

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 20 TRAFFIC SAFETY
PART 11 IGNITION INTERLOCK DEVICES PROGRAM

18.20.11.1 ISSUING AGENCY: The New Mexico department of transportation, PO Box 1149, Santa Fe, New Mexico, 87504-1149.
[18.20.11.1 NMAC - Rp, 18 NMAC 20.11.1, 1/1/2003; Rp, 18.20.11.1 NMAC, xx/xx/2023]

18.20.11.2 SCOPE: This rule applies to the oversight and use of ignition interlock devices in New Mexico pursuant to Sections 66-2-7.1, 66-5-35, 66-5-501 et seq., 66-7-506 and 66-8-102 NMSA 1978 and to all manufacturers, service center operators, installers, and service technicians of such ignition interlock devices; and to the fee imposed upon a person pursuant to Section 66-8-102.3 NMSA 1978.
[18.20.11.2 NMAC - Rp, 18 NMAC 20.11.2, 1/1/2003; Rp, 18.20.11.2 NMAC, xx/xx/2023]

18.20.11.3 STATUTORY AUTHORITY: Sections 66-5-35, 66-5-501 et seq., 66-7-506, 66-8-102 and 66-8-102.3 NMSA 1978.
[18.20.11.3 NMAC - Rp, 18 NMAC 20.11.3, 1/1/2003; Rp, 18.20.11.3 NMAC, xx/xx/2023]

18.20.11.4 DURATION: Permanent.
[18.20.11.4 NMAC - Rp, 18 NMAC 20.11.4, 1/1/2003; Rp, 18.20.11.4 NMAC, xx/xx/2023]

18.20.11.5 EFFECTIVE DATE: _____, unless a later date is cited at the end of a section.
[18.20.11.5 NMAC - Rp, 18 NMAC 20.11.5, 1/1/2003; Rp, 18.20.11.5 NMAC, xx/xx/2023]

18.20.11.6 OBJECTIVE: The purposes of this rule are to implement the ignition interlock program mandated by Sections 66-5-35, 66-5-501 et seq. and 66-8-102 NMSA 1978 and to establish the amount of and the procedure for collecting, remitting, and reimbursing the fee imposed by Section 66-8-102.3 NMSA 1978 and determining indigency pursuant to Section 66-8-102.3 NMSA 1978.
[18.20.11.6 NMAC - Rp, 18 NMAC 20.11.6, 1/1/2003; Rp, 18.20.11.6 NMAC, xx/xx/2023]

18.20.11.7 DEFINITIONS:

- A. alveolar breath means an air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of the alcohol concentration in the breath from which the breath alcohol concentration can be determined. A minimum volume of 1200 milliliters is required to represent alveolar breath. (“Alveolar” refers to the alveoli, the smallest air passages in the lungs, which are surrounded by capillary blood vessels through which an interchange of gases occurs during respiration.)
- B. appropriate authorities means a DWI program coordinator, sentencing court or person assigned by the court, assigned probation officer, parole board, the bureau or its designee, the motor vehicle division of the taxation and revenue department, or other agencies or legal entities as deemed necessary by the bureau as it relates to the interlock program or indigent fund.
- C. bogus breath sample means any gas sample other than an unfiltered alveolar breath sample from a driver.
- D. blood alcohol concentration (BAC) means the concentration of alcohol in a person’s blood, measured in grams per 100 milliliters of blood.
- E. breath alcohol concentration (BrAC) means the concentration of alcohol in a person’s breath, determined by chemical analysis and measured in grams of alcohol per 210 liters of breath.
- F. breath alcohol ignition interlock device means a device, approved by the bureau, which is an electronic breath alcohol analyzer with microcomputer logic and an internal memory connected to the ignition or other control systems of a vehicle that measures breath alcohol concentration and prevents a driver from starting or driving the vehicle if the driver’s BrAC exceeds a specified limit.
- G. breath sample means normal expired human breath primarily containing air from the deep lung.
- H. Bureau means the Traffic Safety Bureau of the New Mexico State Highway and Transportation Department.
- I. calibrate means to test and adjust an ignition interlock device so that it accurately measures breath alcohol concentration.

J. camera means a device used to document the identity of the person using the ignition interlock device. Typically, the camera is mounted on the windshield, or other appropriate placing, and captures the image of the person required to provide a breath sample into the ignition interlock device.

K. certificate means a document issued by the Bureau authorizing a person to be:

- (1) an installer, who may install, service, and remove ignition interlock devices; or
- (2) a service technician, who may service ignition interlock devices.

L. circumvention means any overt, conscious attempt to start a vehicle without taking and passing an initial test or random retest, and includes but shall not be limited to using a bogus or filtered breath sample or an electronic bypass mechanism to start a vehicle, push starting or hot wiring a vehicle, or having a person other than the driver take the initial test or subsequent re-tests.

M. clean driving record means no more than six points on a person's driver's license, and that person has not had a driver's license suspended or revoked within the last five years as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or as the result of a conviction in any jurisdiction of an alcohol or drug-related driving offense.

N. convicted or conviction means that a person has been found guilty of a criminal charge by a court or pled guilty.

O. crime involving moral turpitude means a crime that is contrary to honesty, justice or good morals, such as a crime involving driving under the influence, dishonesty, fraud, perjury, forgery, murder, serious sexual offenses, domestic violence, child abuse, and other such crimes.

P. driver means a person who operates a vehicle in which an ignition interlock device is required to be installed pursuant to Sections 66-8-102, 66-8-102.3, 66-8-111, or 32A-2-3 NMSA 1978 or by order of the parole board.

Q. driver specific means the driver or person in the driver seat and operating the motor vehicle who is blowing into the ignition interlock device.

R. filtered breath sample means a breath sample that has been modified, diluted, or altered through any means in an attempt to remove alcohol from the sample.

S. fixed-site service center means a service center in a permanent physical location in New Mexico.

T. ignition interlock device or device a device that is approved by the bureau and prevents a person who is intoxicated or under the influence from starting or engaging the transmission of a motor vehicle, including but not limited to breath alcohol ignition interlock devices.

U. independent laboratory means a testing laboratory or analytical chemist not affiliated with a manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or reference samples and is acceptable to the bureau.

V. indigent driver means a driver who has been determined to be indigent by the bureau, or, prior to July 1, 2010, by a court, parole board, or probation and parole officer, and who therefore is not required to pay the full cost of the interlock device fee, or the costs of installation and removal, or the cost of leasing the device.

W. initial test means a breath test required to start a vehicle to ensure that the driver's BrAC is below the maximum allowable level on a breath alcohol ignition interlock device.

X. install means to place an ignition interlock device into a vehicle so that it is fully operational for the use for which it is intended.

Y. installer means a person who is trained by an instructor-installer and certified by the bureau to install and remove ignition interlock devices in New Mexico.

Z. instructor-installer means a person who has successfully completed the manufacturer's installation instructor training program, as verified by the manufacturer.

AA. interlock device fee means the fee imposed upon drivers by Section 66-8-102.3 NMSA 1978 to ensure the solvency of the interlock device fund.

BB. license means the document issued by the bureau authorizing a manufacturer to provide ignition interlock devices or authorizing a person to operate a service center.

CC. limited driving history means a driving record from the New Mexico motor vehicle division of the taxation and revenue department, or its equivalent from another state, that includes actions, citations, and driver's license revocations pursuant to the Implied Consent Act or similar acts in other states.

DD. manufacturer means a person who produces or assembles ignition interlock devices.

EE. manufacturer's report means a report detailing all services provided to a driver for a specified period of time, including the driver's personal identifier, location of service center, name of client, fee schedule, vehicle information, violations, type of service, and date of service.

FF. mobile service unit means a unit of a service center that travels to a site to install, service, and remove ignition interlock devices.

GG. notice of rule violation (NRV) means a written statement on one or more violations of the ignition interlock NMAC rules. The respondent will have ten (10) business day to form a response to the bureau. The bureau requires a written response describing the corrective actions a manufacturer, service center, installer or service technician will take to resolve the violation(s) from reoccurring and to achieve full compliance.

HH. parole board means the New Mexico parole board.

II. parent company means a firm that owns a controlling interest in one or more smaller companies.

JJ. person means an individual, firm, partnership, association, corporation or other legal entity.

KK. place of business means the location where a person is working or attending school.

LL. random retest means a test required within randomly variable intervals that is performed after the vehicle has been started and while a driver is operating a vehicle, but that does not require the driver to turn off the vehicle, to ensure that the driver's BrAC remains below the maximum allowable level on a breath alcohol ignition interlock device.

MM. reference sample means either a dry gas sample or a wet bath solution containing a known concentration of alcohol at a known temperature that is used to calibrate an ignition interlock device.

NN. remove means to take an ignition interlock device from a vehicle, permanently reconnect all severed wires and insulate them with heat shrink tubing or its equivalent, and otherwise return a vehicle to normal operating condition.

OO. revocation or revoked means the involuntary permanent termination of the bureau's approval of a license of a manufacturer, service center, or certificate of an installer or service technician for cause.

PP. service means to calibrate, monitor, maintain, download data from, or inspect ignition interlock devices for evidence of tampering or circumvention as required by 18.20.11 NMAC.

QQ. service center means a fixed-site service center, which may include one or more mobile service units, where ignition interlock devices are installed, serviced, and removed.

RR. service center operator or licensee means a person approved by a manufacturer and licensed by the Bureau to operate a service center in New Mexico.

SS. service technician means an employee of a service center operator who is trained by an instructor-installer and certified by the bureau to service ignition interlock devices.

TT. suspension or suspended means the involuntary termination of the bureau's approval of a license of a manufacturer or service center or a certificate of an installer for cause for a specified period of time.

UU. tampering means an overt, conscious attempt to physically alter or disable an ignition interlock device, or disconnect it from its power source, or remove, alter, or deface physical anti-tampering measures, so a driver can start the vehicle without taking and passing an initial test or random test.

VV. vehicle switch means the process in which the ignition interlock service center removes and transfers an interlock device from one motor vehicle to another with the bureau's approval.

WW. verified active usage is determined by a report from the interlock manufacturer documenting that the ignition interlock device has been used in the manner in which it was intended, including but not limited to verification of service and maintenance of the vehicle/device monthly or bi-monthly as required by 18.20.11 NMAC; record of interlock events, including but not limited to breath violations and rolling re-tests; and verification of corresponding payment for service.

XX. withdrawal means the temporary or permanent cessation of the bureau's approval of an ignition interlock device.

[18.20.11.7 NMAC - Rp, 18 NMAC 20.11.7, 1/1/2003; Rp, 18.20.11.7 NMAC, x/x/2023]

18.20.11.8 APPLICATION FOR APPROVAL OF IGNITION INTERLOCK DEVICES:

A. Approval required. No person shall provide ignition interlock devices for installation without first having obtained approval of the device from the Bureau in accordance with the requirements of this rule.

