

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

18.20.11.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department.
[18.20.11.1 NMAC - Rp, 18 NMAC 20.11.1, 1-1-03]

18.20.11.2 SCOPE: This rule applies to the usage of ignition interlock devices in New Mexico pursuant to NMSA 1978 Sections 66-5-35 and 66-8-102 and to all manufacturers, service center operators, and installers of such ignition interlock devices.
[18.20.11.2 NMAC - Rp, 18 NMAC 20.11.2, 1-1-03]

18.20.11.3 STATUTORY AUTHORITY: NMSA 1978 Sections 66-5-35 and 66-8-102.
[18.20.11.3 NMAC - Rp, 18 NMAC 20.11.3, 1-1-03]

18.20.11.4 DURATION: Permanent.
[18.20.11.4 NMAC - Rp, 18 NMAC 20.11.4, 1-1-03]

18.20.11.5 EFFECTIVE DATE: January 1, 2003, unless a later date is cited at the end of a section.
[18.20.11.5 NMAC - Rp, 18 NMAC 20.11.5, 1-1-03]

18.20.11.6 OBJECTIVE: The purpose of this rule is to implement the ignition interlock program mandated by NMSA 1978 Sections 66-5-35 and 66-8-102.
[18.20.11.6 NMAC - Rp, 18 NMAC 20.11.6, 1-1-03]

18.20.11.7 DEFINITIONS: As used in this rule:

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 the sentencing court, an assigned probation officer, the Bureau or its designee, the Motor Vehicle Division of the Taxation and Revenue Department, and/or the New Mexico Department of Finance and Administration.

C. bogus breath sample means any gas sample other than an unaltered, undiluted, and unfiltered alveolar breath sample from a driver.

D. breath alcohol concentration (BAC) means the amount of alcohol in a person’s breath, determined by chemical analysis and measured in grams of alcohol per 210 liters of breath.

E. Bureau means the Traffic Safety Bureau of the New Mexico State Highway and Transportation Department.

F. calibrate means to test and adjust an ignition interlock device so that it accurately measures breath alcohol concentration.

G. circumventing means an overt, conscious attempt to use a bogus or filtered breath sample or an electronic bypass mechanism to start a vehicle, or to push start or hot wire a vehicle, without taking and passing an initial breath test.

H. certificate means a document issued by the Bureau authorizing a person to install and remove ignition interlock devices and, where applicable, to train installers.

I. clean driving record means a person has no more than six (6) points on his/her driver’s license, and has not within the last three (3) years had his/her driver’s license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.

J. driver means a person who operates a vehicle in which an ignition interlock device has been installed pursuant to NMSA 1978 Section 66-5-35 or 66-8-102.

K. filtered breath sample means a breath sample which has been filtered through a substance such as, but not limited to, silica gel, drierite, cat litter, cigarette filters, water filters, or cotton, in an attempt to remove alcohol from the sample

L. ignition interlock device or device means an electronic breath alcohol analyzer with microcomputer logic and an internal memory connected to the ignition and other control systems of a vehicle that measures breath alcohol concentration and prevents a driver from starting the vehicle if the driver's BAC exceeds a specified limit.

M. 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 approved by the Bureau.

N. initial breath test means a breath test required to start a vehicle to ensure that the driver's BAC is below the maximum allowable level before a driver can start a vehicle.

O. installer means a person certified by the Bureau to install and remove ignition interlock devices in New Mexico.

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

Q. license means the document issued by the Bureau authorizing a person to operate a service center.

R. limited history driving record means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes driver's license revocations pursuant to the Implied Consent Act.

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

T. random retest means a breath test required within randomly variable intervals while a driver is driving a vehicle to ensure that the driver's BAC remains below the maximum allowable level.

U. 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.

V. revocation means the permanent withdrawal of the Bureau's approval of a device, license of a service center, or certificate of an installer for cause.

W. sentenced driver means a person required by law to have an ignition interlock device installed in all vehicles the person operates.

X. service means to calibrate, maintain, download data from, and inspect ignition interlock devices for evidence of tampering or circumventing, and to report information to the appropriate authorities.

Y. service center means the physical location in New Mexico where ignition interlock devices are installed, serviced, and removed, and includes mobile service units.

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

AA. service technician means an employee of a service center operator who is trained by a manufacturer or service center operator to service ignition interlock devices.

