

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Enforcement Division RESOLUTION TL-19131
August 6, 2020

RESOLUTION

RESOLUTION REQUIRING PASSENGER CARRIERS TO COMPLY WITH COVID-19
PREVENTION GUIDELINES AND TEMPORARILY MODIFIES THE PROCEDURES USED
BY CARRIERS TO REINSTATE THEIR AUTHORITIES.

SUMMARY

The Commission issues this Resolution on its own motion in response to the Coronavirus Disease 2019 (COVID-19) pandemic in order to protect passenger carriers under its jurisdiction and their passengers. This Resolution requires carriers to obey the California Governor's executive orders, orders of California's State Public Health Officer, and orders of the local city and/or county where the carriers are operating. Carriers shall obey whichever order is most restrictive. This Resolution also extends the suspension period to 180 days for specific causes for suspension of a carrier's permit or certificate prior to its revocation, and suspends the fee that carriers pay to have their authorities reinstated from revocation during this pandemic.

BACKGROUND

On March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency due to the threat of the COVID-19 pandemic.¹

¹ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

On March 19, 2020, in response to the emerging COVID-19 pandemic, Governor Newsom issued Executive Order N-33-20 that ordered all residents to “...immediately heed the current State public health directives...”² On the same day, the State Public Health Officer ordered “...all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sections, as outlined...” by the federal Cybersecurity and Infrastructure Security Agency (CISA).³ The Transportation Systems Sector is one of the critical infrastructure sectors identified by the CISA.⁴

The California Department of Public Health (CDPH) issued California’s Pandemic Roadmap which identified four stages:⁵

- Stage 1: safety and prevention
- Stage 2: reopening of lower-risk workplaces and other spaces
- Stage 3: reopening of higher-risk workplaces and other spaces
- Stage 4: easing of final restrictions and the end of the stay at home order

On May 7, 2020, the State Public Health Officer moved the State to Stage 2. Some jurisdictions (e.g., City and County of San Francisco) have postponed moving to Stage 2 until a later date.⁶

On July 2, 2020, the CDPH, in concert with the California State Transportation Agency (CalSTA) and the California Occupational Safety and Health Administration (Cal/OSHA) released *COVID-19 Industry*

² <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf>

³ <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>

⁴ <https://www.cisa.gov/transportation-systems-sector>

⁵ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%205-7-2020.pdf>

⁶ <https://sf.gov/news/differences-between-state-and-city-stay-home-orders-reopening-businesses>

*Guidance: Public and Private Passenger Carriers, Transit, and Intercity Passenger Rail.*⁷

COVID-19 PREVENTION

The Centers for Disease Control and Prevention (CDC) has issued guidelines to prevent the transmission of COVID-19. Published guidelines include:

- Keeping the Workplace Safe⁸
- Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission⁹
- Cleaning and Disinfection for Non-emergency Transport Vehicles¹⁰
- Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19¹¹

The CDC's recommendations from the published guidelines above include:

- Keep the windows of vehicles open when possible
- Increase the ventilation inside the vehicle
- Regularly disinfect vehicle surfaces followed by disposing of any gloves or personal protective gear used when cleaning the vehicle and through hand washing
- “[W]earing a cloth face covering in public settings where other social distancing measures are difficult to maintain…**especially** in areas of significant community-based transmission” (emphasis in original). This applies to both a carrier's employees and its passengers.

⁷<http://covid19.ca.gov/pdf/guidance-transit-rail.pdf>

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/workplace-school-and-home-guidance.pdf>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

¹⁰ <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/disinfecting-transport-vehicles.html>

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>

- “At a minimum, clean and disinfect commonly touched surfaces in the vehicle at the beginning and end of each shift and between transporting passengers who are visibly sick”
- Measure employees’ temperatures and assess symptoms prior to their starting work
- Practice six-foot social distancing when work duties permit it

