is undetermined the number of individuals and businesses affected by this rule because this is a new program and is predicated upon individuals' driving behaviors in worksites.

INDOT worksites do not exist in perpetuity, and most do not exist continuously for a full year. Worksites exist for the express purpose of completing road work, and worksites are dismantled, and roads or bridges reopened in a timely fashion for motorists and flow of traffic. Allowing INDOT to operate and monitor four (4) worksites at any given time will permit INDOT to monitor worksites in a manner that reflects the practical and temporary nature of worksites. This enables INDOT to promote public safety both for workers and the traveling public in active worksites across the state. It is difficult to place a dollar value on a person's life, but this program will help save lives and monitoring multiple worksites in a given year will facilitate the effort to foster public safety.

Pursuant to I.C. 8-23-32-20, INDOT is mandated to submit reports to the interim study committee concerning worksites where an automated traffic control system was operated. The reports must include the following information:

- 1) The number of motor vehicle accidents and related serious injuries and deaths that occurred at each worksite;
- 2) Speed of the motor vehicles traveling through the worksite;
- 3) The number of violations issued; and
- 4) The amount of fines imposed for violations occurring in the worksite.

Preserving data is necessary to evaluate the pilot program and its effectiveness on worksite safety. INDOT intends to destroy identifying personal information and photographs or recorded images collected under the

pilot program in accordance with I.C. 8-23-32-15(e). It is necessary for the rule to clarify what statistical data and information must be kept for INDOT to comply with statutory requirements.

Additionally, imposing the exceptions for appeals and in accordance with court orders is necessary to ensure the state is not in contempt of a court order and has viable evidence to present in an appeal. If the information and photograph or recorded image are destroyed, INDOT has no ability to prove the violation occurred without any evidence to support its position.

VI. Cost Analysis

The rule will impose additional costs upon INDOT to regulate the worksite safety enforcement pilot program. If another operator is identified by the owner in rebutting the presumption that the owner was the driver, INDOT will incur additional costs to issue subsequent citations to the named operator. The anticipated costs would be minimal, no more than \$5.00 per citation. Over the course of a year, the estimated costs could range from \$5-\$832.50. This is based off a ten percent (10%) success rate of rebutting the presumption ($1665 \times 10\% = 166.5 \times 5.00 = \832.50). Again, because other states have strict liability and do not allow owners to rebut the presumption that another person was the operator of the vehicle at the time of the violation, INDOT can only guess the number of appeals and success rate that may result in a reissuance of a citation to another operator.

While this is technically a cost to INDOT, the revenue generated by issuing the citation to the true driver that is deposited in the State General Fund will outweigh this cost. Pursuant to the statute, citation fines start at seventy-five dollars (\$75.00) after an initial warning is issued and increase to one hundred fifty dollars (\$150.00) thereafter.¹ No additional costs are expected.

In attempting to calculate costs and benefits of the rule, INDOT utilized the study from Pennsylvania² and based its costs from that:

$$\frac{7080(\text{\#appeals in PA})^3}{17 (\text{\#worksites in PA})} = 416.47(\text{\# appeals}) \times 4 (\text{worksites in IN}) = 1665^4$$

Because Indiana's statute does not impose strict liability like Pennsylvania, it can be reasonably anticipated that more than 1% of the appeals taken will attempt to rebut the presumption that the owner was the operator of the motor vehicle at the time of the violation. Given that the rule allows an affidavit or oral testimony to be presented to rebut the presumption, there is some probability that motor vehicle owners may attempt to rebut the presumption with sworn testimony vis-à-vis a notarized affidavit.

The statute already requires the recipient of a citation to appeal in order to avoid paying the civil penalty or to overturn the citation. This rule is being implemented to provide the requirements necessary to rebut the presumption that the owner was the operator. The additional costs will be minimal and are identified as the costs of a notarized affidavit. A notarized document might be free to owners who can access notary services through banking institutions, and the market rate in Indiana for a notary is currently ten dollars (\$10.00) for individuals who do not have access to free notary services. This is a new program, and it is unknown how many appeals may be sought where affidavits are provided. As a result, INDOT can only estimate potential costs, especially given that the same information can be presented via sworn testimony at a hearing instead of providing a notarized affidavit. With that said, INDOT estimates that if about two-thirds of the appeals sought are brought by individuals, and if about half of those appellants submit an affidavit in lieu of sworn testimony, it can be estimated that the costs could range from \$10-\$5550. ($1665 \times 66\% = 1110 \times 50\% = 555 \times 10 = 5550$).