B. Applications available from the bureau. A person may obtain an application for approval of an ignition interlock device by contacting the bureau at 1-800-541-7952 or accessing the website at <https://www.dot.nm.gov>.

C. Contents of application. Any manufacturer seeking approval of an ignition interlock device shall submit an application to the bureau at the address specified on the application. The application shall include:

- (1) the manufacturer's name, address, telephone number, fax number, e-mail address, and website if applicable.
- (2) the name, telephone number, and email address of a contact person.
- (3) a copy of the manufacturer's New Mexico business license and state and federal tax identification numbers.
- (4) the name and number of the model or class of the device for which approval is sought.
- (5) a list of other states in which the same device has been approved for use, and the name, address and telephone number of the authorizing agency in each state.
- (6) a precise set of specifications describing the features of the device.
- (7) detailed operating instructions for each device.
- (8) documentation ensuring that the device is set to New Mexico parameters for ignition interlock performance standards and required testing.
- (9) the territory in which the manufacturer proposes to operate, with a plan to establish a licenses service center in operation within 60 days of approval of the application. A manufacturer shall choose one or more of the following options:
 - (a) New Mexico State Highway District 1;
 - (b) New Mexico State Highway District 2;
 - (c) New Mexico State Highway District 4;
 - (d) New Mexico State Highway District 6;
 - (e) New Mexico State Highway Districts 3 and 4;
 - (f) New Mexico State Highway Districts 5 and 6; or
 - (g) Statewide.
- (10) the number of fixed site service centers the manufacturer proposes to establish in New Mexico, the nature of the relationship between the manufacturer and the service center operator (i.e., employee or independent contractor), and a plan for providing service within 100 miles or two hours, whichever is less, of any driver's residence or place of business in the territory in which the manufacturer proposes to operate.
- (11) a business model plan that describes how the manufacturer will provide services and how the device is in the best interests of New Mexico.
- (12) the manufacturer installation/operation manual and user reference guide.
- (13) the application for a breath alcohol ignition interlock device shall include:
 - (a) a detailed description of the reference sample to be used for calibrating the device;
 - (b) the name and address of any independent laboratory that has tested the device or reference sample for which approval is sought;
 - (c) a notarized statement or affidavit from an independent laboratory stating the name, address and phone number of the independent laboratory and the name of the person who tested:
 - (i) the device, certifying that each model or class of breath alcohol ignition interlock device for which the manufacturer seeks approval from the bureau meets or exceeds the national highway traffic safety administration specifications published in the most current standards, or its successor specifications, and meets or exceeds the requirements of this rule; and
 - (ii) the reference sample, certifying that the reference sample to be used by the manufacturer's service center operators to calibrate the device is satisfactory for that purpose;
 - (d) a copy of the laboratory report on the testing of the device for which approval is sought dated not more than ten years before the date the application for approval of the device is filed with the bureau; and
 - (e) the applicant shall pay all costs of testing of ignition interlock devices.

D. Qualifying provisions required with application packet.

- (1) a certificate of product liability insurance, written on an occurrence basis, covering defects in product design, materials, and manufacturing of ignition interlock devices. The certificate of insurance shall:
 - (a) be issued or delivered by a company licensed to do business in, or placed in accordance with the surplus lines laws of, the state or jurisdiction in which the insured's principal place of business is located;
 - (b) show the insured as the manufacturer;
 - (c) provide the name, telephone number and email address of the insurance agent;

(d) show the type of coverage and have a minimum liability limits of two million dollars (\$2,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate; the products liability coverage must either be issued as a separate policy or the three million dollars (\$3,000,000) aggregate limit must apply separately to the products liability coverage; and

(e) include a statement from the insurance company that it will notify the bureau 30 days before canceling the insurance. In the event the bureau finds the certificate of insurance to be insufficient, the manufacturer shall send a copy of the policy to the bureau upon request;

(2) a surety bond for the benefit of the state of New Mexico in the amount of ten thousand dollars (\$10,000) issued by a surety company licensed to do business in New Mexico. The surety bond shall be continuous, shall name

the New Mexico department of transportation, traffic safety bureau as obligee, and shall ensure replacement of the manufacturer's ignition interlock devices pursuant to Paragraph 3 of Subsection O of 18.20.11.10 NMAC or Subsection D of 18.20.11.28 NMAC;

(3) a sworn statement that the manufacturer shall indemnify and hold harmless the state of New Mexico, the bureau and its officers, employees and agents from all claims, demands and actions resulting from damage, death, or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer relating to the installation, service, repair, use or removal of an ignition interlock device;

(4) a sworn statement that the manufacturer shall comply with all requirements of this rule;

(5) a sworn statement that each of the manufacturer's service center operators is a representative of the manufacturer for the purpose of accepting service of process and that service of process on one of the manufacturer's service center operators shall constitute service of process on the manufacturer; and

(6) a sworn statement that the manufacturer shall provide documentation to the bureau of its compliance with these statements upon request by the bureau.

E. Approval and Completeness check. When the bureau receives an application for approval of a device, the bureau shall check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within fifteen

(15) days of receipt. The applicant shall then have 30 days from the date of contact to complete the [18.20.11.8 NMAC - Rp, 18 NMAC 20.11.8, 1/1/2003; Rp, 18.20.11.8 NMAC, xx/xx/2023]

18.20.11.9 TERM OF MANUFACTURER / IGNITION INTERLOCK DEVICE APPROVAL

A. Term. An ignition interlock device approval shall be valid from the date of issuance until June 30 of each year, unless withdrawn by the bureau before that date. Renewal approvals shall be valid from July 1 of the year of renewal to June 30 of the following year.

B. Approval of application for renewal.

(1) A manufacturer shall file an application for renewal of its ignition interlock device approval with the bureau on or before May 1 each year to ensure certificate renewal by July 1. A manufacturer that files an application for renewal after May 1 shall pay a late fee of \$50.00. No applications for renewal shall be accepted after June 1.

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the website at <https://www.dot.nm.gov>

(3) The renewal application shall be submitted to the bureau at the address specified on the application and shall contain the following:

(a) the manufacturer's name, address, telephone number, fax number, e-mail address and website if applicable;

(b) the name, telephone number and email address of a contact person; the name and number of the model or class of the device for which approval is sought;

(c) a list of other states in which the same device has been approved for use, and the name, address and telephone number of the authorizing agency in each state;

(d) a list of New Mexico licensed service centers stating the nature of the relationship between the manufacturer and the service center operator (i.e., employee of independent contractor)

(e) a copy of the manufacturer's New Mexico business license, New Mexico Gross receipts number and federal tax identification numbers;

- (f) the territory in which the manufacturer proposes to operate:
 - (1) New Mexico state highway district 1;
 - (2) New Mexico state highway district 2;
 - (3) New Mexico state highway district 4;
 - (4) New Mexico state highway district 6;
 - (5) New Mexico state highway districts 3 and 4;
 - (6) New Mexico state highway districts 5 and 6; or
 - (7) Statewide;
- (h) manufacturer may not change the fee schedule more than once per quarter; and
- (i) accompanied by the documents specified in 18.20.11.8 Subsection D (1-6).
- (4) A manufacturer shall submit any changes or updates that have been made to the manufacturer's business model, operation manual or user guides.
- (5) If any changes or updates are made to the approved device for New Mexico; the manufacturer will need to submit specifications listed in 18.20.11.8 Subsection C (13-15)

C. Approval/disapproval of application for renewal.

- (1) The bureau shall renew the approval of an ignition interlock device for a period of one (1) year if the applicant:
 - (a) has filed the required information and documents required by Paragraph (3) of Subsection B above;
 - (b) meets the standards specified in 18.20.11 NMAC and other provisions of this rule; and
 - (c) has made sufficient progress toward establishing one or more service centers within the territory or territories in which the applicant agreed to operate pursuant to Paragraph (9) of Subsection C of 18.20.11.8 NMAC.
- (2) The bureau shall not renew the approval of any ignition interlock device if the manufacturer:
 - (a) fails to file the required information and documents;
 - (b) fails to meet the standards specified in 18.20.11 NMAC or other provisions of this rule; or
 - (c) has one or more outstanding notices of rule violation pending resolution by the bureau.

D. Notice of rule violation. The bureau may send any manufacturer a notice of rule violation if it finds evidence that the manufacturer is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the manufacturer is not in compliance. Failure to correct a rule violation in the time requested by the bureau may result in denial of device approval renewal until any outstanding notices of rule violation are resolved by the bureau.

[18.20.11.9 NMAC – N, xx/xx/2023]

18.20.11.10 RESPONSIBILITIES OF MANUFACTURERS: A manufacturer shall:

- A. develop written instructions for the installation, servicing, and removal of ignition interlock devices approved for use in New Mexico and supply those instructions to all service centers authorized by the manufacturer and licensed by the Bureau to install ignition interlock devices in New Mexico.
- B. develop a user reference and problem-solving guide in English and Spanish which shall:
 - (1) include information on the location of service centers, servicing procedures, emergency procedures and a strong warning that the device detects non-compliance, circumvention, and tampering;
 - (2) provide written instructions on how to clean and care for the ignition interlock device;
 - (3) describe the type of vehicle malfunctions or repairs that might affect the ignition interlock device and inform a driver what to do when such repairs are necessary; and
 - (4) provide the driver with a bureau-issued comment and concern form regarding the device or the service the driver receives from the service center operator. The form may be obtained by contacting the bureau at 1-800-541-7952 or accessing the website at <https://www.dot.nm.gov>.
- C. train each service center operator and its employees that use its ignition interlock devices to service the device and certify to the bureau in writing within 30 days that the service center operator and its employees have been trained.

D. train installers at each service center to install and remove ignition interlock devices and certify to the bureau in writing within 30 days that an installer has been trained.

E. train each service technician at each service center to service ignition interlock devices and certify to the bureau in writing within 30 days that a service technician has been trained.

F. notify the bureau in writing within 30 days after the manufacturer receives notice that approval of a device for use in New Mexico is or ever has been temporarily or permanently withdrawn, suspended, revoked or denied in another state, whether such action occurred before or after approval in New Mexico and whether or not such action is or has been appealed in the other state.

G. employ or contract only with those persons whom the bureau has licensed as service centers or certified as service center operators, installers, or service technicians, except for administrative staff.

H. disseminate information about its ignition interlock device to the public, and to any service center with which it contracts, and the employees of the service center. A manufacturer of an approved device may state that its device has been "approved by the traffic safety bureau for use in New Mexico" in its advertising or promotional materials.

I. not make any modification in design or operational concept of a device approved for use in New Mexico that materially affects the way the device measures alcohol or records data without the prior written approval of the bureau. The bureau may require a manufacturer to reapply for approval of a device the manufacturer intends to significantly modify. Modification does not include repair or replacement of parts to maintain the device in working order or software changes that do not modify the functionality of the device.

J. affix a label to each device warning against tampering, circumvention, or misuse of the device.

K. provide expert or other required testimony in any civil or criminal proceedings regarding the manufacture and functioning of its device, or the interpretation of recorded data.

