

Sullivan-Leshin, Isaac, PRC

From: Sullivan-Leshin, Isaac, PRC
Sent: Wednesday, April 15, 2020 5:17 PM
To: Records, PRC, PRC
Subject: 20-00079-TR-M; Filing Submission
Attachments: 20-00079-TR-M, Amended Order Granting Temporary Waivers from NMPRC
Transportation Rules 18.3.4.12.C.9 NMAC, 18.3.14.11.A NMAC and 18.3.8.17 NMAC.pdf

IN THE MATTER OF TRANSPORTATION DIVISION’S REQUEST TO)
GRANT A TEMPORARY WAIVER FROM NMPRC TRANSPORTATION)
RULES 18.3.4.12.C.9 NMAC, 18.3.14.11.A NMAC AND 18.3.8.11) Case No. 20-00079-TRM
NMAC)
_____)

Please file the attached AMENDED ORDER GRANTING TEMPORARY WAIVERS FROM NMPRC TRANSPORTATION RULES 18.3.4.12.C.9 NMAC, 18.3.14.11.A NMAC AND 18.3.8.11 NMAC into the above captioned case.

Thank you.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF TRANSPORTATION DIVISION'S)
REQUEST TO GRANT A TEMPORARY WAIVER)
FROM NMPRC TRANSPORTATION RULES) Case No. 20-00079-TRM
18.3.4.12.C.9 NMAC, 18.3.14.11.A NMAC AND 18.3.8.11)
NMAC)**

**AMENDED ORDER GRANTING TEMPORARY WAIVERS FROM NMPRC
TRANSPORTATION RULES 18.3.4.12.C.9 NMAC, 18.3.14.11.A NMAC AND 18.3.8.11
NMAC**

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the April 8, 2020 Recommendation filed by Transportation Division Staff (“Staff”) recommending that the Commission grant all certificated ambulance service carriers a temporary waiver from 18.3.4.12(C)(9) NMAC, 18.3.14.11(A) NMAC and grant all motor carriers a variance from 18.3.8.11 NMAC¹ during the public health emergency resulting from the COVID-19 epidemic; wherefore, being duly advised in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Recommendation requested that that the Commission grant all certificated ambulance service carriers a temporary waiver from 18.3.4.12(C)(9) NMAC, 18.3.14.11(A) NMAC and 18.3.8.11 NMAC during the public health emergency resulting from the COVID-19 epidemic.

2. As grounds for a temporary waiver of 18.3.4.12(C)(9)² NMAC, the

¹ The reference to 18.3.8.11 NMAC is a typographical error and is intended to read as 18.3.8.17 NMAC pertaining to Voluntary Suspensions.

² **18.3.4.12 C. Qualifications of drivers other than drivers of small passenger vehicles.** This rule adopts by reference only the following specific sections of Title 49, Part 391 of the Code of Federal Regulations:...(9) **medical examinations; certificate of physical examination:** Section 391.43, except that for volunteer drivers of ambulance services only, the medical examiner (as defined in 49 CFR Section 390.5) performing the medical examination shall perform a medical examination sufficient to enable the medical examiner

Recommendation asserted that many of the certificated ambulance service carriers' staff will have their DOT physicals expire and students that will be graduating will need DOT physicals during this crisis but be unable to schedule non-emergency physicals during the public health emergency. A temporary waiver from having a medical physical certificated during the public health emergency would allow current and newly graduated EMS operators that may be unable to acquire a medical physical certificate during the public health emergency to continue to be employed by ambulance service providers and provide service to their communities without the fear of having to suspend drivers.

3. As grounds for the request for a temporary waiver of the requirements set forth in 18.3.14.11(A) NMAC³, Staff asserted that many ambulance service providers, during the public health emergency are experiencing a combination of limited resources, staff shortage, and also are trying to minimize exposure risk to COVID-19 during the public health emergency. Therefore, Staff is requesting a temporary waiver from the requirement that there be two Emergency Medical Technician ("EMT") for all emergency transports and to allow ambulance service carriers, during the public health emergency, to provide emergency transports with one EMT instead of two for all emergency transports.

