

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RAIL SAFETY DIVISION
RAIL TRANSIT SAFETY BRANCH

Resolution ST-241
December 17, 2020

RESOLUTION

RESOLUTION ST-241 GRANTING THE COMMISSION'S RAIL
SAFETY DIVISION DIRECTOR TEMPORARY AUTHORITY TO
EXTEND COMPLIANCE DATES UNDER COMMISSION GENERAL
ORDER REQUIRMENTS AS A RESULT OF THE COVID-19
PANDEMIC FOR CALIFORNIA RAIL TRANSIT AGENCIES

SUMMARY

This resolution grants the California Public Utilities Commission's Rail Safety Division Director temporary ministerial authority, consistent with the terms of this Resolution, to extend timeframes for triennial safety and security reviews of California rail transit agencies, required by Commission General Order 164-E, as a result of the novel Coronavirus Disease 2019 pandemic. Additionally, in some circumstances a Rail Transit Agency may demonstrate that it is unable to comply with certain safety regulations pertaining to retraining and recertification of employees within the required timeframe as a consequence of the novel Coronavirus Disease 2019 pandemic. In such situations, which meet certain criteria established below, this Resolution allows the Rail Safety Division Director to extend compliance dates. Because of the continuous and ongoing rail transit safety program at the Commission no significant negative safety effects are anticipated as a result of the proposed time extensions. This measure improves safety by not requiring activities now that would compromise CPUC employee and transit agency personnel health and safety, and by more closely following guidance relating to Coronavirus transmission prevention. The temporary authority granted by this Resolution shall expire 24 months after its effective date.

BACKGROUND

On March 4, 2020, California Governor Newsom proclaimed a state of emergency in California as a result of novel Coronavirus Disease 2019 (COVID-19) pandemic. Subsequently, the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC), Governor Newsom, and California local jurisdictions issued various additional orders and guidance to lower the risks of COVID-19 transmission, including requirements for physical distancing and the use of face masks in public. Notwithstanding these efforts, in the months since issuance of the Governor's Executive Order, there have been spikes and surges of COVID-19 cases and hospitalizations. Additionally, health professionals have expressed great concern regarding how the COVID-19 pandemic will interact with the annual spike in influenza cases that typically occurs in the fall and winter months, which could complicate identification and treatment of both. Colder weather leads to more people being indoors where air circulation issues can lead to virus spread, and health professionals expect case counts and resulting hospitalizations to rise.

Pursuant to Public Utilities Code Section 99152, among other provisions, California Rail Transit Agencies (RTAs)¹ are subject to regulations of the California Public Utilities Commission (CPUC) relating to safety appliances and procedures. This includes both the large urban transit systems operating light or rapid rail that are funded and regulated to a limited extent by the Federal Transit Administration (FTA), as well as smaller fixed-guideway systems not regulated by FTA. On October 23, 2018, CPUC's State Safety Oversight (SSO) program was approved and certified by the FTA, in accordance with the requirements of federal public transportation safety law (49 United States Code §5329(e)) and FTA's SSO regulation (49 Code of Federal Regulations Part 674), as California's designated State Safety Oversight Agency (SSOA) for the oversight of FTA-funded RTAs.

¹ The California RTAs are Americana at Brand Trolley, Angels Flight Railway Company, Bay Area Rapid Transit District (BART), BART Oakland Airport Connector, Getty Center Museum Automated People Mover, The Grove Trolley, Los Angeles County Metropolitan Transportation Authority, Los Angeles Airport Automated People Mover (under construction, estimated opening in 2023) North [San Diego] County Transit District, Orange County Streetcar (under construction, estimated opening in 2022), Sacramento Airport Automated People Mover, Sacramento Regional Transit District, San Diego Trolley, San Francisco International Airport (AirTrain) Automated People Mover, San Francisco Municipal Transportation Agency, and Santa Clara Valley Transportation Authority.

The Rail Transit Safety Branch (RTSB) of CPUC's Rail Safety Division (RSD) implements the Commission's rail transit SSO program. Staff conducts safety inspections, accident investigations, oversight of construction and capital projects, triennial safety and security audits, and other activities as key elements of the CPUC's SSO program. These activities focus on verification of compliance with the RTA's Public Transportation Agency Safety Plan/System Safety Program Plan, System Security Plan, and Safety Certification Plan to ensure that these plans meet all state and federal rules and regulations, and that RTAs are effectively implementing those plans according to the RTA's adopted policies and procedures.