BB. suspension means the withdrawal of the Bureau's approval of a device, license of a service center, or certificate of an installer for cause for a specified period of time.

CC. 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 breath test.

[18.20.11.7 NMAC - Rp, 18 NMAC 20.11.7, 1-1-03]

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. Contents of application. A manufacturer seeking approval of an ignition interlock device shall submit an application to the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall include:

- (1) the manufacturer's name, address, telephone number, fax number and e-mail address.
- (2) the name and telephone number of a contact person.
- (3) the name and number of the model or class of the device for which approval is sought.
- (4) 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.
- (5) a precise set of specifications describing the features of the device.
- (6) detailed operating instructions for each device.
- (7) a detailed description of the reference sample to be used for calibrating the device.
- (8) the name and address of any independent laboratory that has tested the device or reference sample for which approval is sought.

(9) the territory in which the manufacturer proposes to operate. 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;
- (g) Statewide.

(10) the number, location, and type (fixed-site or mobile unit) of 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 one hundred (100) miles or two (2) hours, whichever is less, of any sentenced driver's residence or place of business.

(11) 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:

(a) the device, certifying that each model or class of ignition interlock device for which the manufacturer seeks approval from the Bureau was tested in accordance with the Testing Specifications for Ignition Interlock Devices adopted by the Bureau and meets or exceeds the requirements of this rule. The manufacturer shall pay all costs of such testing.

(b) 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.

C. 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.
- (2) If the application is complete, the Bureau shall review the application.

D. Approval and qualifying provisions. The Bureau shall notify the manufacturer in writing of its approval or disapproval of the device for use in New Mexico. The Bureau may deny approval of a device if the device or the manufacturer fails to meet the requirements of this rule. Within thirty (30) days of receipt of a notice of approval, a manufacturer shall submit to the Bureau:

(1) proof of product liability insurance from an insurance company licensed to do business in New Mexico covering defects in product design, materials, and manufacturing of ignition interlock devices, with minimum liability limits of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. The proof of insurance shall include a statement from the insurance company that it will notify the Bureau thirty (30) days before canceling the insurance.

(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 to ensure replacement of the manufacturer's ignition interlock devices pursuant to paragraph 3 of subsection N of 18.20.11.9 NMAC or subsection D of 18.20.11.24 NMAC.

(3) a signed 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 signed statement that the manufacturer shall comply with all requirements of this rule.

(5) a signed 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.

[18.20.11.8 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

18.20.11.9 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) advise the driver that he or she may contact the Bureau at 1-800-541-7952 if he or she has a complaint about the device or the service the driver receives from the service center operator.

C. train each service center operator that uses its ignition interlock devices to service the device and certify to the Bureau in writing that the service center operator has been trained.

D. train at least one installer at each service center to install and remove ignition interlock devices and certify to the Bureau in writing that an installer has been trained.

E. notify the Bureau in writing within thirty (30) days after the manufacturer receives notice that a device approved for use in New Mexico is or ever has been 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.

F. employ or contract with only those persons whom the Bureau has licensed as service center operators or certified as installers, except for administrative staff.

G. disseminate information about its ignition interlock device to the public. 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.

H. not make any modification in design or operational concept of a device to be used 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.

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

J. 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.

K. reimburse the Bureau for any costs incurred if a manufacturer requests the Bureau to provide testimony in any civil or criminal procedures involving the approval or use of an ignition interlock device in New Mexico.

L. ensure that disposable mouthpieces with saliva traps are always available to service center operators.

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

N. 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 one hundred (100) miles or two (2) 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 one hundred (100) miles or two (2) 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 (30) 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 sixty (60) days and shall remove the devices at no cost to the drivers.