L. reimburse the bureau for any costs incurred if a manufacturer requests the bureau to provide testimony in any civil or criminal proceedings involving an ignition interlock device in New Mexico.

M. ensure that mouthpieces with saliva traps of a type recommended by the manufacturer are always available to service center operators.

N. ensure that reference samples to be used in calibrating devices are always available to service center operators.

O. implement the plan for providing service under Paragraph 9 of Subsection C of 18.20.11.8 NMAC within sixty (60) days of approval of the ignition interlock device application;

P. be responsible for providing uninterrupted service of its installed devices if one of its service centers moves more than ten (10) miles from its location or goes out of business. A manufacturer shall notify the Bureau within ten (10) business days if one of its service centers is moving or going out of business and shall indicate whether or not it will replace the service center.

(1) If the manufacturer replaces the service center, the manufacturer shall make all reasonable efforts to obtain driver records and data from the original service center and provide them to the new service center.

(2) If the manufacturer does not replace the service center, the manufacturer shall make all reasonable efforts to obtain driver records and data from the original service center, maintain them at its main business office, and provide them to the appropriate authorities as required by this rule.

(3) A manufacturer shall be responsible for removing its devices and shall bear the cost of having them replaced with approved devices from another manufacturer if:

(a) the manufacturer can no longer provide service within 100 miles or two hours, whichever is less, of the sentenced driver's residence or place of business; and

(b) the other manufacturer has a service center no more than 100 miles or two hours, whichever is less, from the driver's residence or place of business than the original service center.

(4) A manufacturer shall notify all drivers of the change of service center or replacement of the device as soon as possible but no later than thirty days before the change or replacement will occur.

(5) If a manufacturer cannot comply with paragraph (3) of this subsection, the manufacturer shall notify all drivers and the appropriate authorities that service will be terminated within 60 days and shall remove the devices at no cost to the drivers.

[18.20.11.9 NMAC - N, 1-1-03; Rp, 18.20.11.9 NMAC, xx/xx/2023; Rn, 18.20.11.10 NMAC, xx/xx/2023]

18.20.11.11 PERFORMANCE STANDARDS FOR IGNITION INTERLOCK DEVICES:

A. Performance standards for all ignition interlock devices. All ignition interlock devices must:

- (1) prevent a person from starting or driving a vehicle 95 percent of the time when the person has a BrAC of 0.025 or more grams of alcohol per 210 liters of breath, whether the device is a breath alcohol ignition interlock device or a non-breath alcohol ignition interlock device;
- (2) detect attempts to tamper with or circumvent the device;
- (3) not have any form of bypass device that would permit a person to start a vehicle without taking an initial test;
- (4) be usable by a person of average intelligence with minimum inconvenience;
- (5) operate accurately at all temperatures between -10° Fahrenheit and 110° Fahrenheit.
- (6) operate accurately at all altitudes between 2500 feet and 13,000 feet.
- (7) not be significantly affected by humidity, dust, electromagnetic interference, or normal automobile vibration;
- (8) not be affected by normal fluctuations of power source voltage resulting from operation of the vehicle and other electronic devices installed in the vehicle;
- (9) allow the vehicle to be restarted without requiring an additional test for three minutes after the ignition has been turned off or the vehicle has stalled, except when the driver has failed to take a random retest;
- (10) display device responses or label the light-up buttons on the device, as applicable, in English or Spanish as requested by the driver;
- (11) provide audio and visual warning signals, and written, spoken, or visual instructions in English or Spanish when an initial test or random retest is required;
- (12) retain data for a minimum of three thousand driving events or a period of 65 days before requiring servicing;
- (13) retain its electronic tamper detection capabilities when the device is disconnected from the vehicle's power supply or record that the device was disconnected;
- (14) provide a service visit reminder if the device's internal memory reaches 90 percent of capacity;
- (15) not report false passes of a test more than five percent of the time;
- (16) not report false failures of a test more than five percent of the time;
- (17) issue an audio or visual warning that the vehicle needs to be serviced within five days whenever:
 - (a) the driver is scheduled for a service visit;
 - (b) the device detects evidence of circumvention or tampering;
 - (c) the driver has failed an initial test six times within a period of three hours; and
 - (d) the driver has failed initial tests or random retests ten (10) times within a period of 30 days or as ordered by the appropriate authorities.
- (18) not permit the vehicle to be started or driven if the driver fails to appear for a service visit within the five day warning period. The vehicle shall not be operable until a service center operator, installer or service technician has serviced the device;
- (19) not impede the safe operation of the vehicle; and
- (20) if it contains a camera unit, the unit shall not distract or impede the driver in any manner from safe and legal operation, shall record all ignition interlock activity of the person, and shall provide any visual evidence of actual or attempted tampering, alteration, bypass or circumvention, and report this information directly to the manufacturer.
- (21) The camera shall be able to record and store visual evidence of each person providing a BrAC, and shall meet the following:
 - (a) at installation, the camera shall take a reference picture of the person, and keep on file
 - (b) a clear picture shall be taken for each event, including initial start, all rolling tests and whenever a violation is recorded;
 - (c) each picture shall be a wide-angle view of the cabin of the vehicle, including the passenger side, to ensure the camera can clearly capture the entire face of the person and any passengers; and

(d) the camera shall produce a digital image, identifiable verification, or photograph of the person in all lighting conditions.

B. Additional standards for breath alcohol ignition interlock devices. All breath alcohol ignition interlock devices must be based on alcohol-specific electro-chemical fuel cell sensor technology and must meet the National Highway Traffic Safety Administration specifications published in the most current standards, federal register volume 78, number 89, pages 26849-26867, dated Wednesday, May 8, 2013 and effective May 8, 2014, or its successor specifications, and the requirements of this rule. In addition to meeting all of the performance requirements of Subsection A of this section, all breath alcohol ignition interlock devices shall:

(1) detect a BrAC of 0.025 grams of alcohol per 210 liters of breath, with an accuracy of plus or minus 0.005 grams of alcohol per 210 liters of breath;

(2) prevent the vehicle from starting or driving ninety-five (95) percent of the time when it detects a BrAC above 0.025 grams of alcohol per 210 liters of breath;

(3) assure that the breath sample is collected;

(4) meet the requirements of paragraphs (1) and (2) of Subsection B of this section when subjected to simple harmonic motion (vibrations) having an amplitude of:

(a) 0.38mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 1/2 minutes, then decreased at a uniform rate to 10 Hz in 2 1/2 minutes; and

(b) 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 1/2 minutes, then decreased at a uniform rate to 30 Hz in 2 1/2 minutes;

(5) not indicate a breath test failure when testing an alcohol-free sample or a sample containing endogenously produced substances capable of being present in the breath;

(6) automatically cleanse or remove from the device a previous breath sample or other contaminant containing alcohol before allowing a subsequent breath test to be taken; and

(7) be subject to a calibration check at each service visit, or at least every 60 days, at a calibration set point of 0.05 grams of alcohol per 210 liters of breath using the known concentration of an approved reference sample, and remain stable in the field for at least 65 days.

[18.20.11.10 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03; Rp, 18.20.11.10 NMAC, xx/xx/2023; Rn, 18.20.11.11 NMAC, xx/xx/2023]

18.20.11.12 REQUIRED TESTING: All ignition interlock devices must meet the following minimum standards for testing drivers.

A. Initial test. An ignition interlock device shall:

(1) require a test before a person may start the vehicle.;

(2) if a breath alcohol ignition interlock device, indicate by audio or visual means when a sufficient sample of breath has been collected;

(3) indicate the results of the test by the use of pass/fail signals and not by displaying a numerical BAC or BrAC level;

(4) prevent a person from starting a vehicle when:

(a) a breath alcohol ignition interlock device detects a BrAC of 0.025 or more grams of alcohol per 210 liters of breath;

(b) a driver fails to appear for a scheduled or violation service visit within the five day warning period;

(5) require a driver to wait five (5) minutes before attempting to start the vehicle a second or third time if the breath alcohol ignition interlock device detects a BrAC of 0.025 or more grams of alcohol per 210 liters of breath on the initial or second breath test, or the driver otherwise fails the initial or second test on a non-breath alcohol ignition interlock device;

(6) require a driver to wait 30 minutes before attempting to start the vehicle a fourth or subsequent time if the breath alcohol ignition interlock device detects a BrAC of 0.025 or more grams of alcohol per 210 liters of breath on the third or subsequent test, or the driver otherwise fails the third or subsequent test on a non-breath alcohol device; and

(7) allow a driver to start the vehicle for three (3) minutes after successful completion of an initial test.

B. Random retests. All ignition interlock devices shall require random retests.

(1) The device shall require the driver to take a random retest within a randomly variable interval ranging from three to ten minutes after a driver has passed an initial breath test and started the vehicle.

(2) The device shall use an audio or visual warning to alert the driver that a random retest is required and the driver will have five minutes to take the random retest.

(3) If a driver fails to take a random retest within five minutes of the warning, or the breath alcohol ignition interlock device detects a BrAC of 0.025 or more grams of alcohol per 210 liters of breath, an audible alarm or horn shall sound repeatedly until the vehicle is turned off. The device shall not allow the driver to:

(a) restart the vehicle within three minutes after the ignition has been turned off without taking an initial breath test; or

(b) take an initial breath test for five minutes after the vehicle is turned off.

(4) For the duration of travel, the device shall require additional random retests at random intervals ranging from ten to 60 minutes after the previous test.

(5) If the vehicle is intentionally turned off or accidentally stalls after or during the warning of an impending random retest, but before the driver takes the random retest, the driver shall not be able to start the vehicle without taking an initial test.

[18.20.11.11 NMAC - Rp, 18 NMAC 20.11.8 and 20.11.9, 1-1-03; Rp, 18.20.11.11 NMAC, xx/xx/2023; Rn, 18.20.11.12 NMAC, xx/xx/2023]

18.20.11.13 DATA RECORDING REQUIREMENTS FOR IGNITION INTERLOCK DEVICES:

A. An ignition interlock device shall record the following driving events:

(1) all attempts to circumvent the device;

(2) all attempts to tamper with the device that interfere with the proper and intended operation;

(3) all attempt to start the vehicle without first taking an initial breath test;

(4) all attempts to continue driving the vehicle without taking a random retest;

(5) the date, time, BAC of the driver, and success or failure of each attempt to start the vehicle and BrAC of the driver, if applicable;

(6) the date, time, BAC of the driver, and success or failure of each random retest and BrAC of the driver, if applicable;

(7) the total number of events recorded by the data recorder since the last service visit; and

(8) the number of vehicle starts.

B. An ignition interlock device data recorder shall be incorporated into a module that cannot be detached and shall have a backup system to protect the security of all recorded data in the event the power supply to the device is interrupted or the sample head is disengaged or disconnected.