RTSB has received multiple inquiries from RTAs regarding compliance issues created by the COVID-19 pandemic, and a resulting inability or potential inability to maintain compliance with training and recertification requirements of the Commission's General Orders applicable to RTAs. Additionally, both Staff and RTA personnel are concerned that they may be so constrained by current health protocols that they will be unable to conduct mandated audits safely and effectively.

Commission General Orders (GOs) 143-B, 164-E, 172 and 175-A set forth rules and regulations pertaining specifically to RTSB and RTAs, and those are the subject of this Resolution. These GOs include requirements, such as the ones listed below, that may require an extension of compliance dates as a result of the current health emergency:

- GO 143-B, Safety Rules and Regulations Governing Light-Rail Transit
 - Section 12.02: requires RTAs to biannually administer physical examinations for some employees meeting the Class B licensing requirements established by the California Department of Motor Vehicles.
 - Section 13.03: requires RTAs to provide a refresher course on the meaning and application of the carrier's operating rules to certain employees at least every two years.

- GO 164-E, Rules and Regulations Governing State Safety Oversight of Rail Fixed Guideway Systems
 - Section 3.2: provides rules on System Safety Program Plan / Public Transportation Agency Safety Plan (SSPP/PTASP) requirements, where RTAs may provide for specific maintenance activities on certain schedules, and likewise for training and recertifications.
 - Section 3.4: requires Staff to perform an on-site review of each RTA's implementation of its SSPP/PTASP a minimum of once every three years. The triennial review verifies compliance and evaluates the effectiveness of each RTA's SSPP/PTASP to assess the level of compliance with GO 164-E and other Commission and regulatory safety requirements.
 - Section 4.5: requires Staff to perform an on-site review of each RTA's System Security Plan a minimum once every three years. The triennial review verifies compliance and evaluates the effectiveness of each RTA's System Security Plan to assess the level of compliance with GO 164-E and other Commission and regulatory safety requirements.
- GO 172, Rules and Regulations Governing The Use of Personal Electronic Devices by Employees of Light Rail Transit Agencies and Rail Fixed Guideway Systems
 - Section 5.3: requires each RTA to provide a refresher course on its zero-tolerance policy and program at least every two years and maintain records showing compliance with this requirement for a minimum of three years.
- GO 175-A, Rules and Regulations Governing Roadway Worker Protection Provided By The Light Rail Transit Agencies and Rail Fixed Guideway Systems
 - Section 8.3: requires RTAs to offer training to non-RTA emergency response personnel in their service territory either: 1) no less than

every two years, or 2) regularly, and accommodating all requests for training. Under either option, records of training must be available for three years for Staff review.

- Section 9.4: requires RTAs at least once every 24 months to retrain all roadway workers and employees with roadway worker responsibilities on the RTA's Roadway Worker Protection training program and maintain records of the training for three years.

In addition to GO 164-E Sections 3.4 and 4.5 cited above, FTA regulations also require SSOAs to perform triennial audits. It is one of the criteria upon which CPUC's SSO program is evaluated by FTA (also triennially). As Staff first considered postponing triennial Safety and Security Audits, because of the potential exposure of RTA personnel and CPUC Staff to COVID-19 and the risks to the health of those involved, Staff contacted FTA. Staff sought to determine FTA's position on triennial audit requirements during the next CPUC SSO program review, and FTA's opinion on delaying the RTA audits scheduled for 2020 until next year. Since FTA has already informed the SSO community that it has postponed and rescheduled its triennial audits of SSO programs, including the CPUC's SSO program review currently scheduled for Summer 2021, Staff suggested that delaying triennial audits would not be unreasonable. FTA acknowledged its own schedule readjustment and indicated, that provided the reasons for not performing audits of RTAs under its jurisdiction within the three-year time period are documented, FTA recognizes the potential need to modify schedules or processes during the COVID-19 pandemic.

DISCUSSION

Currently, the RTSB continues to conduct its safety oversight activities on RTAs, but it has taken a number of steps to do so in compliance with CDC, state, and local health safety requirements. These steps limit contact to the extent possible between Staff and RTA personnel. Routine field work since March is typically conducted by one or more inspectors making inspections and observations of the operations and infrastructure, and subsequently transmitting the inspection report and any findings to the RTA. RTA personnel and participating Staff

review accidents videos remotely, or by in-person meetings following social distancing and mask protocols. Capital project meetings are conducted virtually by RTAs and their contractors.

