

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch**

**RESOLUTION TL-19136
[Date]**

DRAFT RESOLUTION

**RESOLUTION MODIFYING EXEMPTION REQUIREMENTS REGARDING THE USE
OF THIRD-PARTY CONTRACTORS AS OPERATORS IN AUTONOMOUS VEHICLE
PILOT PROGRAMS.**

SUMMARY

Participants in the Commission's autonomous vehicle (AV) programs may request exemptions to certain provisions of General Order 157-E, which governs Transportation Charter-Party carriers, including AV program participants. Under Part 8.02 of General Order 157-E, participants in the Commission's AV Pilot programs may be granted exemptions of up to 12 months with a single renewal period of up to 12 additional months. Per Section 4.21.2 of Decision 20-11-046, participants in the Commission's AV Deployment programs may request exemptions allowing for the use of third-party vehicle operators as safety drivers. Such exemptions last for the duration of the participant's AV Deployment permit. Per Part 1.07 of General Order 157-E, this resolution authorizes a deviation from the provisions of General Order 157-E Part 8.02 such that regulations governing third-party operator exemptions in the AV Pilot program will align with those that govern the AV Deployment program. Exemptions of this type granted in the AV Pilot programs will last for the duration of the participant's AV Pilot program permit or for the duration of the pilot program, whichever is shorter.

BACKGROUND

A. CPUC Autonomous Vehicle Programs

The California Public Utilities Commission (Commission) authorized two sets of autonomous vehicle (AV) programs: (1) a Drivered and a Driverless AV Passenger Service Pilot Program established in Decision (D.)18-05-043; and (2) a Drivered and a Driverless AV Passenger Service Phase I Deployment program established in D.20-11-046 (later modified by D.21-05-017). As the names imply, the drivered programs allow passenger service in

AVs with a safety driver in the vehicle; the driverless programs allow passenger service in AVs without a safety driver in the vehicle. Moreover, while a safety driver is available to assist with operations if needed under the drivered programs, a communication link between passengers and a person responsible for monitoring the vehicle must be available and maintained at all times during passenger service under the driverless programs.

Monetary compensation may not be charged for any rides in test AVs under the Pilot Programs. Under the Phase I Deployment Programs, however, participants are authorized to charge fares for AV passenger service. In addition, applicants to the Driverless Pilot Program and the Driverless Phase I Deployment Program are required to submit Passenger Safety Plans that outline their plans to protect passenger safety.

Generally, applicants in the Commission's AV programs must obtain separate permits from the California Department of Motor Vehicles (DMV) and the Commission:

- Applicants in CPUC's Pilot programs must first obtain an Autonomous Vehicle Tester Program Manufacturer's Testing Permit¹ from the DMV for AV testing with or without a safety driver. Participants must comply fully with DMV's AV testing regulations. Similarly, applicants in CPUC's Phase I Deployment Programs must first obtain an AV Deployment Permit from the DMV.
- To carry passengers in DMV-permitted services, AV companies must obtain Transportation Charter-Party Carrier (TCP) authority from the Commission for each AV Pilot or Phase I Deployment Program and comply with the requirements established by the Commission for the Pilot or Phase I Deployment Program.

Currently, the Commission has issued nine Drivered Pilot Program Permits and one Driverless Pilot Program Permit.² There have been no permits issued for either the Drivered or Driverless Phase I Deployment Programs.

B. Requests for Exemption and Deviation from General Order 157-E Rules

Generally, the Commission's authority to regulate all passenger carriers, including autonomous vehicles, emanates from the California Constitution, State statutes and Commission decisions. To implement these authorities, the Commission adopted General Order (GO) 157-E, which establishes the rules and regulations governing the operations of charter-party carriers of passengers. Obtaining a TCP permit is a prerequisite to participate

¹ Information on DMV's program is available at <http://www.dmv.ca.gov/portal/vehicle-industry-services/autonomous-vehicles/>.