[18.20.11.9 NMAC - N, 1-1-03]

18.20.11.10 PERFORMANCE STANDARDS FOR IGNITION INTERLOCK DEVICES: All 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 Federal Register Volume 57, Number 67, pages 11772-11787, dated Tuesday, April 7, 1992 and the requirements of this rule. An ignition interlock device shall:

- A. detect a BAC 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.
- B. prevent the vehicle from starting ninety-five (95) percent of the time when it detects a BAC above 0.025 grams of alcohol per 210 liters of breath.
- C. assure that the breath sample collected is essentially alveolar.
- D. detect attempts to tamper with or circumvent the device.
- E. not have any form of bypass device that would permit a driver to start a vehicle without taking an initial breath test.
- F. be usable by a person of average intelligence with minimum inconvenience;
- G. operate at all temperatures between -10° Fahrenheit and 110° Fahrenheit.
- H. operate at all altitudes between 2500 feet and 13,000 feet.
- I. not be significantly affected by humidity, dust, electromagnetic interference, or normal automobile vibration. The device shall meet the requirements of subsections A and B of this section when subjected to simple harmonic motion (vibrations) having an amplitude of:
 - (1) 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
 - (2) 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.
- J. not be affected by normal fluctuations of power source voltage resulting from operation of the vehicle and other electronic devices installed in the vehicle.
- K. allow the vehicle to be restarted without requiring an additional breath test for three (3) minutes after the ignition has been turned off or the vehicle has stalled, except when the driver has failed to take a random retest.
- L. display device responses or label the light-up buttons on the device, as applicable, in English or Spanish as requested by the sentenced driver.
- M. provide audible and visual warning signals, and written, spoken, or visual instructions in English or Spanish when an initial breath test or random retest is required;
- N. 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.
- O. 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.
- P. retain data for a minimum of three thousand (3,000) driving events or a period of sixty-five (65) days before requiring servicing.
- Q. retain its electronic tamper detection capabilities when the device is disconnected from the vehicle's power supply, or record that the device was disconnected.
- R. provide a service visit reminder if the device's internal memory reaches ninety percent (90%) of capacity.
- S. not report false passes of a breath test more than five (5) percent of the time
- T. not report false failures of a breath test more than five (5) percent of the time.
- U. issue an audible or visual warning that the vehicle needs to be serviced within five (5) days:
 - (1) whenever the driver is scheduled for a service visit;
 - (2) the driver has failed an initial breath test six (6) times within a period of three (3) hours;
 - (3) the driver has failed initial breath tests or random retests ten (10) times within a period of thirty (30) days;
 - (4) the device detects evidence of circumventing or tampering.
- V. not permit the vehicle to be started if the sentenced driver fails to appear for a service visit within the five (5) day warning period. The vehicle shall not be operable until a service center operator or service technician has serviced the device.
- W. be calibrated 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 sixty-five (65) days.
- X. not impede the safe operation of the vehicle.

[18.20.11.10 NMAC - Rp, 18 NMAC 20.11.8, 1-1-03]

18.20.11.11 STANDARDS FOR DETECTING BREATH ALCOHOL CONCENTRATION:

A. Initial breath test. An ignition interlock device shall:

- (1) indicate by audible or visual means when a sufficient sample of breath has been collected.
- (2) indicate the results of the breath test by the use of pass/fail signals and not by displaying a numerical BAC level.
- (3) prevent a driver from starting a vehicle when:
 - (a) it detects a BAC 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.
- (4) require a driver to wait five (5) minutes before attempting to start the vehicle a second or third time if the driver's BAC on the initial breath test exceeded 0.025 grams per 210 liters of breath.
- (5) require a driver to wait thirty (30) minutes before attempting to start the vehicle a fourth or subsequent time if the driver's BAC on the second breath test exceeded 0.025 grams per 210 liters of breath.
- (6) allow a driver to start the vehicle for three (3) minutes after successful completion of an initial breath test.

B. Random retests. An ignition interlock device shall require random retests.

- (1) The device shall require the driver to take a random retest within a randomly variable interval ranging from three (3) to ten (10) minutes after a driver has passed an initial breath test and started the vehicle.
- (2) The device shall use an audible or visual warning to alert the driver that a random retest is required and the driver will have five (5) minutes to take the random retest.
- (3) If a driver fails to take a random retest within five (5) minutes of the warning, or the device detects a BAC of 0.025 or more grams of alcohol per 210 liters of breath, the horn shall sound repeatedly until the vehicle is turned off. The device shall not allow the driver to:
 - (a) restart the vehicle within three (3) minutes after the ignition has been turned off without taking an initial breath test; or
 - (b) take an initial breath test for five (5) 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 thirty (30) to sixty (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 breath test.