The CDPH Guidance includes many references to the CDC’ s guidelines, and some counties have made these guidelines into enforceable rules. For example, the City and County of San Francisco’ s Department of Public Health issued “Order of the Health Officer” No. C19-12 that “requires employees, contractors, owners, and volunteers of all Essential Businesses or those operating public transportation and other types of shared transportation to wear a Face Covering when at work.”¹² Los Angeles County’ s Department of Public Health issued an order entitled the “Safer At Home Order for Control of COVID-19” that, while not specifically addressing transportation, required social distancing and included the wearing of face covering while around persons that do not live in the same household or living unit.¹³ Failure to comply with or obey these orders is a misdemeanor and may result in a fine, imprisonment, or both.¹⁴

The CDPH Guidance added guidelines directed to commercial transportation providers operating smaller passenger vehicles such as TNCs, airport shuttles, and limousines including:

- Ask passengers to handle their own personal bags and belongings, if possible, or for passengers to provide a minimum of six feet of distance when being assisted by the driver. Drivers should wash or sanitize their hands after handling the passenger’ s belongings.

¹² <https://www.sfdph.org/dph/alerts/files/OrderNoC19-12-RequiringFaceCovering-04172020.pdf>

¹³ <http://publichealth.lacounty.gov/media/Coronavirus/docs/HOO/FAQ-SaferatHomeOrder.pdf>

¹⁴ California Health and Safety Code § 120295, et seq.; Cal. Penal Code §§ 69, 148(a)(1); San Francisco Administrative Code §7.17(b), and Los Angeles County Code § 11.02.080.

- Have passengers sit in the back seat to maximize the distance between the driver and passengers.
- Pooled rides offered by TNCs should be suspended until further public guidance is provided for restarting such rides.
- Drivers and passengers should be able to cancel rides without penalty if the other party is not wearing a face mask. This policy should be communicated to passengers prior to their booking trips
- Suspend offering items that are provided to the passenger such as magazines, mints, and phone chargers.

Pub. Util. Code §§ 701 et seq., 1033, and 5381 give the Commission the authority to create its own rules governing carriers under its jurisdiction, and therefore it may create rules regarding COVID-19 and the carriers it regulates.

REINSTATEMENT OF OPERATING AUTHORITIES

The COVID-19 pandemic and the resultant stay-at-home order has created a challenging environment for passenger carriers, making it uniquely challenging to generate revenue and maintain an active operating authority. While the Commission may suspend or revoke the permit or certificate of any carrier who fails to comply with the requirements to hold an operating authority,¹⁵ it may also extend the period for a carrier to remedy deficiencies that caused the carriers operating authority to be suspended and to reduce or waive the fee to reinstate a revoked operating authority.

A carrier' s permit or certificate may be suspended administratively for the following reasons:

- Failure to file annual bus inspection report and/or pay vehicle inspection fees (TCPs only per Commission Resolution TL-18662)

¹⁵ Pub. Util. Code §§ 1009, 1033.5 and 5378(a)(1).

- Failure to have evidence of liability insurance on file with the Commission (PSCs and TCPs per Commission Resolution PE-498; VCCs per Commission General Order 111-C)
- Failure to have evidence of workers' compensation insurance on file with the Commission (PSCs and TCPs only per Commission Resolution TL-18306)
- Having its corporate powers, rights, and privileges suspended by the California Secretary of State (PSCs and TCPs only per Commission Resolution TL-18577)
- Failure to pay Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees (all carriers per Commission Resolution TL-18376)
- When a carrier's insurance or surety company is liquidated (PSCs and TCPs only per Commission Resolution TL-18541)

When the deficiency is corrected (e.g., a new insurance policy is filed), the suspension is lifted, and the carrier's authority is reinstated. After a period of 45 days (e.g., for failing to pay fees owed to the Public Utilities Commission Transportation Reimbursement Account) to 90 days (e.g., for failing to have insurance on file), if the deficiency is not corrected, the carrier's authority will be revoked. The carrier still has an additional 90 days to correct the deficiency, pay a \$125 reinstatement fee, and have its authority reinstated from revocation.¹⁶ It is prohibited for a carrier to operate while its authority is suspended.¹⁷

DISCUSSION

The COVID-19 pandemic continues to have major health and economic impacts on California. California's Public Health Officer has issued an order directing all individuals to stay at home except as needed to

¹⁶ Commission Resolutions TL-18556 and PE-2272.

¹⁷ Pub. Util. Code §§ 702 and 5379.

maintain critical infrastructure, and some counties have each issued their own orders that require non-essential employees to stay at home.