² Aurora Innovation, Argo AI, AutoX, Cruise, Deeproute.ai, Pony.ai, Voyage, Waymo and Zoox for the drivered program, and Cruise for the driverless program.

in the Commission's AV programs, and is governed by the rules and regulations under GO 157-E.

Under specific circumstances, GO 157-E allows an applicant or TCP permit-holder in any of the Commission's pilot programs to seek an exemption from any of the requirements established in GO 157-E. Part 8.02 states:

For any pilot program established by the Commission, Commission staff processing a license application may grant the requested exemption where the carrier, in its permit application pursuant to this General Order, presents a justification in writing that clearly and specifically shows consistency between the exemption request and the Commission's purpose for the pilot program and demonstrates that, if the exemption is granted, the carrier's operations will be functionally equivalent to the operations otherwise required by this General Order. Any exemption granted under this part shall be in effect for 12 months or for the duration of the pilot program, whichever is shorter. Renewal of the exemption may be granted by Commission staff for only one additional period of time not to exceed 12 months, where the carrier presents an updated justification for the request consistent with this section. The justification presented by any carrier under this part shall be posted by Commission staff on the website.³

An applicant or permit-holder in the Commission's AV Pilot program can submit a written request for an exemption to the Commission. If granted, the exemption shall remain in effect for 12 months or the duration of the pilot program, whichever is shorter. The exemption may be renewed for only one additional period not to exceed 12 months.

Additionally, Part 1.07 of GO 157-E allows the Commission to authorize deviations from rules and regulations set forth in GO 157-E:

The Commission may authorize deviations from these rules and regulations or prescribe or require the observance of additional or different rules by special order.⁴

To date, five participants in the AV Pilot programs have requested and been granted exemptions.⁵ One participant, Waymo, requested and was granted a renewal of its exemption. Due to the COVID-19 pandemic, Waymo was forced to cease its operations and was thus unable to utilize its renewed exemption. Because GO 157-E does not allow for

³ General Order 157-E at 14.

⁴ General Order 157-E at 5.

⁵ Zoox, Inc., Pony.ai, Inc., Waymo LLC, Argo AI, and Cruise LLC have been granted exemptions by the Commission.

extensions beyond the initial and renewed periods, Waymo filed a request with the Commission to deviate from GO 157-E such that Waymo's exemption would remain in place for 12 months following the adoption of a Commission resolution authorizing the deviation.⁶ The Commission approved resolution TL-19134, which granted Waymo's request, in its July 15, 2021 voting meeting.

C. Third Party Contractors as Operators in AV Programs

Currently, AV Pilot program exemptions have been granted pertaining to sections 4.01 (which prescribes requirements for carriers' equipment statements) and 5.03 of GO 157-E. Most of the exemptions granted pertain to section 5.03 of GO 157-E, which requires that every driver operating under a TCP permit be an employee of the permit holder, an employee of a sub-carrier, or an independent owner-driver who holds charter party authority and is operating under a sub-carrier. In their various exemption requests, the AV Pilot program participants attest that third-party contractors are held to the same standards as employees and accordingly their operations would be functionally equivalent to those required under GO 157-E.

The AV Deployment programs specifically address the use of third-party contractors as safety drivers, authorizing participants to seek exemptions for this purpose.⁷ As in GO 157-E Part 8.02, which governs pilot program exemptions, participants must demonstrate that their operations would be functionally equivalent to operations using only employees as operators. Deployment program exemptions from GO 157-E Part 5.03 last until the permit expires and thus do not require annual renewal.

DISCUSSION

Currently, regulations regarding exemptions differ between the Commission's AV Pilot and AV Deployment programs. AV Pilot program exemptions are governed by Part 8.02 of GO 157-E, which provides generally for exemptions lasting up to 12 months with a single possible renewal for up to 12 additional months. To date, most AV Pilot program exemption requests have been to authorize the use of third-party operators.⁸ Per D.20-11-046, AV Deployment program regulations address this issue directly, allowing CPED Staff

⁶ See Attachment A to Resolution TL-19134, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M393/K334/393334302.PDF>.

⁷ D.20-11-046 at 77.