[18.20.11.11 NMAC - Rp, 18 NMAC 20.11.8 and 20.11.9, 1-1-03]

18.20.11.12 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;
- (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;
- (6) the date, time, BAC of the driver, and success or failure of each random retest;
- (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]

18.20.11.13 LICENSING OF SERVICE CENTERS:

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 or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>. The application shall include:

- (1) the applicant's name, address, telephone number, fax number and e-mail address.
- (2) the name, address, and telephone of three (3) character and employment references who are not

family members.

(3) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau.

(4) a state police background check on the applicant dated no earlier than sixty (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 at least sixty (60) days before the date the application is filed with the Bureau.

(5) the applicant's resume or curriculum vitae.

(6) a copy of the standard agreement between the service center and sentenced drivers regarding the device. The agreement may require the sentenced 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 sentenced driver becomes disabled or dies.

(7) a copy of the agreement between the manufacturer and the service center.

(8) a fee schedule setting forth the cost a sentenced driver will pay for:

(a) installation of the device;

(b) monthly leasing of the device;

(c) a thirty (30) or sixty (60) day scheduled service visit;

(d) a violation service visit; and

(e) removal of the device.

C. 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.

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

D. Standards for issuance of service center license. In reviewing applications for service center licenses, 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 or employment experience;

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

(4) the applicant has not been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.

E. Issuance of license. If the Bureau determines that the applicant meets the standards in subsection D of this section, the Bureau will notify the applicant in writing that the Bureau has approved the application. The Bureau shall issue a license if, within thirty (30) days of approval, the applicant submits to the Bureau:

(1) the physical location of and type (fixed site or mobile unit) of service center the applicant will operate;

(2) the name of the manufacturer and the model or class of ignition interlock device to be installed;

(3) 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.

(4) proof of garagemen's public liability insurance from an insurance company licensed to do business in New Mexico covering injury, death or property damage resulting from the installation, servicing, or removal of ignition interlock devices in an aggregate amount of not less than one million dollars (\$1,000,000). The proof of insurance shall include a statement from the insurance company that it will notify the Bureau thirty (30) days before canceling the insurance.

(5) a signed 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 or installer relating to the installation, servicing, or removal of an ignition interlock device.

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

F. Denial of license. If the Bureau determines that the applicant does not meet the standards in subsection D 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.

G. Term. A service center license shall be valid until:

(1) the service center ceases operations;

(2) the manufacturer terminates its agreement with the service center;

- (3) the Bureau suspends or revokes the license for cause as provided in this rule; or
- (4) the Bureau requires license renewal for any reason.

H. Restriction on sale of license. A service center license may not be sold or transferred.
[18.20.11.13 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

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

- A.** provide the tools, test equipment, and manuals needed for installing, inspecting, downloading, calibrating, repairing, maintaining, servicing and removing ignition interlock devices.
- B.** ensure that all devices are installed and removed in a workmanlike manner in accordance with accepted trade practices by properly trained and certified installers.
- C.** 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 or service technician.
- D.** maintain sufficient staff to ensure an acceptable level of service; the service center must be staffed with at least one certified installer during all posted hours of operation.
- E.** report to the Bureau in writing within ten (10) business days any changes in location, fee schedule, or other matters that may affect the service center operator's ability to comply with the requirements of this rule .
- F.** provide expert or other required testimony in any civil or criminal proceedings regarding the installation, servicing, and removal of devices or the interpretation of recorded data.
- G.** reimburse the Bureau for any costs incurred if the service center operator requests the Bureau to provide testimony in any civil or criminal procedures involving the installation, servicing, and removal of an ignition interlock device.
- H.** not reveal any personal and medical information provided by drivers to any person other than the appropriate authorities or employees of the manufacturer of service center operator on an as-needed basis.
- I.** provide information to interested drivers concerning the device and costs of installation, leasing, servicing, and removal. An installer may state that the installer is "licensed by the Traffic Safety Bureau" and may state that the device the installer provides is "approved by the Traffic Safety Bureau for use in New Mexico" in its advertising or promotional materials.
- J.** provide to each driver at the time the device is installed a form prescribed by the Bureau on which the driver shall self-certify the number of vehicles he or she drives.
- K.** ensure that ignition interlock devices are installed on all vehicles driven by the driver within ten (10) business days of the date requested by a sentenced driver.
- L.** inquire of the sentenced driver whether the sentenced driver has a driver's license or state-issued identification card. If so, the installer shall affix the state-prescribed indicator on the card indicating that the sentenced driver is prohibited from driving any vehicle that does not have an ignition interlock device installed.
- M.** take adequate security measures to prevent drivers or other unauthorized persons from accessing 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.
- N.** provide a certificate of installation to a driver upon request.
- O.** submit a copy of the certificate of installation and the driver's self-certification to the appropriate authorities within ten (10) business days of completion of each installation.
- P.** collect all fees and costs associated with installing, leasing, servicing and removing ignition interlock devices.
- Q.** ensure that no driver or other unauthorized person witnesses the installation, servicing or removal of an ignition interlock device.
- R.** use only reference samples 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 provided to the mobile service center 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 center.
- S.** comply with all requirements of this rule.

