

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 5 OCCUPATIONAL HEALTH AND SAFETY
PART 6 CONVENIENCE STORES

11.5.6.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[11.5.6.1 NMAC - N, 6/1/04]

11.5.6.2 SCOPE: All convenience store employers and employees.
[11.5.6.2 NMAC - N, 6/1/04]

11.5.6.3 STATUTORY AUTHORITY: NMSA 1978, Sections 50-9-7, 50-9-13, and 74-1-8.
[11.5.6.3 NMAC - N, 6/1/04]

11.5.6.4 DURATION: Permanent.
[11.5.6.4 NMAC - N, 6/1/04]

11.5.6.5 EFFECTIVE DATE: June 1, 2004, unless a later date is cited at the end of a section.
[11.5.6.5 NMAC - N, 6/1/04]

11.5.6.6 OBJECTIVE: To establish standards related to the occupational health and safety of employees in the convenience store industry.
[11.5.6.6 NMAC - N, 6/1/04]

11.5.6.7 DEFINITIONS: General: Unless otherwise specified, the following definitions, in addition to those contained in 11.5.1.7 NMAC and the state act, are applicable to this part.

A. "American society for testing materials standard D3935-02" means the American society for testing materials classification standards for transparent polycarbonate bullet-resistant materials.

B. "B rated" means a safe box industry standard, which, at a minimum, conforms to the specifics of a one-fourth inch body and a one-half inch door constructed of steel or an equivalent material.

C. "Controlled access area" means an enclosure of the service counter area with transparent polycarbonate or other bullet-resistant material that meets American society for testing materials or underwriters laboratory standards.

D. "Convenience store" means any business that is primarily engaged in the retail sale of convenience goods, or both convenience goods and gasoline, and employs one or more employees during the normal operating hours of the establishment. This term excludes businesses that operate as hotels, taverns, lodging facilities, restaurants, stores that sell prescription drugs, gasoline service stations, grocery stores, supermarkets, businesses that have more than 10,000 square feet of retail floor space, farmer's markets, roadside stands, on-site farm markets, and other agricultural activities or operations.

E. "Convenience goods" means articles that are purchased frequently for immediate use in readily accessible stores and with a minimum of effort. This term includes consumable items that are generally limited in quantity and variety, and sold in their original containers. This definition is not intended to exclude convenience stores that sell a small quantity of fresh food or unpackaged products in addition to other convenience goods.

F. "Depository or time lock safe" means a B or higher rated safe box equipped with an electronic or manually programmed time lock, or drop slot, that prevents unauthorized access.

G. "Environmental engineering controls" means an established store floor plan adopted or developed by the employer to reduce theft or robbery by measures, which include, but are not limited to, cash register placement in plain view of customers, properly functioning indoor and outdoor lighting, and proper placement of security cameras.

H. "Pass-through window" means a manually operated mechanical pass-through trough, front-loading deposit door, or other similar device that is encased in a transparent polycarbonate window or other bullet-resistant material that meets American society for testing materials standard D3935-02, or underwriters laboratory standard 752.

I. "Security surveillance system" means a VHS or digital camera surveillance system that is capable of recording and retrieving a clear video or digital recorded image.

J. "Security alarm system" means any device or series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other

mechanical or electronic device used to notify law enforcement or a private security agency of an unlawful act in progress.

K. “Underwriters laboratories standard 752” means the underwriters laboratory standards for transparent polycarbonate bullet-resistant materials.

L. “Service counter” means, at a minimum, the counter space designated by the employer to include the service transaction area of the money register(s) and the surrounding perimeter.

M. “Signage” means posters, placards, neon lights, or logos, positioned in the convenience store windows and doors.

N. “Training curriculum” means the instruction manual or pamphlet adopted or developed by the employer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

[11.5.6.7 NMAC - N, 6/1/04; A, 12/01/04; A, 10/30/08]

11.5.6.8 SECURITY REQUIREMENTS: All convenience stores shall be equipped with the following security devices and standards:

A. Exterior lighting: The employer shall provide and maintain exterior lighting during all evening and nighttime operating hours that ensures clear visibility of the parking areas, walkways, building entrances and exits, and gasoline pump areas.