4. As grounds for the request for a temporary waiver of the requirements set forth in

to certify, in accordance with Subsection C of 18.19.5.33 NMAC, whether or not the driver has a condition that may interfere with the safe operation of an ambulance.....

³ **18.3.14.11 MINIMUM PERSONNEL REQUIREMENTS: A. Ambulances. (1)**

A minimum of two (2) licensed EMTs from the ambulance service shall be present at the scene of the emergency, except that two (2) EMTs need not be present at the scene for prearranged transfers of a stable patient or in those unusual situations where there are overlapping calls, disasters, or similar unforeseen circumstances which result in an insufficient number of EMTs being available. (2) A minimum of one (1) EMT shall be in the patient compartment at all times during patient care and transport.

18.3.8.11 NMAC⁴, the Recommendation states that many motor carriers currently issued a permit, certificate or warrant have informed the Transportation Division that they are experiencing financial hardship due to a decrease in revenues generated during the Department of Health's 03-23-2020 Public Health Emergency Order recommending New Mexico citizens to Stay-At-Home and the corresponding decreased need for public transportation. According to the Recommendation, many motor carriers may not be able to afford appropriate insurance coverage and, therefore, may need to apply to the Transportation Division Director requesting approval to voluntarily suspend their services during the public health emergency and for this reason, Staff requested that the Commission waive the filing fee(s) required to apply for a temporary voluntary suspension and/or reinstatement after voluntary suspension⁵.

5. The Recommendation stated that Staff discussed the matter with Mr. Kyle Thornton, Bureau Chief of the Department of Health's EMS Bureau, the Commission's technical advisor on ambulance standards⁶ who stated that he supports granting the waiver of these rules during this crisis.

6. Lastly, Staff recommended the Commission granting the requested waivers to

⁴ **18.3.8.11 A. VOLUNTARY SUSPENSION OF A CERTIFICATE OR PERMIT: A. Application.** An applicant for voluntary suspension shall file: 1) an application on the form prescribed by the director; 2) copies of its current certificate or permit and all endorsements it seeks to suspend; 3) a statement explaining: (a) why such voluntary suspension is not adverse to the public interest, including whether any other motor carrier is capable of providing the service; and (b) if applicable, why the applicant is not fit, willing, and able to render reasonably continuous and adequate service for the period of time for which voluntary suspension is requested; **B. Application.** An applicant for reinstatement following voluntary suspension shall file: (1) an application on the form prescribed by the director; (2) a copy of the application for voluntary suspension approved by the director; and; (3) a statement of the changes in circumstances and evidence that the applicant is fit, willing, (4) the period of time for which the applicant seeks to suspend service; and (5) the fee required by NMSA 1978 Section 65-2A-36.

⁵ Section 65-2A-36 A. NMSA 1978 provides: "...7) for filing an application for reinstatement of a certificate or permit following voluntary or involuntary suspension, one hundred dollars (\$100); (8) for filing an application for voluntary suspension of a certificate or permit, fifteen dollars (\$15.00);..."

⁶ NMSA 1978 §24-10B-4(B).

continue for at least 45 days after the Governor rescinds the 03-23-2020 State of Public Health Emergency Order directing New Mexico citizens to Stay-At-Home, as subsequently extended and amended.

7. Finally, Staff recommended that the Commission waive the technical requirements of 1.2.2.40 (A) and (B) NMAC, such that the request be in the form of a petition and accompanied by an affidavit, so that it may grant a waiver based upon the Recommendation filed in the docket.⁷

8. The Commission finds that it may, in its discretion, waive or vary any requirement of its Motor Carrier Rules if the Commission finds that such waiver or variance would be in the public's health, welfare, and safety interests.

9. Based upon the reasons set forth in Staff's Recommendation, the Commission finds that it is in the public's health, welfare, and safety interests to grant the requested waivers because they will enable allow certificated ambulance service carriers in the state of New Mexico to continue providing emergency ambulance transports thus benefitting the residents of the State during the current public health emergency and allow all motor carriers to file an application with the Transportation Division Director requesting approval to voluntarily suspend and apply for re-instatement after voluntary suspension, of their permits, warrants or certificates, without immediately paying the application fee required by Section 65-2A-36 A. NMSA 1978.