[18.20.11.14 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.15 INITIAL CERTIFICATION OF INSTALLERS:

A. Certification required. No person or licensee may install or remove ignition interlock devices without first having obtained a 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 <http://www.nmshtd.state.nm.us>. 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.
- (3) the name and location of the service center employing or contracting with the applicant;
- (4) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau; and
- (5) a state police background check on the applicant dated no earlier than sixty (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 at least sixty (60) days before the date the application is filed with the Bureau.
- (6) the applicant's resume or curriculum vitae.

C. 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.
- (2) If the application is complete, the Bureau shall review the application.

D. Standards for issuance of installer license. In reviewing applications for certification, 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 has experience with vehicle electrical systems 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 not been convicted of:
 - (a) a crime involving moral turpitude;
 - (b) any alcohol or drug-related offense within the last three (3) years;
 - (c) two (2) or more alcohol or drug-related offenses in the last five (5) years;
 - (d) probation violation;
 - (e) perjury, forgery, or sworn falsification; or
 - (f) any crime substantially related to the qualifications, functions, and duties required to install or remove devices.

(8) the applicant has not had a driver's license or professional certification suspended, revoked or denied for violation of a motor vehicle safety equipment law.

(9) the applicant has not been sanctioned in any jurisdiction for circumventing or tampering with an ignition interlock device.

E. Approval for training.

(1) If the Bureau determines that the applicant meets the standards in subsection D 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 conducted either by the manufacturer or an instructor-installer.

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

F. 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 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.

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

[18.20.11.15 NMAC - N, 1-1-03]

18.20.11.16 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 \$25.00.

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

(3) The application shall be accompanied by:

(a) a copy of the installer's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau; and

(b) a state police background check on the installer dated no earlier than sixty (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 at least sixty (60) days before the date the application is filed with the Bureau.

B. Approval/disapproval of renewal.

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

(a) has filed the required documents;

(b) meets the standards specified in subsection D of 18.20.11.14 NMAC; and

(c) 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 shall not renew the certificate of any installer who:

(a) fails to file the required documents;

(b) receives an overall rating of unsatisfactory in the periodic evaluations conducted by the Bureau or its designee during the preceding year; or

(c) fails to meet the standards specified in subsection D of 18.20.11.14 NMAC.

[18.20.11.16 NMAC - N, 1-1-03]

18.20.11.17 RESPONSIBILITIES OF INSTALLERS: An installer shall

A. provide expert or other required testimony in any civil or criminal proceedings 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 requests the Bureau to provide testimony in any civil or criminal proceedings involving the installation, servicing, and removal of an ignition interlock device.

C. not reveal any personal and 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 certified by an independent laboratory and approved by the Bureau to calibrate ignition interlock devices. If an installer uses wet bath reference samples to calibrate ignition interlock devices from a mobile service center, the installer 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 center.

E. comply with all requirements of this rule.

[18.20.11.17 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.18 INSTALLATION OF IGNITION INTERLOCK DEVICES:

- A.** An installer shall:
- (1) not install an ignition interlock on a vehicle unless the sentenced driver is at the service center.
 - (2) ensure that no driver or other unauthorized person witnesses the installation or removal of an ignition interlock device.
 - (3) 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.
 - (4) follow a manufacturer's written instructions for the installation, servicing and removal of its ignition interlock devices.
 - (5) install the following physical anti-tampering measures:
 - (a) solder (hard wire) all connections between an ignition interlock device and a vehicle.
 - (b) place all connections between a device and a vehicle under the dash or in an inconspicuous area of the vehicle.
 - (c) cover with a unique and easily identifiable seal, epoxy, resin, wire, sheathing, or tape:
 - (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;
 - (iii) all exposed electrical connections.
 - (d) mark points likely to be accessed when attempting to tamper with the device, such as battery post terminals, wire to starter solenoid, wire to ignition, dash screws, etc.) with a special mark, seal, paint, epoxy, resin, or other material unless the device is capable of recording such attempts to tamper with it.
- B.** A service center operator or service technician shall calibrate each device at a calibration set point of 0.05 using the known concentration of an approved reference sample before the device is installed in a vehicle. [18.20.11.18 NMAC - Rp, 18 NMAC 20.11.10, 1-1-03]