Staff considered requiring RTAs to individually submit requests for waivers from GO requirements listed above. However, the number of RTAs and GO provisions involved would result in a large number of requests and the need for Staff to prepare many Commission Resolutions acting on those requests. Furthermore, these are time-sensitive matters which impose notice requirements before the Commission can act on individual requests.

For these reasons, granting the RSD Director authority described in this Resolution will expedite the process for seeking extensions to required timeframes, reduce the burden on RTAs to prepare separate time extension requests, reduce the burden on Staff and Commissioners to review, draft a Resolution and act on each request through the existing Resolution waiver process. It will improve public safety by providing appropriate means to comply with time-sensitive safety requirements while remaining compliant with COVID-19 safety protocols.

Triennial Audits

Generally, in order to carry out the processes and procedures pertaining to the comprehensive triennial audits, Staff must conduct on-site visits to RTA facilities. Staff reviews documents and conducts interviews with RTA supervisors, employees and contractors, inspects infrastructure and vehicles, monitor operations, evaluates maintenance practices, and engages in other activities that are routine elements of RTSB triennial safety and security reviews.

After discussing and analyzing various options on conducting triennial safety and security reviews, Staff and RTA personnel have determined that it would be possible to conduct some, but not all, required activities either virtually or utilizing procedures to maintain physical distancing. For example, Staff must personally visit RTA facilities where records subject to CPUC review are maintained. While going through the checklist guiding that area of the review, Staff randomly (or otherwise) selects representative examples to review for

accuracy and compliance. Since most RTAs still keep paper records and plans, it is not possible for RTAs to make them all available electronically, nor would that afford Staff the opportunity to review the records and have a meaningful exchange between the RTA's managers and supervisors of that audit area regarding how they conduct their work, in the context of the written RTA procedures. It would be unduly burdensome to require that the records Staff needs to review be scanned to an electronic format during the pandemic and provided to Staff. Additionally, records reviews are supplemented by interviews with select employees. Staff generally selects random RTA personnel within the department to interview about regular processes and procedures in use at the facility, in order to get an insight into the facility personnel and their safety culture. RTSB cannot rely on RTAs to make only personnel of the RTA's choice available for this questioning in order for the process to be effective as a means to get at safety culture in general.

In many instances it is not possible to carry out required activities while remaining in compliance with COVID-19 related guidance and directives issued by CDC, California Governor Newsom, and California local jurisdictions. Based on these and other examples, Staff concluded that triennial audits performed primarily remotely would be inadequate. Moreover, since triennial audits are a backwards-looking review of RTAs activities and conduct, and since RTSB Staff's general transit safety oversight activities are ongoing, delaying the triennial audits to the following calendar year is unlikely to compromise safety.

RTSB typically performs three to four triennial audits per year, each of which requires a large number of Staff to devote two or more weeks, involving overnight travel and significant interaction with coworkers, RTA personnel, and others. It is unrealistic to attempt to simply add the triennial audits delayed from this year into next year with those already scheduled for 2021. If triennial audits scheduled for this year are postponed to next year, then triennial audits scheduled for next year must be postponed to the following year, which means the audits scheduled for next year will violate the GO requirement of auditing every three years. This domino effect will propagate to the next 3 years. Providing an expiration period of 24 months for the authority granted by this Resolution provides flexibility based on the COVID-19 situation going forward

and allows sufficient time to get all the RTAs on a new three-year cycle for audits, if necessary. Providing this flexibility to the RSD Director would allow reasonable adjustment of the triennial audit schedule based on the COVID-19 situation over the next 24 months.

Employee Retraining and Recertifications

Regarding retraining and recertification of RTA personnel for their job classification, as well as two-year medical evaluations for vehicle operators, several RTAs have already requested that re-certifications be allowed to exceed the intervals the GOs require because of the difficulty in getting the medical exams right now, and safely providing in-person training. Also, RTAs indicated that they are requesting these extensions only for re-training and re-certification, and not for new or transferred employee appointments. This Resolution would authorize the RSD Director to consider extensions of time to comply with training requirements only for re-training or re-certification. No extensions/exemptions will be permitted for training and certification of new or transferred employee appointments to a new or different job classification.

In addition, efforts are being made to transition to a computer-based training for some items. Wherever possible, RSD's Director would consider alternative methods of training that may be available at that time so that re-certification or re-training can continue.

In light of the COVID-19 pandemic, the CPUC's RSD Director should be granted temporary authority to extend the timeline for retraining and recertification intervals under the GO requirements listed above, whenever the RTAs demonstrate they are unable to comply as a consequence of COVID-19 pandemic, or it is unwise to proceed with a particular activity due to the potential exposure of Staff, RTA personnel, or others.