[18.20.11.12 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03; Rp, 18.20.11.12 NMAC, xx/xx/2023; Rn, 18.20.11.13 NMAC, x/x/2023]

18.20.11.14 APPLICATION FOR SERVICE CENTER LICENSE:

A. **License required.** No person may operate a service center without first having obtained a license from the bureau in accordance with the requirements of this rule.

B. **Application required.** A person wishing to obtain a license to operate a service center must file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the website at <https://www.dot.nm.gov>

C. **Contents of application.** A person seeking approval of a service center license shall submit an application to the bureau at the address specified in the application. The application shall include:

(1) the applicant's name, address, telephone number, fax number, e-mail address, the name that appears on its business license, and website if applicable;

(2) the name, address, and telephone number of three character, and employment references who are not family members, one of which must be a past or present supervisor;

(3) a copy of the applicant's limited driving history from the motor vehicle division, driver services bureau, or its equivalent from every state in which the applicant has held a driver's license in the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau;

(4) a state police background check on the applicant from every state in which the applicant has resided in the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau,

or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent at least 60 days before the date the application is filed with the bureau;

(5) the applicant's resume or related work history;

(6) a copy of the standard agreement between the service center and drivers regarding the device. The agreement shall require the driver to notify the service center operator if:

(a) the vehicle in which the device is installed is sold, stolen, repossessed, damaged beyond repair, permanently moved out of the service center operator's territory, or impounded and not to be returned; or

(b) the driver becomes disabled;

(7) a copy of the contract between the manufacturer and the service center, including the hours of operation and contact information for the service center;

(8) a fee schedule for setting forth the cost of services for each approved device, to include:

(a) installation of the device;

(b) leasing of the device;

(c) a scheduled service visit;

(d) a violation service visit;

(e) vehicle switch; and

(f) removal of the device;

(g) mobile service fees, if applicable;

(9) a copy of the service center's New Mexico business license, and state and federal tax identification numbers; and

(10) a sworn statement that the service center shall only operate with one manufacturer, unless the parent company owns separate devices, then the service center will need to have written approval for each device from the bureau.

D. Completeness. When the bureau receives an application for a service center license, the bureau shall check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within 15 days of receipt. The applicant shall then have thirty 30 from the date of contact to complete the application. If the applicant fails to complete the application within the thirty 30 days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

[18.20.11.14 NMAC - N. xx/xx/2023]

18.20.11.15 ISSUANCE OF INITIAL SERVICE CENTER LICENSE:

A. Standards for issuance. In reviewing an application for a service center license, the bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment references provided by the applicant report favorably on the applicant's character and employment experience;

(3) the applicant is at least eighteen (18) years of age;

(4) the applicant holds a valid driver's license;

(5) the applicant has a clean driving record;

(6) the applicant has been convicted of:

(a) a crime involving moral turpitude that relates to the qualifications, functions and duties required to

perform the work for which the license is issued; or

(b) a crime involving moral turpitude that does not relate to the qualifications, functions and duties

required to perform the work for which the license is issued, if the bureau determines after investigation that the applicant has been sufficiently rehabilitated to warrant the public trust;

(c) any alcohol or drug-related offense within the past five (5) years;

(7) the applicant has had a probation or parole revoked;

(8) the applicant has been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device;

(9) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act; and

(10) other factors indicate that the applicant is not fit to operate a service center, such as whether the applicant has previously been licensed or certified by the state of New Mexico and the license or certificate has been suspended, revoked, not renewed or has prior unresolved violations.

B. Qualifying provisions. The application packet must contain:

(1) the physical location of the service center fixed site which will accommodate installation, inspection, servicing or removing of ignition interlock devices; any mobile units the service center will operate of any type, fixed site or mobile unit, of service center the applicant will operate. A service center cannot operate without at least one (1) fixed-site service center, and at least one (1) certified ignition interlock installer;

(2) submit photographs of the service center showing: the bay area, the customer waiting area, office area and outside of building;

(3) the name of the manufacturer and the model or class of ignition interlock device to be installed, which shall be limited to one (1) manufacturer without the prior written approval of the bureau;

(4) the name and address of the manufacturer, and the type (dry gas or wet bath) of reference sample to be used to calibrate the device, if the device is a breath alcohol ignition interlock device;

(5) a sworn statement that the applicant shall indemnify and hold harmless the state of New Mexico, the bureau and its officers, employees and agents from all claims, demands and actions resulting from damage, death, or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the service center operator, installer, or service technician relating to the installation, servicing, or removal of an ignition interlock device;

(6) a certificate of commercial liability insurance, written on an occurrence basis, covering injury, death or property damage resulting from the installation, servicing, or removal of ignition interlock devices. The certificate of insurance shall:

(a) be from an insurance company authorized to transact insurance business in New Mexico;

(b) show the insured as the service center or as the service center owner d/b/a the service center;

(c) provide the name, telephone number and email address of the insurance agent;

(d) show the type of coverage and have minimum liability limits in the following amounts:

(i) commercial general liability insurance, written on an occurrence basis, for one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate; or

(ii) garage operations liability insurance, for one million dollars (\$1,000,000) per occurrence for each accident, auto only; one million dollars (\$1,000,000) per occurrence for each accident, other than auto only; and two million dollars (\$2,000,000) in the aggregate, other than auto only; and

(e) include a statement from the insurance company that it will notify the bureau thirty (30) days before canceling the insurance. In the event the bureau finds the certificate of insurance to be insufficient, the manufacturer shall send a copy of the policy to the bureau upon request; and

(f) list the bureau name and address as the certificate holder.

(7) a sworn statement that the applicant shall comply with all requirements of this rule.

C. Approval of license. If the bureau determines that the applicant meets the standards in Subsection A and B of this section, the bureau will notify the applicant in writing that the bureau has approved the application

D. Denial of license. If the bureau determines that the applicant does not meet the standards in Subsection A and B of this section, the bureau shall issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time but no more frequently than once per quarter.

18.20.11.15 NMAC - N. xx/xx/2023]

18.20.11.16 TERM OF SERVICE CENTER LICENSE:

A. Term. A service center license shall be valid from the date of issuance until June 30 of each year or until the manufacturer's contract with the service center terminates, unless the service center ceases operations or the license is suspended or revoked before that date. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

B. License renewal.

(1) A service center shall file an application for renewal of its certificate with the bureau on or before May 1. A service center that files an application for renewal after May 1 shall pay a late fee of \$50.00. No applications for renewal shall be accepted after June 1.

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the website at <https://www.dot.nm.gov>

(3) The application shall be submitted to the bureau at the address specified in the application and shall be accompanied by:

(a) a copy of the service center operator's limited driving history from the motor vehicle division, driver services bureau of the taxation and revenue department or its equivalent from every state in which the applicant has held a driver's license in the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau; and

(b) a state police background check on the service center operator, from every state in which the applicant has resided for the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent, at least 60 days before the date the application is filed with the bureau.

C. Approval/disapproval of license renewal.

(1) The bureau shall renew the license of a service center operator for a period of one (1) year if the applicant:

- (a) is in compliance with the requirements of this rule;
- (b) has filed the required information and documents required by Subsection A of this section;
- (c) meets the standards specified in Subsection A of 18.20.11.15 NMAC and other provisions of this rule; and
- (d) has received an overall rating of satisfactory or better from the compliance visits conducted by the bureau or its designee during the preceding year and does not have any unresolved NRVs pending resolution by the bureau.

(2) The bureau may, in its discretion, not renew the license of any service center operator who does not meet the standards in 18.20.11.16.C(1) NMAC.

D. Notice of rule violation. The bureau may send a licensee a notice of rule violation if it finds evidence that the licensee is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the licensee is not in compliance. Failure to correct a rule violation in the time requested by the bureau may result in denial of a license application until the violation is resolved by the bureau.

E. Early termination.

(1) A license shall automatically terminate if a service center ceases operation or if the contract between the service center and the manufacturer terminates.

(2) The bureau may suspend, revoke, or not renew a license as provided in this rule.

(3) If a service center ceases operation for any reason, the licensee shall comply with the requirements of 18.20.11.16.DD NMAC.

F. Restriction on sale of license. A service center license shall not be sold or transferred. [18.20.11.13 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03; Rp, 18.20.11.13 NMAC, xx/xx/2023; Rn, 18.20.11.16 NMAC, xx/xx/202023]

18.20.11.17 RESPONSIBILITIES OF SERVICE CENTER OPERATORS: A service center operator shall:

A. ensure that all installers and service technicians have received the proper training required by this rule and are directly supervised by a certified installer; until certified by the bureau, provided that the person has submitted an application to the bureau under this rule;

B. ensure that all installers and service technicians have the tools, test equipment, and manuals needed for installing, inspecting, downloading, calibrating, maintaining, servicing and removing ignition interlock devices;

C. ensure that all devices are installed and removed in a workmanlike manner in accordance with accepted trade practices by properly trained and certified installers;

D. ensure that all devices are serviced in a workmanlike manner in accordance with accepted trade practices by a properly trained and certified service center operator, installer or service technician;

- E. ensure that all service center operations are conducted in a professional and courteous manner, with an acceptable level of service, which shall include fair practices, courtesy and respect to the customers and the bureau or its designee and adequate staffing;
- F. comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;
- G. ensure that the business environment is free from discrimination, intimidation, and harassment; no person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others;
- H. impose the same fee on all drivers for installing, servicing, leasing, and removing ignition interlock devices, except for drivers who have received a determination of indigency under 18.20.11.30 NMAC. The bureau shall reimburse the service center operator for all indigent drivers in accordance with Subsection E of 18.20.11.30 NMAC, but in no event shall the bureau be responsible for any portion of the leasing fee for any driver who knowingly and deliberately tampers or interferes with the proper and intended operation of an ignition interlock device, terminates a service contract before its expiration date, fails to have a device serviced, or whose vehicle cannot support the proper and intended operation of the interlock device. The service center operator shall reimburse the bureau for any overpayments obtained from the bureau in violation of this section;
- I. post the current fee schedules and hours of operation, all current bureau licenses and certificates, and any public notice provided by the bureau in a publicly visible location in the service center;
- J. notify the driver and the bureau in writing 30 days prior to the event if the service center is changing devices or manufacturers, and adequately inform the driver in writing of the consequences of such event and the driver's options under the contract;
- K. provide the driver with a bureau-issued comment and concern form about the device or the service that the driver receives from the service center operator;
- L. report to the bureau in writing within ten business days any changes in location, fee schedule, hours of operation, closing of a service center, any employment changes of certified staff, or other matters that may affect the service center operator's ability to comply with the requirements of this rule;
- M. report to the bureau ten days prior to any change in the name of the service center, and provide the bureau with a business license, and state and federal tax identification reflecting the name change at the time of reporting. Upon receipt of these documents, the bureau shall issue a license reflecting the name change;
- N. immediately report to the bureau if the service center operator, installer or service technician has his or her driver's license suspended or revoked;
- O. provide expert or other required testimony in a civil or criminal proceeding regarding the installation, servicing, and removal of devices or the interpretation of recorded data;
- P. reimburse the bureau for any costs incurred if the service center operator requests the bureau to provide testimony in a civil or criminal proceeding involving an ignition interlock device;
- Q. not reveal any personal and medical information provided by drivers to any person other than the appropriate authorities, employees of the manufacturer or service center operator on an as-needed basis;
- R. provide information to interested drivers concerning the device and costs of installation, leasing, servicing, and removal. A service center may state that the service center is "licensed by the traffic safety bureau" and may state that the device the service center provides is "approved by the traffic safety bureau for use in New Mexico" in its advertising or promotional materials;
- S. provide forms from the bureau for determination of indigency, but shall not assist in completion of indigency forms, or guarantee or promise a determination of indigency to any driver;
- T. ensure that ignition interlock devices are installed on all vehicles as requested by the driver within ten business days of the date requested by a driver;
- U. take adequate security measures to prevent drivers or other unauthorized persons from accessing client files and secured materials in service centers such as tamper seals, installation instructions, computer disks, and any other material used to install, service, or remove the device;
- V. provide one certificate of installation per vehicle to a driver upon request;
- W. submit a copy of the certificate of installation to the appropriate authorities within ten business days of completion of each installation;
- X. collect all eligible fees and costs associated with installing, leasing, servicing and removing ignition interlock devices, unless the driver has received a determination of indigency from the bureau pursuant to 18.20.11.30 NMAC;
- Y. ensure that no driver or other unauthorized person witnesses the installation, servicing or removal of an ignition interlock device;