18.20.11.19 DRIVER ORIENTATION AND SUPPORT: A service center operator 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 twenty-four (24) hour toll-free emergency telephone number to all drivers.
- E.** respond to all service inquiries within twenty-four (24) hours of the initial contact.
- F.** service, repair, or replace an ignition interlock device within forty-eight (48) hours of initial contact at a service center located within one hundred (100) miles or two (2) 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]

18.20.11.20 SERVICING OF IGNITION INTERLOCK DEVICES.

- A.** A service center operator or service technician shall:
- (1) service a device within thirty (30) days after the initial installation and every sixty (60) days thereafter, unless otherwise specified by court order.
 - (2) ensure that another device is substituted whenever an installer removes a device for any reason.
 - (3) calibrate every installed device at least every sixty (60) days.
- B.** At each service visit, service center operator or service technician shall:
- (1) perform a calibration confirmation test 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 operator shall recalibrate the device.
 - (b) If the device fails the calibration confirmation test after being recalibrated, the service center operator 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 operator 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, BAC of the driver, and success or failure of each attempt to start the vehicle;
 - (b) the date, time, BAC of the driver, and success or failure of each random retest;
 - (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]

18.20.11.21 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 upon request:
 - (1) records on every driver, including the results of every service visit;
 - (2) service, calibration, repair, and replacement records on each device installed; and
 - (3) records of all complaints received and corrective actions taken by the service center operator. The report 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.
 - (d) device failure.
 - B. shall within five (5) business days of a service visit, report to the appropriate authorities, in the format prescribed by the Bureau:
 - (1) any evidence of circumventing, removing, or tampering with the device.
 - (2) any failure to appear for a service visit within the five (5) day warning period.
 - (3) the failure of six (6) initial breath tests within a period of three (3) hours.
 - (4) the failure of ten (10) initial breath tests or random retests in any thirty (30) day period.
 - C. shall submit to the Bureau upon request statistical data regarding driver and equipment performance, without identifying individual drivers.
 - D. may maintain required records electronically.
- [18.20.11.21 NMAC - N, 1-1-03]

18.20.11.22 REMOVAL OF IGNITION INTERLOCK DEVICES:

- A. An 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 NMSA 1978 Section 66-8-102:
 - (a) upon expiration of the term specified in the judgment and sentence;
 - (b) one year from the date of installation if the judgment and sentence does not specify a term;
 - or
 - (c) upon lawful order of the court.
 - (2) for devices installed pursuant to NMSA 1978 Section 66-5-35:
 - (a) upon expiration of the limited license; or
 - (b) upon lawful order of the court.
- B. A service center operator shall notify the appropriate authorities and may petition the sentencing court 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, or impounded and not to be returned to the owner;
 - (2) if the sentenced driver becomes disabled or dies; or
 - (3) the sentenced 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]

18.20.11.23 RESPONSIBILITIES OF THE BUREAU:

A. The Bureau shall establish and maintain a list of ignition interlock devices approved for use in New Mexico by manufacturer and model or class.

B. The Bureau or its designee shall have the right to periodically evaluate:

- (1) the technical competency and reliability of installers;
- (2) service centers, service center operators, and service technicians;
- (3) the installation, servicing, and removal of ignition interlock devices; and
- (4) a manufacturer's training of installers.

[18.20.11.23 NMAC - N, 1-1-03]

18.20.11.24 SUSPENSION OR REVOCATION OF APPROVAL OF AN IGNITION INTERLOCK DEVICE:

A. The Bureau may suspend or revoke 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 manufacture.

(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.

(4) the manufacturer requests the Bureau to remove a device from the list of approved devices.

(5) the Bureau finds that the device 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.

(9) the manufacturer fails to pay all required fees for the interlock device ("indigency") fund to the New Mexico Department of Finance and Administration.

