

This rule was filed as 1 NMAC 2.1.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 1 GENERAL PROVISIONS

12.2.1.1 ISSUING AGENCY: Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508.
[5/1/98; Recompiled 10/15/01]

12.2.1.2 SCOPE: Attorneys general.
[5/1/98; Recompiled 10/15/01]

12.2.1.3 STATUTORY AUTHORITY: New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.; New Mexico Pyramid Promotional Schemes Act, Section 57-13-11 NMSA 1978; New Mexico False Advertising Act, Section 57-15-7 NMSA 1978; New Mexico Indian Arts and Crafts Act, Section 30-33-11 NMSA 1978; and New Mexico Charitable Organizations and Solicitations Act, Subsection C of Section 57-22-9 NMSA 1978.
[5/1/98; Recompiled 10/15/01]

12.2.1.4 DURATION: Permanent.
[5/1/98; Recompiled 10/15/01]

12.2.1.5 EFFECTIVE DATE: Re-promulgated and reformatted in NMAC format effective as of May 1, 1998, unless a later date is cited at the end of a section or paragraph.
[5/1/98; Recompiled 10/15/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.1.6 OBJECTIVE: These rules govern the procedures for rule-making by the attorney general and shall be construed to secure a just and speedy determination of every proceeding. The purpose is to promote uniformity with respect to rule-making and this part shall be liberally construed to carry out that purpose.
[5/1/98; Recompiled 10/15/01]

12.2.1.7 DEFINITIONS: The following words when used in this part, except as otherwise required by the context, shall have the following meaning:

- A. "Attorney general" means the office of the attorney general or any division therein.
- B. "Rule" includes the whole or any part of every regulation of general or particular application adopted by the attorney general to implement, interpret or prescribe law enforced or administered by the attorney general, if the adoption or issuance of such rules is specifically authorized by the law giving the attorney general jurisdiction over such matters.
- C. "Rule-making" means any process for the promulgation, adoption, amendment or repeal of a rule.
- D. "Proceeding" means any division process in connection with rule-making.
- E. "Action" includes the whole or part of every rule or failure to act upon a proposed rule.

[5/1/98; Recompiled 10/15/01]

12.2.1.8 RULE-MAKING REQUIREMENTS: In addition to other rule-making requirements imposed by law, the attorney general shall:

- A. make available all required or suggested forms, together with proper instructions pertaining thereto; and make available for public inspection all rules formulated, adopted or used by the attorney general in the discharge of his functions; and
- B. provide a reasonable manner at a reasonable cost for interested persons to obtain copies of items described in Paragraph 8.1.1 of this section [now Subsection A of 12.2.1.8 NMAC].

[5/1/98; Recompiled 10/15/01]

12.2.1.9 RULE-MAKING PREREQUISITES:

A. Prior to the adoption, amendment or repeal of any rule, the attorney general shall, within the time specified by law, or if no time is specified, then at least 30 days prior to its proposed action:

- (1) publish notice of the proposed action in the state register; and
- (2) notify any person specified by law, and, in addition, any person or group filing a written request for notice of proposed action which may affect that person or group, notification being by mail or otherwise to the last address specified by the person or group. The notice shall:
 - (a) give the time and place of any public hearing or state the manner in which data, views or arguments may be submitted to the attorney general by any interested person;
 - (b) either state the express terms or adequately describe the substance of the proposed action or adequately state the subjects and issues involved; and
 - (c) include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed;
- (3) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. If the attorney general finds that oral presentation is unnecessary or impracticable, he may require data, views or arguments to be submitted in writing.
- (4) All written documents shall be submitted to the attorney general no later than 30 days after the conclusion of any hearing. Where oral presentation is unnecessary or impracticable, written documents shall be submitted no later than 30 days after publication of a notice of a proposed rule in the state register. The attorney general shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule contested at hearing or otherwise, the attorney general shall issue a concise statement of his principal reasons for adoption of the rule together with the reasons for any rejections. All persons heard or represented at any hearing or who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the decision by mail or otherwise.

B. Emergency procedures: If the attorney general finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, or if the attorney general for good cause finds that observance of the requirements of notice and public hearing would be contrary to the public interest, the attorney general may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The attorney general's finding and a brief statement of the reasons for his finding shall be incorporated in the emergency rule, amendment or suspension filed under 10.1 of this Part [now Subsection A of Section 12.2.1.10 NMAC].

C. Upon adoption of an emergency rule, amendment or suspension, notice of the adopted emergency rule, amendment or suspension shall be published in the state register and all interested persons shall be afforded reasonable opportunity to submit data, views or arguments orally or in writing as required in this part for proposed rules.

[5/1/98; Recompiled 10/15/01]

12.2.1.10 RULES; PUBLICATION AND REVISION:

- A. The attorney general:
- (1) shall compile and publish all effective rules adopted by the attorney general. Compilations shall be supplemented or revised as often as necessary and at least once every two years;
 - (2) shall publish an annual bulletin setting forth the text of all rules filed during the previous year, excluding rules in effect upon the adoption of this procedure; and
 - (3) may omit from the bulletin or compilation any rule, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule, in printed or processed form, is made available on application to the adopting agency and if the bulletin or compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

B. Bulletins and compilations shall be made available upon request to state agencies, institutions and political subdivisions free of charge and to other persons at prices fixed by the attorney general to cover mailing and publication costs.

[5/1/98; Recompiled 10/15/01]

12.2.1.11 PETITIONS FOR ADOPTION; AMENDMENT OR REPEAL OF RULES: Any interested person may petition the attorney general requesting the promulgation, amendment or repeal of a rule and may accompany his petition with data, views and arguments he or she thinks pertinent. Within sixty days after the

submission of a petition, the attorney general shall either deny the petition in writing stating the reasons for the denial or shall initiate rule-making proceedings in accordance with Section 9 of this Part [now 12.2.1.9 NMAC].
[5/1/98; Recompiled 10/15/01]

12.2.1.12 JUDICIAL REVIEW BY DECLARATORY JUDGMENT; GRANTING RELIEF NOT OTHERWISE PROVIDED FOR: Unless otherwise provided by law, the validity or applicability of a rule may be determined in an action for declaratory judgment in any district court which has jurisdiction.
[5/1/98; Recompiled 10/15/01]

12.2.1.13 AMENDMENT AND REPEAL: The provisions of this part may be amended, repealed or superseded by another act of the legislature or the attorney general only by direct reference to the section or sections of this part being amended, repealed or superseded.
[5/1/98; Recompiled 10/15/01]

12.2.1.14 SEVERABILITY: If any part or application of any part of these procedures is held invalid, the remainder and application thereof shall not be affected.
[5/1/98; Recompiled 10/15/01]

12.2.1.15 SIGNATURE:
Original Adoption and Promulgation
Tom Udall
Attorney General
Date: 1/17/92

Readoption and Repromulgation
Tom Udall
Attorney General
Date: 4/9/98

Tom Udall
Attorney General
[5/1/98; Recompiled 10/15/01]

HISTORY OF 12.2.1 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part is derived from that previously filed with the State Records Center and Archives under:

AG 77-1, (AG PROC 77-1), Procedures for Issuance of Regulations Under Unfair Practices Act, False Advertising Act and Pyramid or Multi-level Sales Act, filed 5/31/77.

AG 92-3, Rule-making Procedures, filed 1/27/92.

History of Repealed Material: [RESERVED]