Z. use only reference samples which have not exceeded their expiration date and which are certified by an independent laboratory and approved by the bureau to calibrate ignition interlock devices. If wet bath reference samples are to be used to calibrate ignition interlock devices from mobile service centers, the service center operator shall ensure that:

(1) the reference samples used by a mobile service unit can be maintained within the temperature limits specified by the manufacturer of the reference sample for accuracy of results; or
(2) that substitute devices are pre-calibrated at the fixed site service center and exchanged for the devices needing calibration at the mobile service unit;

AA. provide the driver with receipts of each service, calibration, repair and replacement on each device installed;

BB. notify the appropriate authorities within 24 hours of removal of a device under 18.20.11.25 NMAC that a device has been removed from a vehicle;

CC. inform the bureau if the service center operator is engaged in any other business that is or could be deemed to be a conflict of interest with the operation of a service center;

DD. upon ceasing operation for any reason, shall, 30 days prior to ceasing operation, notify the bureau, manufacturer, and all drivers with devices installed or serviced by the service center with the date upon which operations will end; make all service center records available for inspection or copying by the bureau or its designee at any time; and provide all drivers with the arrangements for ensuring a transfer to another service center;

EE. be in compliance with all local, state and federal ordinances, rules and laws; and

FF. comply with all requirements of this rule.

[18.20.11.14 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03; Rp, 18.20.11.14 NMAC, xx/xx/2023; Rn, 18.20.11.17 NMAC, xx/xx/2023]

18.20.11.18 INITIAL CERTIFICATION OF INSTALLERS:

A. Certification required. No person or licensee may install or remove ignition interlock devices without first having obtained an installer certificate from the Bureau.

B. Application required. A person wishing to obtain a certificate as an installer must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <https://www.dot.nm.gov>.

C. **Contents of application.** A person seeking approval of an installer certificate shall submit an application to the bureau at the address specified in the application. The application shall contain:

(1) the applicant's name, address, telephone number, fax number and e-mail address;

(2) the name, address, and telephone number of three (3) character, and employment references who are not family members, at least one of which must be a past or present supervisor;

(3) the name and location of the service center employing or contracting with the applicant;

(4) a copy of the applicant's limited driving history from the motor vehicle division, driver services bureau or its equivalent from every state in which the applicant has held a driver's license in the past ten (10) years dated no earlier than 60 days before the date the application is filed with the bureau;

(5) a state police background check on the applicant from every state in which the applicant has resided for the past ten years dated no earlier 60 days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent, at least 60 days before the date the application is filed with the bureau; and

(6) the applicant's resume or relevant work history.

D. **Completeness.** When the bureau receives an application for certification as an installer, the bureau shall check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within 15 days of receipt. The applicant shall then have 30 days from the date of contact to complete the application. If the applicant fails to complete the application within the 30 days, the applicant's file shall be closed and the application shall be returned to the applicant;_

(2) If the application is complete, the bureau shall review the application.

E. **Standards for issuance of installer certificate.** In reviewing applications for a certificate, the bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment or school references provided by the applicant report

favorably on the applicant's character and employment or school experience;

- (3) the applicant is at least 18 years of age;
- (4) the applicant has a minimum of one year experience with vehicle electrical systems or a directly related field, or a certificate of satisfactory completion from an automotive mechanics training program;
- (5) the applicant holds a valid driver's license;
- (6) the applicant has a clean driving record.
- (7) the applicant has been convicted of:
 - (a) a crime involving moral turpitude that relates to the qualifications, functions and duties required to perform the work for which the certificate is issued; or
 - (b) a crime involving moral turpitude that does not relate to the qualifications, functions and duties required to perform the work for which the certificate is issued, if the bureau determines after investigation that the applicant has been sufficiently rehabilitated to warrant the public trust;
 - (c) any alcohol or drug-related offense within the past five years;
- (8) the applicant has had a probation or parole revoked;
- (9) the applicant has been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device;
- (10) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act; and
- (11) other factors indicate that the applicant is not fit to be an installer, such as whether the applicant has previously been licensed or certified by the state of New Mexico and the license or certificate has been suspended, revoked, not renewed or had prior unresolved violations.

F. Training.

(1) If the bureau determines that the applicant meets the standards in Subsection E of this section, the bureau shall grant approval to proceed with training as an installer. The applicant must successfully complete an ignition interlock device installation training program with an exam score of 80 percent or higher, conducted either by the manufacturer or an instructor-installer, to be eligible for certification. The applicant shall not install or remove any ignition interlock device during training without the direct supervision of a certified installer.

(2) If the bureau determines that the applicant does not meet the standards in Subsection E of this section, the bureau shall issue a letter stating the reasons it is not granting approval to proceed with training as an installer.

G. Final review.

(1) Upon receipt of verification from a manufacturer or instructor-installer that an applicant has successfully completed training as an installer, the bureau will notify the applicant in writing that it has approved the application. The bureau shall issue a certificate if the applicant signs a statement that the applicant will comply with all requirements of this rule. The certificate shall specify, by manufacturer's name and class or model number, which ignition interlock devices the installer is certified to install, service and remove and whether the applicant is qualified as an instructor-installer.

(2) If the bureau does not receive verification from a manufacturer or instructor-installer that an applicant has successfully completed training as an installer, the bureau shall issue a letter stating its reasons for denial of certification. The applicant may attend further ignition interlock device training courses.

H. Term. An installer certificate shall be valid from the date of issuance until June 30 of each year, unless suspended or revoked for cause before that date. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

I. Notice of rule violation. The bureau may send an installer a notice of rule violation if it finds that the installer is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the installer is not in compliance. Failure to correct a rule violation in the time requested by the bureau may result in denial of certification until the rule violation is resolved by the bureau.

[18.20.11.15 NMAC - N, 1-1-03; Rp, 18.20.11.15 NMAC, xx/xx/2023; Rn, 18.20.11.18 NMAC, xx/xx/2023]

18.20.11.19 RECERTIFICATION OF INSTALLERS:

A. Certificate renewal.

(1) An installer must file an application for renewal of his or her certificate with the Bureau on or before May 1 each year to ensure certificate renewal by July 1. An installer who files an application for renewal after May 1 shall pay a late fee of \$50.00 to TSD. No application for renewal shall be accepted after June 1.

(2) A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <https://www.dot.nm.gov>.

(3) The application shall be sent to the address specified in the application and shall be accompanied by:

(a) a copy of the installer's limited driving history from the motor vehicle division, driver services bureau of the taxation and revenue department or its equivalent from every state in which the applicant has held a driver's license in the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau; and

(b) a state police background check on the installer from every state in which the applicant has resided for the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent at least 60 days before the date the application is filed with the bureau.

B. Approval/disapproval of renewal.

(1) The bureau shall renew the certificate of an installer for a period of one (1) year if the installer:

(a) is in compliance with the requirements of this rule:

(b) has filed the information and documents required by Subsection A of this section;

(c) meets the standards specified in subsection [E] of 18.20.11.18 NMAC and other provisions of this rule; and

(d) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the bureau or its designee during the preceding year.

(2) The bureau may, in its discretion, not renew the certificate of any installer who does not meet the standards in 18.20.11.18 NMAC.

[18.20.11.16 NMAC - N, 1-1-03; Rp, 18.20.11.16 NMAC, xx/xx/2023; Rn, 18.20.11.19 NMAC, xx/xx/2023]

18.20.11.20 INITIAL CERTIFICATION OF SERVICE TECHNICIANS:

A. Certification required. No person, including a licensee, may service ignition interlock devices without first having obtained a certificate from the bureau.

B. Application required. A person wishing to obtain a certificate as a service technician shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the website at <https://www.dot.nm.gov>.

C. Contents of application. A person seeking to obtain a service technician certificate shall submit an application to the address specified in the application. The application shall contain:

(1) the applicant's name, address, telephone number, fax number and email address

(2) the name, address and telephone number of three character and employment references who are not family members, at least one of which must be a past or present supervisor;

(3) the name and location of the service center employing or contracting with the applicant;

(4) a copy of the applicant's limited driving history from the motor vehicle division, driver services bureau of the taxation and revenue department or its equivalent from every state in which the applicant has held a driver's license in the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau;

(5) a state police background check on the applicant from every state in which the applicant has resided for the past ten years dated no earlier than 60 days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent, at least 60 days before the date the application is filed with the bureau; and

(6) the applicant's resume or relevant work history.

D. Completeness. When the bureau receives an application for certification as a service technician, the bureau shall check the application for completeness within fifteen (15) days of receipt.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

E. Standards for issuance of service technician certificate. In reviewing applications for a certificate, the bureau shall consider whether:

(1) the information provided by the applicant is accurate and valid;

(2) the character and employment or school references provided by the applicant report favorably on the applicant's character and employment or school experience;

(3) the applicant is at least 18 years of age;

(4) the applicant holds a valid driver's license;

(5) the applicant has a clean driving record;

(6) the applicant has been convicted of:

(a) a crime involving moral turpitude that relates to the qualifications, functions and duties required to perform the work for which the certificate is issued; or

(b) a crime involving moral turpitude that does not relate to the qualifications, functions and duties required to perform the work for which the certificate is issued, if the bureau determines after investigation that the applicant has not been sufficiently rehabilitated to warrant the public trust; or

(c) any alcohol or drug- related offense within the past five years;

(7) the applicant has had a probation or parole revoked;

(8) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act; and

(9) the applicant has been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.