B. Employee training:

(1) The employer shall provide each employee, at the time of his or her initial appointment, and by periodic review not to exceed four-month intervals, crime prevention and safety training in accordance with a written training curriculum. The training curriculum may include computer-based training. Periodic reviews shall include, at a minimum, review of the written training curriculum and site-specific issues. Training shall be conducted in a language that is understood by the employee. The employer shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum that includes but is not limited to:

- (a) an overview of the potential risk of assault;
- (b) operational procedures, such as cash handling rules, that are designed to reduce risk;
- (c) proper use of security measures and engineering controls that have been adopted in the

workplace;

(d) behavioral strategies to defuse tense situations and reduce the likelihood of violence, such as techniques of conflict resolution and aggression management;

(e) specific instructions on how to respond to a robbery and how to respond to attempted shoplifting; and

- (f) emergency action procedures to be followed in the event of a robbery or violent incident.

(2) Store specific training shall be conducted by the employee’s immediate supervisor.

(3) Current employees shall receive training within ninety days of the effective date of this regulation.

(4) All employers shall prepare training documentation for each employee and have employees sign a statement indicating the date, time, and place they received their safety training. Employers shall maintain documentation of an employee’s training for a period of at least twelve months, or six months after termination of an employee’s employment. Employee training documentation shall be made available within forty-eight hours of a department representative’s request. The forty-eight hour period shall exclude holidays and weekends. Failure to provide employee training documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). Training curricula shall be kept on the convenience store premises and made available on request by the department.

C. Late night security measures:

(1) In addition to the other security requirements of this part, convenience stores operating between the hours of 11:00 p.m. and 5:00 a.m. shall employ at least one of the following security measures:

(a) two employee shift: the employer shall employ a minimum of two employees during the operating hours of 11:00 p.m. to 5:00 a.m.; or, shall substitute the second employee requirement by employing security personnel on the premises;

(b) controlled access area: the employer shall provide a controlled access area by means of a secured safety enclosure of transparent polycarbonate or other bullet-resistant material that meets American society for testing materials standard D3935-02 or underwriters laboratory standard 752;

(c) pass-through window(s): the employer shall provide a pass-through window of transparent polycarbonate or other bullet-resistant material that meets American society for testing materials standard D3935-02 or underwriters laboratory standard 752 that restricts access to and encompasses the service counter area, providing an enclosure that extends not less than five feet above the service counter; or

(d) alternative operation: between the hours of 11:00 p.m. and 5:00 a.m., the employer shall close the store and prohibit all sales transactions but allow employees to perform duties such as store stocking, maintenance, cleaning and other non-sales transaction duties. Signs shall be conspicuously posted on all entryways stating the store is closed.

D. Unobstructed view of the service counter: The employer shall maintain door and window signage, product displays, shelving, equipment, and other similar items so that a clear and unobstructed view of the service counter and cash register exists from outside the building.

E. Security surveillance system:

(1) The employer shall provide each convenience store with a fully operational VHS or digital security surveillance system that, at a minimum, shall:

(a) record a continuous unobstructed view of the service counter area and all entryways and exits during all operating hours; and

(b) include a high resolution black and white or color screen monitor with on screen date and time capabilities.

(2) The employer shall:

(a) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security surveillance system, and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises;

(b) maintain documentation, for a period of at least twenty-four months, of all inspections, servicing, alterations, and upgrades performed on the security surveillance system. All documentation shall be made available within forty-eight hours of a department representative's request; and

(c) maintain a VHS or digital library of all in-store transactions recorded by the security surveillance system during normal operating hours of the convenience store for a period of no less than twenty business days;

(d) failure to provide equipment maintenance documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). The forty-eight hour period shall not include holidays and weekends.