COVID-19 PREVENTION

The CISA designated the transportation sector as one of the critical infrastructure sectors. As the regulator of for-hire passenger vehicle and vessel transportation within California, Pub. Util. Code §§ 701 et seq., 1033, and 5381 give the Commission the authority to prescribe rules for its regulated carriers. Because the safety of carriers' employees, their passengers, and anyone they come in contact with is paramount, and because lifting the stay-at-home order is dependent on reducing the spread of COVID-19, we find it prudent to require all carriers to follow the CDC's guidelines and the CDPH Guidance. Because the COVID-19 pandemic is constantly evolving and to prevent ordering carriers to continue to follow outdated guidelines, carriers shall follow any revisions and/or additions to the CDC's guidelines and the CDPH Guidance that can be applied to commercial passenger transportation.

We recognize that, while six feet of social distancing inside a passenger vehicle may not be possible, per CDC's guidelines and the CDPH Guidance, having drivers and their passengers wear masks, keeping windows open if weather permits, and having ventilation inside the vehicle will help reduce the risk of spreading the virus. Carriers shall provide training to their drivers on the CDC's guidelines as well as the CDPH Guidance and provide their drivers with personal protective equipment (e.g., masks and gloves) recommended by those guidelines.

Because the state of the COVID-19 pandemic is continually changing, carriers should obey the California Governor's executive orders, orders of California's State Public Health Officer, the CDPH Guidance, and orders of local governments in effect when and where they operate. Carriers shall obey the most restrictive orders in effect. When all jurisdictions reach Stage 4 of the CDPH's Pandemic Roadmap, the requirements related to the CDC's guidelines and the CDPH Guidance shall be suspended. If there is a resurgence of COVID-

19 infections and Public Health Officers reinstate COVID-19 restrictions, the carriers will again be required to follow the CDC's guidelines and the CDPH Guidance.

Carriers shall have a written COVID-19 emergency plan in place detailing how the carriers will ensure the safety of its drivers and passengers. We also require that PSCs, VCCs, and Transportation Network Companies (TNCs) that have an active operating authority submit their COVID-19 emergency plans to the Commission. Because of the public health implications and the importance of prevention, the reports shall be submitted in a public non-redacted format. We believe that making the plans open to inspection by the public will increase the public's confidence that their rides will be safe, helping to speed the recovery of the passenger transportation industry.

EXTENSION OF TIME TO REINSTATE OPERATING AUTHORITY

COVID-19 has created unique challenges with only essential workers being allowed in the workplace and businesses losing staff and revenue. As a result, carriers may become suspended due to circumstances out of their control such as the loss of insurance coverage. In recognition of such challenges, while carriers may not operate without insurance, it is reasonable during the pandemic to extend the suspension period prior to revocation to allow carriers additional time to fix their deficiencies.

Whether suspended or revoked, it is still a violation of the Pub. Util. Code for carriers to operate. However, extending the suspension period from 45 or 90 days to 180 days from the date of suspension will afford carriers more time to correct their deficiencies without being revoked. After revocation, they have 90 days to reinstate their permit or risk losing their operating authority altogether. In order to avoid penalizing any carrier whose operating authority was impacted by the COVID-19 pandemic, we also suspend the \$125 reinstatement fee, set by Commission Resolution TL-18556 (1993), until 90 days after the State Public Health Officer moves the state to Stage 4 of the Pandemic Roadmap. If a carrier is revoked for more than 90 days, it must apply

for a new permit or certificate that includes an application fee ranging from \$500 to \$1500 depending on the authority requested.¹⁸

The extension of the suspension period should apply to any carrier whose operating authority is suspended between the time of the State Public Health Officer's stay-at-home order was issued on March 19, 2020 and when the declaration is issued that California has reached Stage 4 of the Recovery Roadmap.

COMMENTS ON DRAFT RESOLUTION

Pub. Util. Code § 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days of public review and comment prior to a vote of the Commission. Pub. Util. Code § 311(g)(2) provides that this 30-day period may be reduced or waived "in an unforeseen emergency..."