F. Approval for training.

(1) If the bureau determines that the applicant meets the standards in Subsection E of this section, the bureau shall grant approval to proceed with training as a service technician. with an exam score of 80 percent or higher, conducted either by the manufacturer or an instructor-installer, to be eligible for certification. The applicant shall successfully complete an ignition interlock device service training program conducted either by the manufacturer or instructor-installer. The applicant shall not service any ignition interlock device during training without the direct supervision of a certified service technician or installer.

(2) If the bureau determines that the applicant does not meet the standards in Subsection E of this section, the bureau shall issue a letter stating the reasons it is not granting approval to proceed with training as a service technician.

G. Final review.

(1) Upon receipt of verification from a manufacturer or instructor-installer that an applicant has successfully completed training as a service technician, the bureau shall notify the applicant in writing that it has approved the application. The bureau shall issue a certificate if the applicant signs a statement that the applicant will comply with all requirements of this rule. The certificate shall specify, by manufacturer's name and class or model number, which ignition interlock devices the service technician is certified to service.

(2) If the bureau does not receive verification from a manufacturer or instructor-installer that an applicant has successfully completed training as a service technician, the bureau shall issue a letter stating its reasons for denial of certification. The applicant may attend further ignition interlock device training courses.

H. Term. A service technician certificate shall be valid from the date of issuance until June 30 of each year or until the manufacturer's contract with the service center terminates, unless suspended or revoked for cause before that date. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year.

I. Notice of rule violation. The bureau may send a service technician a notice of rule violation if it finds that the service technician is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the service technician is not in compliance. Failure to correct a rule violation in the time requested by the bureau may result in denial of certification until the rule violation is resolved by the bureau.

[18.20.11.20 NMAC – N, xx/xx/2023]

18.20.11.21 RECERTIFICATION OF SERVICE TECHNICIANS:

A. Certificate renewal.

(1) A service technician shall file an application for renewal of his or her certificate with the bureau on or before May 1 of each year to ensure certificate renewal by July 1. A service technician who files an application for renewal after May 1 shall pay a late fee of \$50.00 made payable to the traffic safety bureau. No applications for renewal shall be accepted after June 1.

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the website at <https://www.dot.nm.gov>.

(3) The application shall be sent to the bureau at the address specified in the application and shall be accompanied by:

(a) a copy of the service technician's limited driving history from the motor vehicle division, driver services bureau or its equivalent from every state in which the applicant has held a driver's license in the past ten years, dated no earlier than 60) days before the date the application is filed with the bureau; and

(b) a state police background check on the service technician from every state in which the applicant has resided for the past ten years, dated no earlier than 60 days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent, at least 60 days before the date the application is filed with the bureau.

B. Approval/disapproval of renewal.

(1) The bureau shall renew the certificate of a service technician for a period of one year if the service technician:

(a) is in compliance with the requirements of this rule;

(b) has filed the required information and documents required by Subsection A of

this section;

(c) meets the standards specified in Subsection E of 18.20.11.20 NMAC; and

(d) has received an overall rating of satisfactory or better in the periodic evaluations

conducted by the bureau or its designee during the preceding year.

(2) the bureau may, in its discretion, not renew the certificate of any service technician who does not meet the standards in 18.20.11.20 NMAC.

[18.20.11.21 NMAC – N, xx/xx/2023]

18.20.11.22 RESPONSIBILITIES OF INSTALLERS AND SERVICE TECHNICIANS: An installer or service technician shall:

A. provide expert or other required testimony in a civil or criminal proceeding regarding the installation, servicing, and removal of devices or the interpretation of recorded data;

B. reimburse the bureau for any costs incurred if the installer or service technician requests the bureau to provide testimony in a civil or criminal proceeding involving an ignition interlock device;

C. not reveal any personal or medical information provided by drivers to any person other than the appropriate authorities or employees of the manufacturer or service center operator on an as-needed basis;

D. use only reference samples that have not exceeded their expiration date and which are certified by an independent laboratory and approved by the bureau to calibrate ignition interlock devices. If an installer or service technician uses wet bath reference samples to calibrate ignition interlock devices from a mobile service unit, the installer or service technician shall:

(1) maintain the reference samples within the temperature limits specified by the manufacturer of the reference sample for accuracy of results; or

(2) pre-calibrate substitute devices at the fixed site service center and exchange them for the devices needing calibration at the mobile service unit; and

E. not make any modification in design or operational concept of a device approved for use in New

Mexico that materially affects the way the device measures alcohol or records data without the prior written approval of the bureau

F. comply with all requirements of this rule.

[18.20.11.17 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03; Rp, 18.20.11.17 NMAC, xx/xx/2023; Rn, 18.20.11.22 NMAC, xx/xx/2023]

18.20.11.23 INSTALLATION OF IGNITION INTERLOCK DEVICES:

A. An installer shall:

- (1) not install an ignition interlock on a vehicle unless the driver is at the service center to receive training on the use of the ignition interlock device prior to or at the completion of the installation;
- (2) ensure that no driver or other unauthorized person witnesses the installation, servicing or removal of an ignition interlock device;
- (3) obtain a copy of the vehicle registration prior to installation of an ignition interlock device, which shall be kept in the file;
- (4) not install an ignition interlock device without the written permission of the registered owner of the vehicle, if the registered owner is not the sentenced driver;
- (5) inspect all vehicles prior to installation to determine that mechanical and electrical parts of the vehicle affected by an ignition interlock device are in acceptable condition and not install a device unless and until the vehicle is in acceptable condition;
- (6) follow a manufacturer's written instructions for the installation, servicing and removal of its ignition interlock devices;
- (7) ensure installation of the following physical anti-tampering measures:
 - (a) a solder or hard wire connection between an ignition interlock device and a vehicle;
 - (b) placement of all connections between a device and a vehicle under the dash or in an inconspicuous area of the vehicle;
 - (c) covering with a unique and easily identifiable seal, sheathing, or tape with label-type tamper shield:
 - (i) any portion of an ignition interlock device that can be disconnected;
 - (ii) all wires used to install the device that are not inside a secured enclosure; and
 - (iii) all exposed electrical connections.

B. A service center operator or service technician shall perform a calibration check at each service visit, or at least every 60 days, to ensure a calibration set point of 0.05.

[18.20.11.18 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03; Rp, 18.20.11.18 NMAC, x/x/2016; Rn, 18.20.11.23 NMAC, x/x/2016]

18.20.11.19 DRIVER ORIENTATION AND SUPPORT: A service center operator, installer, or service technician shall:

- A.** thoroughly train drivers on the proper use of the ignition interlock device.
- B.** provide a user reference and problem-solving guide in English or Spanish to drivers when a device is installed.
- C.** be available to answer all questions and handle any problems relating to the device, or repair or replace an inoperable or malfunctioning device, during all posted hours of operation.
- D.** provide a 24-hour toll-free emergency telephone number to all drivers.
- E.** respond to all service inquiries within 24 hours of the initial contact.
- F.** service, repair, or replace an ignition interlock device within 48 hours of initial contact at a service center located within one hundred 100 miles or two hours, whichever is less, of a sentenced driver's residence or place of business.

[18.20.11.19 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03; Rp, 18.20.11.19 NMAC, xx/xx/2023; Rn, 18.20.11.24 NMAC, xx/xx/2023]

18.20.11.25 SERVICING OF IGNITION INTERLOCK DEVICES:

A. A service center installer or service technician shall:

(1) service a device within thirty (30) days after the initial installation and at least every sixty (60) days thereafter, unless a shorter period is specified by order of the court, parole board or the assigned probation officer;

(2) ensure that another device is substituted whenever an installer removes a device for any reason related to the performance of the device; or

(3) calibrate every installed device at least every 60 days.

(4) ensure a client will not remove a device to present at time of servicing or calibration.

B. At each service visit, a service center installer or service technician shall:

(1) perform a calibration check at least every sixty (60) days to verify that the device measures an approved reference sample within plus or minus 0.005 grams per 210 liters of the known concentration of the reference sample;

(a) If the result of the calibration confirmation test is not within plus or minus 0.005 grams per 210 liters of the known concentration of the approved reference sample, the service center installer or service technician shall recalibrate the device.

(b) If the device fails the calibration confirmation test after being recalibrated, the service center installer or service technician shall ensure that a new device is installed.

(2) check that the device will permit a driver to restart a vehicle within three (3) minutes without taking another breath test after the vehicle has stalled or been turned off;

(3) check the device for evidence of tampering and circumvention. A service center installer or service technician shall document and photograph any perforations, cuts, or other evidence of possible tampering;

(4) download all recorded information from the device and prepare a report in the format prescribed by the bureau. The report shall include:

(a) the date, time, success or failure of each attempt to start the vehicle, and BrAC of the driver, if applicable;

(b) the date, time, success or failure of each random retest, and BrAC of the driver, if applicable;

(c) all attempts to tamper with the ignition interlock device;

(d) all attempts to avoid taking a random retest;

(e) all attempts to circumvent the device;

(f) the total number of events recorded by the data recorder since the last service visit; and

(g) the number of vehicle starts.

(5) record the vehicle odometer reading and calculate the number of miles driven since the last service visit;

(6) check that the device continues to meet the requirements of this rule. If at any time the device fails to meet the requirements of this rule, the device shall be recalibrated, repaired, or replaced.

[18.20.11.20 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03; Rp, 18.20.11.20 NMAC, xx/xx/2023; Rn, 18.20.11.25 NMAC, xx/xx/2023]

18.20.11.26 RECORDKEEPING AND REPORTING REQUIREMENTS: A manufacturer or service center operator:

A. shall maintain for a period of three (3) years and make available to the appropriate authorities, including the bureau, upon request:

(1) records on every driver, including indigent clients, driver license number, vehicle registration and insurance. Must also include document from appropriate authorities, date of installation, signature of the installer, dates and the results of every service visit and a copy of the agreement with the driver;

(2) records of each service, calibration, repair, and replacement on each device installed, including itemized receipts for each service visit; and

(3) records of all complaints received and corrective actions taken by the service center operator. The records shall be categorized by:

(a) customer error or operation;

(b) faulty automotive equipment;

(c) apparent misuse or attempt to tamper with or circumvent the device; and

(d) device failure;

B. shall within five business days of a service visit or removal of a device, report to the appropriate authorities, in the format prescribed by the appropriate authority:

- (1) any evidence of circumvention of, removing, or tampering with the device;
- (2) any failure to appear for a service visit within the five-day warning period;
- (3) the failure of six initial breath tests within a period of three hours;
- (4) the failure of ten initial breath tests or random retests in any 30 day period or as ordered

by the appropriate authorities;

C. shall within 24 hours of switching a device to another vehicle for a driver, report such switch to the appropriate authorities, including the vehicle year, make and model;

D. shall submit to the bureau upon request statistical data regarding driver and equipment performance;

(1) upon request, statistical data regarding driver and equipment performance and vehicle identification according to the data exchange specifications published by the bureau; and

(2) on a monthly basis, a manufacturer's report detailing all services provided in the reporting period demonstrating verified active usage and the services performed by the service center;

F. if a service center, shall send all records required by Subsection A of this section to the manufacturer upon cessation of the service center business; and

G. may maintain required records electronically with unrestricted access to manufacturer database granted to the bureau. Electronic records must be available to certified ignition interlock staff at each service center so that the bureau or its authorized representative may access information during posted business hours.