F. Security alarm system:

(1) The employer shall provide and maintain in each convenience store a fully operational security alarm system with a working personal panic alarm for each employee that, when activated, notifies law enforcement or a private security agency when an unlawful act is in progress.

(2) The employer shall:

(a) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the alarm system, and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises; and

(b) maintain documentation for a period of at least twenty-four months of all inspections, servicing, alterations, and upgrades performed on the security alarm system; all documentation shall be made available within forty-eight hours of a department representative's request. Failure to provide equipment maintenance documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). The forty-eight hour period shall not include holidays and weekends.

(3) The security alarm activators shall be located in a location accessible to the employees and be available to the employees as a portable device that can be carried on their person.

G. Depository or time lock safe:

(1) The employer shall:

(a) provide at least one B or higher rated depository or time lock safe in each store;

(b) utilize each depository or time lock safe to ensure controlled access to cash;

(c) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the depository or time lock safe system, or, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises; and

(d) maintain documentation, for a period of at least twenty-four months, of all inspections, servicing, alterations, and upgrades performed on the depository or time lock safe; all documentation shall made available within forty-eight hours of a department representative's request; failure to provide equipment

maintenance documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). The forty-eight hour period shall not include holidays and weekends.

(2) The location of the depository time lock safe may be determined by the employer but shall be located within the service counter area, or in an office adjacent to the service counter area.

H. Cash management: The employer shall not have more than seventy-five dollars in any cash register at any time between the hours of 11:00 p.m. and 5:00 a.m. To protect employee safety, the employer shall maintain minimal amounts of cash in the cash registers at all other times.

I. Required signs:

(1) The employer shall conspicuously post a notice in English and in Spanish in the convenience store that contains, at a minimum, the following information:

- (a) there is a safe in the store;
- (b) employees do not have access to the safe;
- (c) there is an active security alarm system;
- (d) there is an active surveillance system; and
- (e) there is a limited amount of cash in the cash register.

(2) Employers will not be cited by the department for providing employees access to a time lock or other safe.

J. Pay phones: The owner shall provide adequate lighting to the pay phone area.

K. Unobstructed view of sales area: The employer shall ensure an unobstructed view throughout the store from the service counter area. This may be accomplished by different means, including mirrors and video monitors.

[11.5.6.8 NMAC - N, 6/1/04; A, 12/01/04; A, 10/30/08]

11.5.6.9 to 11.5.6.20 [RESERVED]

11.5.6.21 COMPLIANCE PROVISION: Unless otherwise provided, compliance with the sections of this part shall be achieved within sixty days of its effective date.

[11.5.6.21 NMAC - N, 6/1/04; A, 12/01/04]

11.5.6.22 CONSTRUCTION: This regulation shall be liberally construed to carry out the purposes of the occupational health and safety regulations and the state act.

[11.5.6.22 NMAC - N, 6/1/04; A, 10/30/08]

11.5.6.23 SEVERABILITY: If any provision or application of this regulation is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[11.5.6.23 NMAC - N, 6/1/04]

11.5.6.24 ENFORCEMENT AUTHORITY: Department representatives shall be responsible for the enforcement of this regulation.

[11.5.6.24 NMAC - N, 6/1/04]

11.5.6.25 REFERENCES IN OTHER REGULATIONS: Any reference to the Convenience Store regulations or 11.5.6 NMAC in any other rule shall be construed as a reference to this regulation.

[11.5.6.25 NMAC - N, 6/1/04]

11.5.6.26 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this regulation does not relieve a person from the obligation to comply with any other applicable federal, state, or local regulations.

[11.5.6.26 NMAC - N, 6/1/04]

11.5.6.27 SAVINGS CLAUSE: Future amendments: no future amendment to 11.5.6 NMAC shall affect any administrative or judicial enforcement action pending on the effective date of the amendment.

[11.5.6.27 NMAC - N, 6/1/04]

HISTORY OF 11.5.6 NMAC: [RESERVED]