B. The suspension or revocation 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 immediate suspension or revocation is necessary for the safety and welfare of the citizens of New Mexico.

C. A manufacturer may request a review of a suspension or revocation. This request shall be submitted to the Bureau in writing within thirty (30) days of the suspension or revocation. The Bureau shall conduct such review in accordance with the procedures prescribed in the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 et seq.

D. Upon suspension, revocation, 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 suspension, revocation, or voluntary surrender; and

(2) shall 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.

[18.20.11.24 NMAC - N, 1-1-03]

18.20.11.25 SUSPENSION OR REVOCATION OF A SERVICE CENTER LICENSE OR AN INSTALLER CERTIFICATE:

A. Service center license. The Bureau may suspend or revoke the license of a service center operator if:

(1) the service center operator's garagemen's liability insurance or surety bond has been cancelled or terminated.

(2) the service center operator has failed to reimburse the Bureau for costs incurred in providing testimony requested by the service center operator in a civil or criminal proceeding involving the installation, servicing, or removal of an ignition interlock device.

(3) the service center operator has failed to pay all required fees for the interlock device ("indigency") fund to the New Mexico Department of Finance and Administration.

(4) the Bureau finds that the service center operator has not complied with the requirements of this rule.

(5) the service center operator has permitted an installer to install a device that is not on the list of Bureau-approved devices.

(6) the service center operator has permitted a person who is not a Bureau-certified installer to install or remove a device.

(7) the service center operator has permitted any person other than a service technician to service a device.

B. Installer certificate. The Bureau may suspend or revoke the certificate of an installer if:

(1) the Bureau finds that the installer has not complied with the requirements of this rule.

(2) the installer has demonstrated unreliability or incompetence.

(3) the installer has been convicted of:

(a) any alcohol or drug-related offense within the last three (3) years;

(b) two or more alcohol or drug-related offenses in the past five (5) years;

(c) perjury, forgery, or sworn falsification;

(d) circumventing or tampering with an ignition interlock device; or

(e) any other crime substantially related to the installation, servicing and removal of devices.

C. Effective date. The suspension or revocation shall be effective thirty (30) days after notice is sent to the service center operator 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 operator or installer may request a review of suspension or revocation. This request shall be submitted to the Bureau, in writing, within thirty (30) days of the suspension or revocation. The Bureau shall conduct such review in accordance with the procedures prescribed in the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 et seq.

E. Notification. Upon suspension or revocation, a service center operator 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 operator has provided a device.

[18.20.11.25 NMAC - N, 1-1-03]

18.20.11.26 EXEMPTION OR VARIANCE:

A. From the requirements of paragraph 9 of subsection B of 18.20.11.8 NMAC. Manufacturers required to provide service in New Mexico Highway District 4 or 6 pursuant to paragraph 9 of subsection B of 18.20.11.8 NMAC may negotiate with each other to develop a plan for jointly providing service to those districts. The Bureau will consider approving a plan that does not require each manufacturer to provide service to the whole of highway district 4 or 6 if the plan provides for a fixed site in any city in the district with a population of ten thousand (10,000) or more and provides adequate coverage to the rest of the district. The Bureau may require a new plan if one or more manufacturers who is a party to the plan ceases to do business in New Mexico and reserves the right to require coverage of highway district 4 or 6 from each manufacturer authorized to operate in highway district 3 or 5 if the Bureau determines that district 4 or 6 is not being adequately covered. Manufacturers requesting highway districts 3 and 4 or 5 and 6 shall file such a negotiated plan for highway districts 4 or 6 within thirty (30) days of Bureau approval of the manufacturers device and territory.

B. From the requirements of any other provision of this rule.

(1) Any manufacturer, service center operator, or installer may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(a) identify the section of this rule for which the exemption or variance is requested;

(b) describe the situation which necessitates the exemption or variance;

(c) describe the effect of complying with this rule on the manufacturer, service center operator, or installer and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(d) state how the exemption or variance will achieve the purposes of this rule and NMSA 1978 Sections 66-5-35 and 66-8-102; and

(e) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

(2) Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

(3) Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the manufacturer, service center operator, or installer or other person with authority to bind the manufacturer, service center operator, or installer.

(4) The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.20.11.26 NMAC - N, 1-1-03]

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 1-1-03.

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.