[18.20.11.21 NMAC - N, 1-1-03; Rp, 18.20.11.21 NMAC, xx/xx/2023; Rn, 18.20.11.26 NMAC, xx/xx/2023]

18.20.11.27 REMOVAL OF IGNITION INTERLOCK DEVICES:

A. A certified installer shall remove an ignition interlock device, permanently reconnect all severed wires and insulate them with heat shrink tubing or its equivalent, and otherwise return a vehicle to normal operating condition:

- (1) for devices installed pursuant to criminal proceedings and Section 66-8-102 NMSA 1978:
 - (a) upon expiration of the term specified in the judgment and sentence;
 - (b) if not specified in the judgment and sentence, upon expiration of the term

specified by statute; or

- (c) upon lawful order of the court;
- (2) for devices installed pursuant to administrative proceedings and Section 66-5-35 NMSA

1978:

- (a) upon reinstatement of the ignition interlock license;
- (b) upon completion of the court-ordered requirement; or
- (c) upon written request of the driver. The service center operator shall provide the

driver with a form prepared by the bureau to request removal of a device, which shall include the driver's name, date of birth, driver's license number and signature acknowledging that the driver has requested removal of the device and that the service center operator will notify the appropriate authorities upon removal.

B. A certified service center operator shall notify the appropriate authorities and may petition the bureau, the sentencing court, parole board or assigned probation officer for authorization to remove an ignition interlock device if:

- (1) the vehicle in which the device is installed is sold, stolen, damaged beyond repair, repossessed, permanently moved out of the service center operator's territory, not able to support the proper and intended operation of the interlock device or is impounded and not to be returned to the owner;
- (2) the driver is incarcerated for 90 days or more, becomes disabled or dies; or
- (3) the driver fails or refuses to pay fees for so long that the device will not function until it is serviced.

[18.20.11.22 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03; Rp, 18.20.11.22 NMAC, xx/xx/2023; Rn, 18.20.11.27 NMAC, xx/xx/2023]

18.20.11.28 RESPONSIBILITIES OF THE BUREAU: In addition to the responsibilities set forth in 18.20.11.30 NMAC:

A. The bureau shall establish and maintain;

- (1) a list of ignition interlock devices approved for use in New Mexico by manufacturer and

model or class;

(2) a list of all fixed-site licensed service centers, locations of areas serviced by mobile service units, certified Installers and service technicians in New Mexico; and

(3) a website containing all original and renewal application forms required by this rule.

B. The bureau or its designee shall have the right to periodically evaluate, through quality assurance visits:

(1) the technical competency and reliability of installers and service technicians;

(2) service centers and service center operators, including customer service;

(3) the installation, servicing, and removal of ignition interlock devices; and

(4) a manufacturer's or service center's training of installers and service technicians.

C. The bureau or its designee shall have the right to investigate a manufacturer or service center or its employees, on its own initiative or in response to written complaints from any person;

D. All licensees and certificate holders shall cooperate fully in any evaluation or investigation regardless of whether advance notice has been given, including making records available for inspection at the request of the bureau;

E. In conducting its evaluations, the bureau shall consider:

(1) the number and nature of any comments or complaints received;

(2) whether the manufacturer, service center, service center operator, installer or service technician consistently meets the requirements of this rule;

(3) whether the manufacturer, service center, service center operator, installer or service technician has a record of conducting operations in a professional and courteous manner, with an acceptable level of service;

(4) the results of any quality assurance visits; and

(5) outstanding responses or resolution to any notice of rule violation(s) or corrective action plan(s).

F. The bureau may require any licensee or certificate holder to attend trainings to improve performance and service as deemed necessary by the bureau based on its evaluations.

[18.20.11.23 NMAC - N, 1-1-03; Rp, 18.20.11.23 NMAC, xx/xx/2023; Rn, 18.20.11.28 NMAC, xx/xx/2023]

18.20.11.29 TEMPORARY OR PERMANENT WITHDRAWAL OF APPROVAL OF AN IGNITION INTERLOCK DEVICE:

A. Grounds. The bureau may temporarily or permanently withdraw its approval of an ignition interlock device if:

(1) the bureau has evidence of repeated device failure due to gross defects in design, materials, or manufacturer;

(2) the manufacturer's product liability insurance or surety bond has been cancelled or terminated;

(3) the manufacturer has failed to abide by its plan to provide service within forty-eight (48) hours at a service center located within one hundred (100) miles or two (2) hours, whichever is less, of a driver's residence or place of business, or the sentencing court;

(4) the manufacturer requests the bureau to remove a device from the list of approved devices;

(5) the bureau finds that the device or supporting software as set by the standards from the manufacturer does not meet the requirements of this rule;

(6) the bureau has reasonable cause to believe the device was inaccurately represented to meet the requirements of this rule;

(7) the manufacturer has failed to reimburse the bureau for costs incurred in providing testimony requested by the manufacturer in a civil or criminal proceeding involving the approval or use of an ignition interlock device;

(8) the bureau determines that changes in ignition interlock device technology are such that continued approval of the device would not be in the best interests of New Mexico; or

(9) the manufacturer does not have any outstanding NRVs pending resolution by the bureau.

(10) the manufacturer fails to comply with any other requirements of this rule.

B. Procedure. The temporary or permanent withdrawal shall be effective thirty (30) days after notice is sent to the manufacturer via certified mail, return receipt requested, except in cases where the bureau determines that immediate temporary or permanent withdrawal is necessary for the safety and welfare of the citizens of New Mexico.

C. Consequences of suspension or revocation. A manufacturer may request a review of a temporary or permanent withdrawal. This request shall be submitted to the bureau in writing within thirty (30) days of the temporary or permanent withdrawal. The bureau shall conduct such review in accordance with the procedures prescribed in the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978. Upon completion of any proceedings resulting in temporary or permanent withdrawal, or voluntary surrender of an approval, a manufacturer shall notify each of its service center operators in New Mexico that the service center operator shall:

- (1) not install that model or class of device in any driver's vehicle after the effective date of the temporary or permanent withdrawal, or voluntary surrender; and
- (2) remove all such devices from drivers' vehicles. A manufacturer shall be responsible for all costs connected with removing such devices and installing new devices from the bureau's list of approved devices.

D. Notification. Upon completion of any proceedings held pursuant to this section, a manufacturer shall notify:

- (1) the service centers with which the manufacturer has contracted; and
- (2) the drivers of the vehicles for whom the service center has provided a device.
- (3) will be responsible for directing the driver to another service center

E. Service Center Closures. Upon a service center closure, a certified installer or service technician may choose to go to another licensed location:

- (1) upon proof of completion of new device training (if applicable); and
- (2) submittal of revised ignition interlock application; and
- (3) approval from the bureau.

[18.20.11.24 NMAC - N, 1-1-03; Rp, 18.20.11.24 NMAC, xx/xx/2023; Rn, 18.20.11.29 NMAC, xx/xx/2023]

18.20.11.30 SUSPENSION, REVOCATION OR NON-RENEWAL OF A SERVICE CENTER LICENSE OR AN INSTALLER OR SERVICE TECHNICIAN CERTIFICATE:

A. Service center license. The bureau may suspend, revoke or not renew the license of a service center if:

- (1) the service center operator's garagemen's liability insurance has been cancelled or terminated;
- (2) the service center has failed to reimburse the bureau for costs incurred in providing testimony requested by the service center in a civil or criminal proceeding involving an ignition interlock device;
- (3) the bureau finds that the service center has not complied with the requirements of this rule;
- (4) the service center has permitted an installer to install a device that is not on the list of bureau-approved devices;
- (5) the service center has permitted a person who is not a bureau-certified installer to install or remove a device, except as provided in 18.20.11.18.F (1) NMAC or in the case of removal and reinstallation of a device during servicing of the vehicle, for services unrelated to the device, by an automotive repair facility not affiliated with the service center;
- (6) the service center has permitted a person who is not a bureau-certified service technician to service a device, except as provided in 18.20.11.20.F (1) NMAC;
- (7) the service center operator has been convicted of:
 - (a) a crime involving moral turpitude that relates to the qualifications, functions and duties required to perform the work for which the license is issued; or
 - (b) a crime involving moral turpitude that does not relate to the qualifications, functions and duties required to perform the work for which the license is issued, if the bureau determines after investigation that the applicant has not been sufficiently rehabilitated to warrant the public trust;
- (8) the service center operator has had a probation or parole revoked; or

- (9) the service center operator has been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.
- (10) the service center operator does not have any outstanding NRVs pending resolution by the bureau.

B. Installer or service technician certificate. The bureau may suspend, revoke or not renew the certificate of an installer or service technician if:

- (1) the bureau finds that the installer or service technician has not complied with the requirements of this rule;
- (2) the installer or service technician has demonstrated unreliability or incompetence;
- (3) the installer or service technician has been convicted of:
 - (a) a crime involving moral turpitude that relates to the qualifications, functions and duties required to perform the work for which the certificate is issued; or
 - (b) a crime involving moral turpitude that does not relate to the qualifications, functions and duties required to perform the work for which the certificate is issued, if the bureau determines after investigation that the applicant has not been sufficiently rehabilitated to warrant the public trust;
- (4) the installer or service technician has had a probation or parole revoked; or
- (5) the installer or service technician has been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.
- (6) the installer or service technician does not have any outstanding NRVs pending resolution by the bureau.

C. Effective date. The suspension or revocation shall be effective 30 days after notice is sent to the service center or installer via certified mail, return receipt requested, except in cases where the bureau determines immediate suspension or revocation is necessary for the safety and welfare of the citizens of New Mexico.

D. Request for review. A service center or installer may request a review of suspension or revocation. This request shall be submitted to the bureau, in writing, within 30 days of the suspension or revocation.

E. Notification. Upon completion of any proceedings resulting in suspension, revocation, or non-renewal, a service center shall notify:

- (1) the manufacturers of the models or classes of devices the service center operator has been providing; and
- (2) the drivers of vehicles for whom the service center has provided a device.

[18.20.11.25 NMAC - N, 1-1-03; Rp, 18.20.11.25 NMAC, xx/xx/2023; Rn, 18.20.11.30 NMAC, xx/xx/2016]

18.20.11.31 INTERLOCK DEVICE FUND AND FEE:

A. Collection of the interlock device fee. The motor vehicle division of the taxation and revenue department shall, pursuant to Section 66-8-102.3 NMSA 1978, collect an interlock device fee from all drivers not determined to be indigent under Subsection D and deposit the fee in the interlock device fund, which is appropriated to the bureau.