The Commission Rules of Practice and Procedure also provide for public review and comment to be waived or reduced in an "unforeseen emergency situation," specifically where there are "[a]ctivities that severely impair or threaten to severely impair public health or safety..." (Rule 14.6(a)(1) and/or where there are "[c]rippling disasters that severely impair public health or safety." (Rule 14.6(a)(2)). "Requests for relief based on extraordinary circumstances in which time is of the essence" justify such action (Rule 14.6(a)(2)). "Unusual matters that cannot be disposed of by normal procedures if the duties are to be fulfilled" qualify for such expedited treatment (Rule 14.6(a)(8)).

Accordingly, due to the extraordinary nature of the COVID-19 pandemic, the 30-day comment period is reduced to twenty (20) days pursuant to these authorities. In order to better disseminate the directives in this Resolution, it shall be served on the service list of the TNC Rulemaking R.12-12-011, the California Bus Association, the Greater

¹⁸ Pub Util. Code §§ 1036(a), 1904(a), and 5373.1(a)

California Livery Association, and all active and suspended vessel common carriers.

FINDINGS

1. On March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency due to the threat of COVID-19.
2. On March 19, 2020, Governor Newsom issued Executive Order N-33-20 that ordered all residents to “...immediately heed the current State public health directives...”
3. On March 19, 2020, the State Public Health Officer issued a stay-at-home order except for critical infrastructure sectors determined by the CISA.
4. The CISA has determined that highway carriers (e.g., commercial passenger transportation) and maritime transport is a critical infrastructure sector.
5. The CDC has issued guidelines to prevent the transmission of COVID-19 including:
 - (a) Keeping the Workplace Safe
 - (b) Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission
 - (c) Cleaning and Disinfection for Non-emergency Transport Vehicles
 - (d) Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19
6. The CDC’ s recommendations include:
 - (a) Keep the windows of vehicles open when possible
 - (b) Increase the ventilation inside the vehicle

- (c) Regularly disinfect vehicle surfaces followed by disposing of any gloves or personal protective gear used when cleaning the vehicle and through hand washing
 - (d) “[W]earing a cloth face covering in public settings where other social distancing measures are difficult to maintain…**especially** in areas of significant community-based transmission” (emphasis theirs). This applies to both a carrier’s employees and its passengers.
 - (e) Reserving N-95 or surgical masks for healthcare workers and only wearing cloth face coverings
 - (f) “At a minimum, clean and disinfect commonly touched surfaces in the vehicle at the beginning and end of each shift and between transporting passengers who are visibly sick”
 - (g) Measure employees’ temperatures and assess symptoms prior to their starting work
 - (h) Practice six-foot social distancing when work duties permit it
7. On July 2, 2020, the CDPH, in concert with the California State Transportation Agency (CalSTA) and the California Occupational Safety and Health Administration (Cal/OSHA) released *COVID-19 Industry Guidance: Public and Private Passenger Carriers, Transit, and intercity Passenger Rail*
8. The CDPH Guidance developed additional guidelines including:
- (a) Asking the passenger to handle their own personal bags and belongings, if possible, or for the passenger to provide a minimum of six feet of distance when being assisted by the driver. The driver should wash or sanitize their hands after handling the passenger’s belongings.
 - (b) Have the passenger sit in the back seat to maximize the distance between the driver and passenger.
 - (c) Pooled rides offered by TNCs should be suspended until further public guidance is provided for restarting such rides.
 - (d) Drivers and passengers should be able to cancel rides without penalty if the other party is not wearing a face mask. This policy should be communicated to the passenger prior to their booking a ride.