The RSD Director is authorized to extend compliance time frames for retraining and recertification when RTA requests for such temporary relief include the following:

- Identification of the specific retraining or recertification of employees for certain tasks or under certain RTA programs, that are required by Commission general Orders or by the RTA's established plans and procedures;
- Reasons the training or certification testing cannot be performed safely due to the impacts of the COVID-19 pandemic, or inability to obtain the medical fitness for duty examinations for operators because they are not currently being conducted by health care providers;
- Explanation why no reasonable alternatives exist to conduct the retraining or recertification at the current time and the delay is reasonable;
- The proposed date by which the RTA believes it can complete the retraining or recertification; and
- Commitment from RTA to maintain records compiling which training was delayed for which individuals, and when the training was ultimately completed.

The RSD Director shall reply to the RTA in writing indicating the request is granted, granted with modification, or denied.

This Resolution is time sensitive. To comply with directives and guidance issued by CDC, Governor Newsom, and California local jurisdictions, RTAs and Staff may be forced to violate timeline requirements of GOs listed above, unless this Resolution goes into effect immediately.

NOTICE

On November 13, 2020, this Resolution was published on the Commission's Daily Calendar.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

The draft resolution of the Rail Safety Division in this matter was mailed in accordance with Section 311 of the Public Utilities Code and Rule 14.2(d)(1) of the Commission's Rules of Practice and Procedure.

No comments were received.

RECOMMENDATIONS

Staff recommends that the Commission grant the RSD Director the authority to modify the rail transit triennial audit schedule over the next 24 months for the next cycle of triennial audits to assure that those audits are conducted with CPUC Staff and RTA personnel health and safety, and effectiveness of the audit processes as the primary considerations.

Staff also recommends that the RSD Director be empowered to receive and authorize extensions to retraining and recertification of RTA employees when those requests result from impacts of COVID-19 and meet the tests outlined above, herein, for the next 24 months.

FINDINGS

1. On March 4, 2020, Governor Newsom proclaimed a state of emergency in the State of California as a result of the COVID-19 pandemic.
2. California Public Utilities Commission (CPUC) regulates the safety and security of California rail transit agencies (RTAs).
3. Commission General Orders (GOs) 143-B, 164-E, 172, and 175-A include compliance timeframes.

4. State and local orders and guidance on preventing the transmission of COVID-19 are restricting CPUC Staff and RTA personnel from complying with the timeframes specified in GOs listed above.
5. The Federal Transit Administration has indicated that failure to meet the triennial audit requirement of conducting the audits every three years would not be a finding during review of CPUC State Safety Oversight program, provided the reasons are documented.
6. Granting the authority to the Rail Safety Division Director described in this Resolution will expedite the process of granting requested time extensions to RTAs, reduce the burden on RTAs to prepare separate requests, reduce the burden on Staff and Commissioners to review and act on each request through the Resolution process, and improve public safety by providing appropriate means to comply with safety requirements.
7. The time extension requests described are non-controversial technical matters, intended to address Staff and RTA personnel safety and the current public health emergency.

THEREFORE, IT IS ORDERED THAT:

1. The Commission's Rail Safety Division Director is granted authority for the next 24 months to adjust the Commission's triennial audit schedule required by Commission General Order 164-E Sections 3.4 and 4.5 to assure both CPUC and transit agency employee health and safety, as well as a complete and effective triennial audit are performed despite the consequences of the novel Coronavirus (COVID-19) emergency.
2. The Commission's Rail Safety Division Director is granted authority for the next 24 months to extend compliance timeframes required by Commission General Orders and sections specified below, in situations where the Rail Transit Agencies demonstrate to the Rail Safety Division Director that they are unable to comply within the required timeframe as a consequence of the

novel Coronavirus (COVID-19) emergency and include the information in their requests outlined herein.

- GO 143-B - Section 12.02, Section 13.03
 - GO 164-E - Section 3.2
 - GO 172 - Section 5.3
 - GO 175-A - Section 8.3, Section 9.4
3. The temporary authority granted by this Resolution shall expire 24 months after the effective date of this Resolution.
4. This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting held on December 17, 2020. The following Commissioners voting favorably thereon:

/s/ Rachel Peterson
RACHEL PETERSON
Acting Executive Director

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
LIANE M. RANDOLPH
GENEVIEVE SHIROMA
Commissioners