For businesses, state agencies and local units of governments, there may be some administrative costs involved with rebutting the presumption. Some businesses may already have employees who are notaries, so they will not realize any additional costs to rebut the presumption. This is also true of many state agencies and local units of government. For those small businesses who do not have embedded notaries on staff, it is anticipated that their estimated costs could range from \$10-\$100⁵.

It is undetermined the number of individuals and businesses affected by this rule since this is a new program and is predicated upon individuals' driving behaviors in worksites.

VII. Sources of Information

Because this is new legislation and a new program and most states have not adopted a similar program,

INDOT did not have many sources of information it could rely upon when conducting the cost/benefit analysis. INDOT's program was modeled after Pennsylvania to some extent. Pennsylvania's program is structured differently (more worksite control systems and Pennsylvania has a strict liability statute, unlike Indiana). When conducting the cost/benefit analysis, INDOT did seek guidance from Pennsylvania's study found at 2023PennDOT-AWZSE-Report_033023.pdf.

Similar to Indiana, Pennsylvania does allow for two defenses to be made on appeal: (a) vehicle was reported stolen and not recovered at the time of the violation, and (b) the registered owner was not the owner of the motor vehicle at the time of the violation. These defenses accounted for less than 1% of the appeals taken. Because Pennsylvania has strict liability and does not allow an owner of a vehicle to assert that the owner was not the operator of the motor vehicle at the time of the violation, INDOT has nothing to compare potential costs/benefits to for this defense. However, INDOT anticipates that this could reasonably be the majority of the appeals brought pursuant to this rule. Again, only 1-2% of the violations were appealed in Pennsylvania, INDOT anticipates a similar number of appeals under its program.

A notary fee is \$10.00. Because an appeal is a statutory right under this new program, the costs to owners of the motor vehicles, including businesses, state agencies and local governments, would just consist of the cost of a notarized affidavit in the event that the owner does not want to avail itself of the cost-neutral option of providing testimony at a hearing. INDOT's costs will consist of the postage and paper charges for issuing the citation to the identified driver.

VIII. Regulatory Analysis

The benefits of this rule will outweigh the costs. Allowing owners of motor vehicles to redirect liability upon the responsible party who committed the violation is good public policy. Monitoring four worksites at any given time will aid in fostering worker safety and potentially saving lives. The value of life is immeasurable and that far exceeds any costs resulting from the imposition of this rule. It is unknown the fiscal impact that this rule will have and how many appeals may be pursued.

IX. Contact Information of Staff to Answer Substantive Questions

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¹ Since March 2020, Pennsylvania has issued 1,088, 842 violations, of which 913,545 were first violations, 122,300 were second violations and 53,008 were third violations. Indiana's civil penalties are the same as Pennsylvania's.

² INDOT relied upon the Pennsylvania study found at 2023PennDOT-AWZSE-Report_033023.pdf.

³ This data is cumulative from March 2020 through the end of 2022. Note that part of this was during COVID when roads were less traveled. Of the 7080 appeals, only 683 were successful in their defenses (stolen vehicle and not recovered prior to the time of the violation or sold the vehicle and no longer the owner at the time of the violation), resulting in less than 1% of the appeals taken over the 2020-2022 period.

⁴ Based upon the data from Pennsylvania over a three-year period and that the program commenced during COVID, the 1,665 potential appeals is not necessarily indicative of what Indiana's numbers may be on an annual basis.

⁵ This estimated cost is based upon a small business (less than 50 people) who may have no more than 10 employees who violate the statute and realize the cost of a notarized affidavit of \$10. Again, this is just an approximation because this is a new program.

Notice of First Public Comment Period with Proposed Rule: [20240228-IR-105240085FNA](#)

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