- (e) Suspend offering items that are provided to the passenger such as magazines, mints, and phone chargers.
9. Pub. Util. Code §§ 701 et seq., 1033, and 5381 give the Commission the authority to order carriers under its jurisdiction to comply with the CDC' s guidelines.
 10. Following the CDC' s guidelines and the CDPH Guidance will help prevent the spread of COVID-19 and should be implemented by all carriers with training given to the carriers' drivers.
 11. Because of the evolving nature of the COVID-19 pandemic, carriers should observe any revisions and/or updates to the CDC' s guidelines or the CDPH Guidance.
 12. Carriers should have a written COVID-19 emergency plan in place, and PSCs, VCCs, and TNCs should submit their plans to the Commission.
 13. Making the plans open to public inspection will increase the public confidence in the safety of passenger transportation within California and hasten its recovery.
 14. A carrier will have its permit or certificate suspended:
 - (f) for failing to file its annual bus inspection report and/or pay vehicle inspection fees,
 - (g) for failing to have evidence of liability insurance on file with the Commission,
 - (h) for failing to have evidence of workers' compensation or liability insurance on file with the Commission,
 - (i) for having its corporate powers, rights, and privileges suspended by the California Secretary of State, and
 - (j) for failing to pay its PUCTRA fees on time, or
 - (k) when a carrier' s insurance or surety company is liquidated.
 15. Pub. Util. Code §§ 702 and 5379 prohibit carriers from operating while their operating authority is suspended.

16. Suspension periods currently last between 45 and 90 days before a carrier is revoked for failing to correct the deficiency.
17. After the carrier is revoked, it still has 90 days to correct the deficiency, pay a \$125 reinstatement fee, set by Resolution TL-19556, from revocation fee and be reinstated from revocation. After 90 days of revocation, the carrier will have to apply for a new permit or certificate if it wants to operate.
18. The COVID-19 pandemic has created additional challenges for Commission- regulated transportation carriers.
19. By extending the suspension period to 180 days, carriers will have additional time to rectify any deficiencies that cause suspension of their operating authority and to reinstate their authority before it becomes revoked. The extension will apply to any carrier suspended between the issuance of the State Public Health Officer's stay-at-home order on March 19, 2020 and when the declaration is issued that California has reached Stage 4 of the Roadmap to Recovery.
20. In order not to penalize carriers whose operating authority was affected by the COVID-19 pandemic, the reinstatement fee of \$125 should be waived until 90 days after State Public Health Officer moves the state to Stage 4 of the Pandemic Roadmap.

THEREFORE, IT IS ORDERED that:

1. All carriers shall follow the CDC guidelines and the CDPH Guidance on preventing the transmission of COVID-19, and any revisions and/or updates to those guidelines, as practicable.
2. All carriers shall provide training to their drivers on the CDC's COVID-19 guidelines and the CDPH Guidance and provide all personal protective equipment recommended in those guidelines.

3. All carriers shall obey the California Governor' s executive orders, orders of California' s State Public Health Officer, and orders of the local city and/or county where the transportation takes place as they pertain to COVID-19. If the transportation occurs in more than one jurisdiction, the orders of the jurisdiction where the passenger(s) is(are) picked up shall apply. Carriers shall obey whichever order is most restrictive.
4. All requirements to follow the CDC's COVID-19 guidelines and the CDPH Guidance shall be suspended when all jurisdictions attain Stage 4 of the CDPH's Pandemic Roadmap or the local equivalent. If there is a resurgence in COVID-19 and Public Health Officers reinstitute COVID-19 restrictions, the requirements in this Resolution are reinstated in the jurisdiction(s) where the COVID-19 restrictions have been reinstituted.
5. All carriers shall have a written COVID-19 emergency plan in place. PSCs, VCCs, and TNCs that have an active operating authority will submit their plans to the Commission in a public, non-redacted format no later than 30 days from the publication of this Resolution. A copy of the COVID-19 emergency plan shall be available for public inspection at the carrier's principal office in California,
6. Any carrier that has its authority suspended for failing to file its annual bus inspection report and/or pay vehicle inspection fees; failing to have evidence of liability insurance on file with the Commission; failing to have evidence of workers' compensation or liability insurance on file with the Commission; having its corporate powers, rights, and privileges suspended by the California Secretary of State; failing to pay its Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees on time; or when a carrier' s insurance or surety company is liquidated shall have 180 days from the date of suspension to correct all deficiencies that caused the suspension or its permit or certificate shall be revoked.
7. The \$125 reinstatement from revocation fee set by Resolution TL-19556 shall be suspended until 90 days after the State reaches Stage 4 of the Pandemic Roadmap.

8. The Executive Director shall cause a copy of this resolution to be served on every carrier with an operating authority issued by the Commission and every other party on the service list to this resolution.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on _____.
The following Commissioners voted favorably thereon:

ALICE STEBBINS
Executive Director