B. Amount of interlock device fee. The interlock device fee shall not exceed one hundred dollars (\$100.00) but shall not be less than fifty dollars (\$50.00) for each year a driver is required to operate only vehicles equipped with an ignition interlock device.

C. Purpose of interlock device fund. The purpose of the interlock device fund is to provide a fund to pay for the partial costs of installing, removing and leasing ignition interlock devices for indigent drivers who have:

- (1) been convicted of driving while under the influence of intoxicating liquor or drugs pursuant to Section 66-8-102 NMSA 1978;
- (2) been adjudicated as a delinquent on the basis of Section 32A-2-3(A)(1)(a) NMSA 1978;
- (3) had their driver's license revoked pursuant to the Implied Consent Act, Section 66-8-105 et seq. NMSA 1978; or
- (4) been ordered, as a condition of parole, to install an ignition interlock device in any vehicle which the person drives.

D. Request for determination of indigency. A driver who is required to install an interlock device pursuant to Subsection C above and who meets the statutory criteria pursuant to Section 66-8-102.3 NMSA 1978 may request an application for a determination of indigency from the bureau. A person may obtain an application

by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.dot.nm.gov>. The request for a determination of indigency shall include:

- (1) the date of current license revocation by the motor vehicle division, a copy of the driver's judgment and sentence, or a copy of the driver's certificate of parole mandating use of an ignition interlock device, applicable;
- (2) the applicant's original signature and notarization; and
- (3) Indigency shall be determined by the traffic safety bureau based on proof of enrollment in one or more of the following types of public assistance:
 - (a) temporary assistance for needy families;
 - (b) general assistance;
 - (c) the supplemental nutritional assistance program, also known as "food stamps";
 - (d) supplemental security income;
 - (e) the federal food distribution program on Indian reservations; or
 - (f) other criteria approved by the traffic safety bureau.

E. Determination of indigency.

(1) When the bureau receives a complete request for a determination of indigency, the bureau shall review the request. If the request is not complete, the bureau shall return the application. The applicant may re-submit the application with the complete information for review by the bureau.

(2) After reviewing a complete request for indigency, the bureau shall send the applicant a determination of indigency notice indicating whether the request has been granted.

(a) If approved, an approval notice shall be issued and shall state the effective dates of the benefits, during which time the applicant shall be eligible for benefits. The applicant shall provide a copy of the approval notice to the ignition interlock provider, which shall apply the benefit by reducing the scheduled fee for approved services and not requiring the driver to pay the indigent device fund fee.

(b) If incomplete or denied, the notice shall list the reasons the application was incomplete or denied. An applicant may re-submit the application with the information requested for reconsideration.

(3) Applications shall be valid for one year from the date of submission.

(4) Upon the approval of a request for determination of indigency, the bureau shall inform the appropriate authorities that the indigent driver is not required to pay the interlock device fund fee.

F. Manufacturer's or service centers report. The manufacturer or service center shall submit electronically to the bureau a report for each of the service centers contracted with the manufacturer on a form provided by the bureau. The manufacturer's or service centers reports shall be due to the bureau 15 days prior to the end of the month for the prior month's activity, and shall include non-indigent and indigent activity for services that constitute installation, monitor/lease, removal, or a vehicle switch.

G. Fee schedules. The manufacturer or service centers shall submit a fee schedule to the bureau, not to exceed changes more than once per quarter, to include the effective date, manufacturer's name, service center name, address, and costs a driver will pay for each device approved for the:

- (1) installation of the device;
- (2) leasing of the device;
- (3) scheduled service visit;
- (4) violation service visit;
- (5) removal of the device; and
- (6) vehicle switch

H. Requests for payment from the interlock device fund.

(1) Bureau payments. Pursuant to Section 66-8-102.3 NMSA 1978, the bureau shall reimburse the manufacturer or service center for the partial cost of each installation or removal of an ignition interlock device and the partial cost of the monthly cost of leasing an ignition interlock device for each indigent driver in accordance with this section when the manufacturer or service center submits a request for payment and all documentation for review and approval as required by this section.

(2) Payment limits. Provided that money is available in the interlock device fund, the bureau shall reimburse the manufacturer or service center the benefit provided to the driver, up to fifty dollars (\$50.00) for the cost of installation, up to \$50.00 for the cost of removal, and up to thirty dollars (\$30.00) monthly for verified

active usage of the interlock device. The bureau shall not pay any amount above what a driver would be required to pay for the installation, removal or usage of an interlock device. The bureau shall provide reimbursement based on the fee schedule submitted by the manufacturer or service center pursuant to paragraph R 18.20.11.10 above.

(3) Vehicle switch. The bureau may reimburse the manufacturer when a vehicle switch is necessary for mechanical reasons for verified reasons as reviewed and approved by the bureau, or if the driver purchased a different vehicle, up to \$100.00 based on the fees in the fee schedule submitted pursuant to paragraph R 18.20.11.10 above. If a vehicle switch is not listed in the fee schedule, the reimbursement shall be based on the combined installation and removal fees as listed in the fee schedule, up to \$100.00.

(4) Documentation required. The manufacturer shall complete and submit a Substitute W-9 federal form to the bureau so that a vendor number and payment method can be assigned to the manufacturer. On a monthly basis, the manufacturer or service center shall submit to the bureau complete, accurate, dated and signed reimbursement requests for payment on forms provided by the bureau with information including the:

- (a) reporting period;
- (b) manufacturer, including name, address, telephone number and a contact person;
- (c) service center name, address, telephone number, a contact person and the name of the service center operator;
- (d) indigent drivers for whom the manufacturer or service center is requesting payment; and
- (e) payment request, including a summary of all installations, removals, leases and vehicle switches for which the manufacturer or service center is seeking payment. The summary shall identify the services provided, the date of service, each indigent driver's personal identifier, full name as provided on the notice of approval, and date of birth;
- (f) on the initial billing, the copy of the notice of approval and the client intake sheet that includes the indigent driver's name, driver's license number, installation date and year, make and model of vehicle;
- (g) if the driver renews his or her indigent status, the copy of the new notice of approval when next billed;
- (h) notification of a vehicle switch with the new vehicle information, and reason for vehicle switch;
- (i) verification that all services billed are listed on the manufacturer's report. If not listed, provide documentation of the monthly service, an installation report, or removal report depending on the payment requested in order to substantiate the claim;
- (j) proper signature authority on the certification page attesting to the accuracy and completeness of the reimbursement request, which shall be signed by the service center operator or the manufacturer.

(5) Documentation upon request. In addition to the required forms requesting payment from the interlock device fund, a manufacturer or service center shall submit the following supporting documentation, when requested by the bureau:

- (a) a copy of the fees and costs charged by the service center for its services;
- (b) service and lease fee payment records for the device;
- (c) a copy of the contract between the manufacturer or service center and the indigent driver; and
- (d) other documentation identified by the bureau as necessary to verify the request for payment.

(6) A manufacturer or service center shall deliver all forms and supporting documentation requesting payment to the bureau on or before the last day of the following month of activity. Failure to submit supporting documents in a timely manner as specified in this rule shall result in delayed, or non-payment of reimbursement, if it exceeds the current state fiscal year.

(7) The bureau shall not be responsible for any portion of the leasing fee for an indigent driver who knowingly and deliberately tampers or interferes or causes another to tamper or interfere with the proper and intended operation of an ignition interlock device, terminates a service contract before its expiration date, fails to have a device serviced, or whose vehicle cannot support the proper and intended operation of the interlock device that may be reported or identified by the bureau.

(8) The bureau shall not be responsible for reimbursing any portion of the removal fee for the improper removal of a court-ordered interlock device.

I. Lateness, failure to submit required forms and information, and improper use of forms. The bureau may not accept any claims for payment or reimbursement, or amendments to forms or documentation required of manufacturers or service centers under this section that are submitted three (3) months after the end of the fiscal year.

J. Notice of tampering, circumvention and other violations.

(1) A manufacturer or service center shall inform the bureau of repeated and continual tampering, circumvention or untested engine runs, or if a monitoring period exceeds the sixty (60) day requirement for indigent drivers.

(2) If the bureau determines that benefits will be denied for violations reported under this paragraph, the bureau shall inform the indigent driver at the address listed on the current or last approved indigent application that the benefit will be denied, and shall instruct the service center to charge the driver the full cost of the lease for the months in which the infractions occurred and the ignition interlock indigent fund shall not be charged for the denied service period.

[18.20.11.30 NMAC – N, xx/xx/2023]

18.20.11.32 EXEMPTION OR VARIANCE:

A. Petition requirements. Any manufacturer or service center operator may petition in writing for an exemption or variance from any of the requirements of this rule. Such petition shall:

- (1) identify the section of this rule for which the exemption or variance is requested;
- (2) describe the situation which necessitates the exemption or variance;
- (3) describe the effect of complying with this rule on the manufacturer, service center, installer, service technician, and service center customers, and on its competitors and their customers, if the exemption or variance is not granted;
- (4) state how the exemption or variance will achieve the purposes of this rule and Sections 66-5-29, 66-5-35, 66-5-501 et seq. and 66-8-102 NMSA 1978; and
- (5) state why the proposed alternative is in the public interest or is better than the requirement in the rule; and
- (6) include any other documentation requested by the bureau in order to evaluate the petition.

B. Motion for a stay. Such petition may include a motion that the bureau stay the affected portion of this rule for the transaction specified in the motion; the manufacturer or service center operator shall not act outside the rule without such a stay or until the petition is approved by the bureau.

C. Affidavit required. Petitions for an exemption or variance and motions for a stay shall be supported by an affidavit signed by the manufacturer, service center operator or other person with authority to bind the manufacturer or service center operator.

D. Consideration of petition. If the petition is complete, the bureau shall review the petition. The bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

E. Time. Each exemption or variance shall be valid for the time stated in the approval of the petition, and in no event, no longer than the end of the current license year.

[18.20.11.26 NMAC - N, 1-1-03; Rp, 18.20.11.26 NMAC, xx/xx/2023; Rn, 18.20.11.32 NMAC, xx/xx/2023]

HISTORY OF 18.20.11 NMAC

Pre NMAC history: None.

Repealed material:

18 NMAC 20.11, Minimum Standards for Breath Alcohol Ignition Interlock Devices, filed on 11-2-99, was repealed 1/1/2003.

18.20.11 NMAC, Ignition Interlock Devices, (filed 1/1/2003) repealed and replaced effective xx/xx/2023.

NMAC history.

18 NMAC 20.11, Minimum Standards for Breath Ignition Interlock Devices, filed on 6-17-99.

18 NMAC 20.11, Minimum Standards for Breath Alcohol Ignition Interlock Devices, filed on 11-2-99.

18.20.11 NMAC, Ignition Interlock Devices, filed on 1/1/2003.