⁷ 1.2.2.40 NMAC provides that an applicant for a waiver or variance from any transportation rule to submit a written petition, supported by an affidavit, which (1) identifies the section of the rule or order from which the variance is requested; (2) describes the situation that necessitates the variance; (3) describes the effect of complying with the rule or order on the applicant if the variance is not granted; (4) describe the result the variance will have if granted, and (5) describe how the proposed alternative will achieve the purpose of the rule, and why it is in the public interest.

10. Further, the Commission finds that granting the requested waivers is consistent with NMSA 1978, §65-6-4(B)(2) of the Motor Carrier Act which provides: “In establishing standards for ambulances... the commission shall take into consideration the resources of the various communities, institutions and sponsoring organizations providing ambulance service to the public.”

IT IS THEREFORE ORDERED:

A. Temporary waivers from Motor Carrier Rules 18.3.4.12(C)(9) NMAC, and 18.3.14.11(A) NMAC are hereby granted to all certificated ambulance providers from the date of this Order until 45 days after the Governor of the State of New Mexico rescinds the 03-23-2020 Public Health Emergency Order directing New Mexico citizens to Stay-At-Home, as subsequently extended and amended.

B. A temporary waiver from 18.3.8.11 NMAC is hereby granted to all motor carriers that possess Commission approved certificates, warrants and/or permits so that they are allowed to file an application with the Transportation Division Director requesting approval to voluntarily suspend their operations and to apply reinstatement after voluntary suspension without immediately paying the Section 65-2A-36 (A) NMSA 1978 required application fees until 45 days after the Governor of the State of New Mexico rescinds the 03-23-2020 Public Health Emergency Order directing New Mexico citizens to Stay-At-Home, as subsequently extended and amended.

C. This Order is effective immediately.

D. This Order shall be served and noticed by the Transportation Division Director by posting a copy on the commission's internet web site and sending electronic mail to all motor

carriers, public officials or agencies, or other persons or entities who have previously supplied electronic mail addresses to the commission for the purpose of publication, advising such persons of the filing and posting.

E. The Transportation Division Director shall immediately notice all motor carriers that the temporary waivers granted herein will expire in 45 days, using the method set forth in Decretal Paragraph D., as soon as the Governor of the State of New Mexico rescinds the 03-23-2020 Public Health Emergency Order directing New Mexico citizens to Stay-At-Home, as subsequently extended and amended.

F. The Transportation Division is hereby granted variances from Procedural Rule 1.2.2.40 which normally would otherwise require the filing of a petition and an affidavit in support of the request for a variance from Motor Carrier Rules.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 15th day of
April, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed
CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson Byrd, electronically signed
JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Valerie Espinoza, electronically signed
VALERIE ESPINOZA, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed
THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed
STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5



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NMAC)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Amended Order Granting Temporary Waivers from NMPRC Transportation Rules 18.3.4.12.C.9 NMAC, 18.3.14.11.A NMAC and 18.3.8.17 NMAC** issued by the New Mexico Public Regulation Commission on April 15th, 2020 was sent via email to the parties indicated below:

Jason N. Montoya-PRC
Kacy Dunn
Yvette Hetzer
Judith Amer
Bradford Borman
Melchiore Savarese
Mahlon Wigton
Peggy Martinez-Rael
Elizabeth Ramirez
Gilbert Fuentes

Jasonn.Montoya@state.nm.us;
kacy.dunn@state.nm.us;
Yvette.Hetzer@state.nm.us;
Judith.Amer@state.nm.us;
Bradford.Borman@state.nm.us;
Melchiore.Savarese@state.nm.us;
Mahlon.Wigton@state.nm.us;
Peggy.Martinez-Rael@state.nm.us;
Elizabeth.Ramirez@state.nm.us;
GilbertT.Fuentes@state.nm.us;

DATED this 15th day of April, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed
Isaac Sullivan-Leshin, Paralegal