

NOTICE OF EMERGENCY RULEMAKING

This is an emergency amendment to Rule 18.3.4 NMAC, Section 12, effective 12/23/2024.

To ensure the ongoing and continuous services needed to provide for the public health, safety and welfare of New Mexicans and visitors to our state, the New Mexico Department of Transportation (NMDOT) is undertaking an emergency rulemaking to revise the provisions of 18.3.4.12 NMAC, Section 12 to exempt ambulance service providers from requiring drivers be at least 21 years old.

As required by Senate Bill 160, which was passed by the legislature during the 2023 Legislative Session and signed into law on April 4, 2023, the Transportation Division of the New Mexico Public Regulation Commission (PRC) was transferred to the NMDOT effective July 1, 2024. As a result of this transfer, NMDOT became responsible for motor carrier regulation and enforcement, including ambulance standards.

Prior to the transfer, representatives from PRC and NMDOT worked collaboratively to position NMDOT to effectively and efficiently implement business processes and create new rules. On 7/1/2024, among other rules, following the normal rulemaking process, the NMDOT adopted 18.3.4.12 NMAC, Requirements Applicable Only to Non-CDL Drivers, which includes language require drivers of all regulated vehicles to be at least 21 years of age.

Very quickly following adoption of the rule, NMDOT received feedback from state agency partners and stakeholders of the motor carrier industry, particularly certificated ambulance service providers, that the new rule's requirements are cumbersome to them and will have a direct negative impact on the ability to meet the needs of New Mexico's citizens and visitors and would cause imminent peril to the public health, safety and welfare.

In a document dated September 9, 2024 ("DOT Regulation of Certified Ambulance Agencies; Identified Transition Issues"), the Department of Health's (DOH) Statewide Emergency Medical Services Advisory Committee (SWAC) clearly articulates its position on the rules:

The change in enforcement of existing rule, in addition to new rules, now in effect will significantly hinder ground ambulance providers' ability to operate. There is a high probability that prehospital emergency medical care will be unavailable for large areas of the geography of New Mexico due to particularly rural and frontier services being unable to comply with the published rules and enforcement.

Additionally, At its July 24, 2024 meeting, at least one of SWAC member articulated a concern that services to tribal communities would also be negatively impacted by the new rule.

The SWAC further indicates that New Mexico's Emergency Medical Services (EMS) infrastructure is staffed predominantly with volunteers, and that, "...individuals who work in EMS not only performed patient care in the back of the ambulance but are also required to drive. In order to obtain a position at a service, it is often a requirement that you be eligible to obtain licensure as an EMS provider in the State of New Mexico." To be licensed as an EMT Basic, the minimum age requirement is 17. While the requirements for ambulance drivers vary from state to state, the SWAC offers the following summary of its review of age requirements in 49 other states:

- 21 required drivers to be 18 years old and a valid driver's license²
- 16 listed no minimum age or driver requirements³
- 10 only required a "valid state issued driver's license"⁴
- 1 requires drivers to be 19 years old⁵ • 1 requires drivers to be 17 years old

In summary, as justification for and in support of this proposed emergency rulemaking, the DOH and the SWAC have very strongly articulated that applying this age requirement to ambulances:

- Is making it difficult to hire personnel or secure volunteers to provide needed EMS services;
- Would result in the loss of many current drivers, including volunteers, which leads to:

- A decrease or cessation of ambulance service, particularly in rural and tribal communities;
- A loss of jobs, including volunteer opportunities, for current drivers, who are under 21 years old;
- A loss of income for current drivers who are under 21 years old; and
- A negative economic impact on the communities in which current drivers who are under 21 reside.

This emergency rule is temporary pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.