⁸ Zoox, Pony.ai, Waymo, and Cruise have been granted exemptions from Part 5.03 allowing for the use of third-party operators as safety drivers in their drivered pilots. Cruise and Argo AI have been granted exemptions from Part 4.01 allowing for the use of vehicles they do not directly own or lease.

to approve exemptions allowing for third-party operators for the duration of the deployment permit.

The Commission has not been presented with evidence of a need for regulations regarding third-party operators to differ between the AV Pilot and Deployment programs. Aligning regulations across the two programs would improve process clarity and efficiency.

Requests for exemption from the driver status requirement under Part 5.03 have generally been non-controversial. CPED has granted all requests to utilize third-party safety drivers. To date, no evidence has been presented to CPED that would suggest AV Pilot operations with third-party safety drivers are not functionally equivalent to operations otherwise required by GO 157-E. As noted in D.20-11-046 (and later in D.21-05-017, which modified certain sections of D.20-11-046), these exemptions were granted because the applicants demonstrated that their operations would be functionally equivalent to their operations if they used only employees as vehicle operators.⁹ This is further evidenced by the Commission's approval of Waymo's request for deviation via resolution TL-19134, which received no public comments and was approved unanimously by the Commission as part of its consent agenda.

Both AV programs require the carrier to possess a relevant testing or deployment permit from the California Department of Motor Vehicles (DMV). DMV regulations provide for the use of contractors as AV operators, without requiring an exemption or otherwise imposing different regulations when third-party operators are used.¹⁰

Per GO 157-E Part 10, CPED Staff requires third-party operators to be subjected to screening, training, and drug and alcohol testing in the same manner as employees. Staff also checks whether the third-party agency possesses workers compensation insurance. Further, staff has discretion to suspend or revoke a participant's pilot permit at any time should it fail to comply with any of the TCP permit's terms and conditions.¹¹ This enables staff to respond flexibly to any emerging safety or other issue and therefore supports continued oversight over passenger safety in AV Pilot programs.

For the reasons outlined above, the Commission finds it unnecessary to require participants in the AV Pilot programs to annually renew their exemptions allowing third-party vehicle operators or to cap the renewals at one additional 12-month period. There is no compelling reason that regulations governing third-party operator exemptions should differ between

⁹ D.20-11-046 at 76.

¹⁰ 13 CCR § 227.32.

¹¹ D.18-05-043 at 34.

the AV Pilot program and the AV Deployment program, which does not require renewal of these types of exemptions.

Such renewals also place unnecessary burdens on permittees and Commission staff. Pilot permits are granted for three years – longer than the 24-month (12 months initially plus a single 12-month renewal) maximum exemption period. As demonstrated in the case of Waymo and resolution TL-19134, resolving this timing mismatch requires a Commission resolution and the accompanying commitments of permittees and staff to request an exemption and then draft, publish, and approve the resolution. The complexity of the process is asymmetrical to the non-controversial nature of third-party operator exemptions, so the Commission finds it reasonable that such exemptions should not require requests for renewal. This is consistent with the Commission’s directive in D.20-11-046, which authorized exemption requests related to the use of third-party operators and directed that approved exemptions remain valid for the duration of the permit.¹²

For the reasons above, the Commission finds it reasonable that the exemptions policy for AV Pilot programs should align with the exemptions policy for AV Deployment programs. Part 1.07 of GO 157-E allows the Commission to authorize deviations from the rules and regulations of GO 157-E by special order. Accordingly, the Commission authorizes a deviation from Part 8.02 such that exemptions authorizing the use of third-party operators in the AV Pilot programs shall last through the duration of the pilot permit without requiring renewal.

COMMENTS

Public Utilities Code §311(g)(1) provides that this resolution must be served on all parties and be subject to at least 30 days public review. Any comments are due within 20 days of the date of its mailing and publication on the Commission’s website and in accordance with any instructions accompanying the notice. Public Utilities Code §311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

In compliance with Public Utilities Code §311(g), a notice shall be emailed on **September 17, 2021**, informing all parties on the R.12-12-011 Service List of the availability of the Resolution on the Commission’s website at <http://www.cpuc.ca.gov/documents/>. The 30-day review and 20-day comment period for the draft of this resolution were neither waived nor reduced. Accordingly, comments on this draft resolution may be submitted no later than 20 days from the mailing date (October 7, 2021). This draft resolution will be placed on the Commission’s agenda no earlier than 30 days from today (October 18, 2021). If

¹² D.20-11-046 at 78.

adopted by the Commission, the final resolution will be posted and available on the Commission's website.

FINDINGS

1. The Commission has authorized two sets of autonomous vehicle programs: a Drivered and a Driverless AV Passenger Service Pilot Program established in D.18-05-043; and a Drivered and a Driverless AV Passenger Service Phase I Deployment program established in D.20-11-046.
2. Participants in the AV programs are subject to Commission regulations set forth in GO 157-E.
3. Part 1.07 of GO 157-E allows the Commission to authorize deviations from the rules and regulations of GO 157-E by special order.
4. Part 8.02 of GO 157-E allows participants in the AV Pilot programs to request exemptions to the provisions of GO 157-E, which may be granted for a maximum of 12 months with the possibility of a single 12-month renewal.
5. Five pilot program participants have requested and been granted exemptions, four of which exempt the participants from the driver status requirement in Part 5.03 and authorize the use of third-party vehicle operators as safety drivers.
6. These exemption requests have not been controversial.
7. No evidence has been presented indicating that operations in the AV Pilot programs using third-party operators have been functionally different from operations using only employees of the carrier, employees of the sub-carrier, or an independent owner-driver who holds charter-party carrier authority and is operating as a sub-carrier.
8. Both the AV Pilot and AV Deployment programs require participants to have obtained a corresponding testing or deployment permit from the California Department of Motor Vehicles.
9. Title 13, Section 227.32 of the California Code of Regulations does not distinguish between or impose different regulations on autonomous vehicle test drivers that are employees, contractors, or designees of the manufacturer.
10. CPED Staff have discretion to suspend or revoke a participant's AV Pilot program permit at any time should it fail to comply with the permit's terms and conditions.
11. AV pilot permits are granted for three-year periods and may be renewed for three-year periods, per Public Utilities Code Section 5376.
12. An initial 12-month exemption followed by a single 12-month renewal may be shorter than the duration of the AV Pilot permit.
13. Additional extensions of an exemption require a Commission resolution.

14. The complexity of the resolution process is unnecessarily burdensome relative to the noncontroversial nature of third-party operator exemptions.
15. D.20-11-046 authorizes exemption requests for the use of third-party operators as safety drivers and directs that exemptions granted shall be valid for the duration of a participant's AV Deployment program permit.
16. There is no compelling reason for exemption requests for AV Pilot programs to be subject to greater frequency of review than exemption requests for AV Deployment programs.
17. It is reasonable for exemptions allowing for the use of third-party operators in AV Pilot programs to last for the duration of the relevant pilot permit.

THEREFORE, IT IS ORDERED THAT:

1. All existing exemptions to General Order 157-E Part 5.03 granted as part of the Drivered and Driverless Autonomous Vehicle Passenger Service Pilot Programs shall not require renewal and will remain active through the duration of the relevant Drivered or Driverless Autonomous Vehicle Passenger Service Pilot permit or for the duration of the pilot program, whichever is shorter.
2. Any new exemptions in the Drivered and Driverless Autonomous Vehicle Passenger Service Pilot Programs granted per Part 8.02 of General Order 157-E that request exemption from the driver status requirements of General Order 157-E Part 5.03 shall not require renewal and will remain active through the duration of the relevant Drivered or Driverless Autonomous Vehicle Passenger Service Pilot permit or for the duration of the pilot program, whichever is shorter.
3. Other provisions of General Order 157-E Part 8.02 will continue to apply to exemptions to the driver status requirements of General Order 157-E Part 5.03.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting on _____. The following Commissioners approved it:

Rachel Peterson
Executive Director