

This rule was filed as 1 NMAC 2.2

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 2 GAME PROMOTION REQUIREMENTS

12.2.2.1 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]

12.2.2.2 SCOPE: Promoters of games.
[5/1/98; Recompiled 10/15/01]

12.2.2.3 STATUTORY AUTHORITY: New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq. and New Mexico False Advertising Act, Section 57-15-1 NMSA 1978 et seq.
[5/1/98; Recompiled 10/15/01]

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

12.2.2.5 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[Compiler's note: The words *or paragraph*, above, are no longer applicable.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.]

12.2.2.6 OBJECTIVE: The purpose of these game regulations is to describe certain practices in the game promotion industry which are unfair and deceptive trade practices under the Unfair Practices Act, or which constitute false advertising under the False Advertising Act.
[5/1/98; Recompiled 10/15/01]

12.2.2.7 DEFINITIONS:

A. As used in these regulations, "game promotion" shall mean any promotional enterprise whose entrants are sought on the basis of representations that prizes or awards will be made to a certain number of entrants based upon chance or on the entrant's skill; and whose primary purpose in so doing is the direct or indirect promotion of a product, service or business entity, or the generation of money through the collection of entry fees or other consideration. Game promotions shall encompass, without limitation, such terms as "contest", "giveaway", "sweepstakes", "drawing" or "game".

B. As used in these regulations, "consideration" means anything of pecuniary value, and includes any business advantage to the sponsor, user or promoter of the game promotion.
[5/1/98; Recompiled 10/15/01]

12.2.2.8 STATEMENT OF BASIS:

A. The consumer protection division of the attorney general has received a substantial number of complaints on game promotions, which led that office to consider the extent to which such promotions pose a problem to consumers in New Mexico. As a result of an investigation conducted by that office, it was determined that much promotional material was potentially deceptive with respect to not only what was stated in the literature, but what was omitted. Confusion and misleading information was especially prevalent in the areas of the consideration required to enter a game promotion, odds of winning and the nature of prizes to be awarded. Solicitation of consumer comment on an Albuquerque television program also resulted in a large response, and a strong expression of opinion by New Mexico consumers that the game promotion industry should be strictly regulated.

B. Proposed game promotion regulations were issued in draft form on June 1, 1977, in accordance with procedures filed with the state records center by the attorney general pertaining to issuance of regulations under the New Mexico Unfair Practices Act, False Advertising Act and Pyramid Sales Act (see 1 NMAC 2.3) [now

12.2.3 NMAC]. Notice was published in 12 newspapers across the state, pursuant to the procedures mentioned above, announcing the fact that regulations had been proposed, describing the regulations briefly and stating that a public hearing would be held on July 1, 1977 at the Bataan Memorial Building in Santa Fe. The testimony submitted at the hearing was that the regulations were ambiguous, and, unless clarified, might result in enforcement which was too restrictive and prohibitive. Testimony was received that a more effective regulatory approach would be to require a wide range of disclosures, with written substantiation of the disclosed information.

C. The game promotion regulations were re-drafted in accordance with the approach suggested at the hearing. The basic features of the revised regulations are the disclosure and substantiation requirements. In addition, a game promotion designed solely to sell a product or service at a discount was found to be an unfair and deceptive trade practice. The revised regulations were disseminated to interested parties, and all comments received were incorporated into the final draft, which is promulgated herewith pursuant of the Unfair Practices Act and of the False Advertising Act.

D. It is not the intention of these regulations to authorize any lottery prohibited by the New Mexico statute relating to gambling, Section 44-5-1 NMSA 1978 et seq., or to prohibit any otherwise lawful game promotion except to the extent that it may be false or misleading.
[5/1/98; Recompiled 10/15/01]

12.2.2.9 ADVERTISING: It is an unfair or deceptive trade practice for any person to engage in any advertising or oral, written or graphic representation in conjunction with any game promotion, which may, tends to or does deceive or mislead any person concerning the number of participants, odds of winning any prize, amount of consideration required to enter, nature of the prize or any other aspect of the game promotion.
[5/1/98; Recompiled 10/15/01]

12.2.2.10 PROMOTIONS: It is an unfair or deceptive trade practice for any person to sponsor, use or promote in any manner any game promotion, whether involving skill or chance, which requires consideration in order to participate, unless the following disclosures are clearly and conspicuously made in each and every representation made in connection with the game promotion, including all advertising and promotional literature:

A. the number of prizes to be awarded in each category or denomination, and a complete description of all prizes, including the exact monetary amount of cash prizes. If a prize is to be shared in the event of multiple winners, that fact should be disclosed, as well as the method by which the allocation will be made, and the approximate amount of the reduced share;

B. the odds of winning each stated prize. This information should be based on statistics on actual numbers of participants in prior similar game promotions, if available; or upon a reasonable estimate of anticipated participation in the promotion. If the promotion has multiple stages, the odds of reaching each stage should be disclosed;

C. the total amount of consideration necessary in order to be eligible for the first prize in each category or denomination. If the promotion has multiple stages, each involving separate consideration, the amounts involved should be totaled to reflect the full consideration which would be required by a participant were he successful at each stage;

D. the manner in which winners in each category or denomination shall be selected;

E. the complete name and address of the sponsor, user or promoter. Where there is a national sponsor, user or promoter as well as local retail outlets through which the game promotion is operated, only the name and address of the national sponsor, user or promoter need be stated in national advertisements or representations, although the local retail outlets should be described or identified if possible. Both the national and local sponsors must be identified in local advertising;

F. the geographic area covered;

G. the opening date and scheduled termination date;

H. the scheduled announcement date of the winners and the date and manner of award of prizes;

I. with respect to radio, television and outdoor billboard advertising, only the information required by Subparagraphs 10.1.5, 10.1.6 and 10.1.7 [now Subsections E, F and G of 12.2.2.10 NMAC] need be disclosed in the body of the advertisement, as long as the advertisement also contains a specific reference to a publication or other source where further detailed information concerning the game promotion can be obtained;

J. for purposes of Paragraph ten [now 12.2.2.10 NMAC] **only**, game promotions shall not include athletic competition or other sports events, pari-mutuel betting, booths at fairs or competition whose entrants are

judged on the results of their skilled efforts at raising animals, training dogs, growing flowers, baking cakes, creating arts and crafts or other endeavors.
[5/1/98; Recompiled 10/15/01]

12.2.2.11 EXEMPTIONS: Persons may receive an exemption from some or all of the requirements of Paragraph ten [now 12.2.2.10 NMAC] through application to the office of the attorney general. Exemptions will be granted only in limited cases, and only if the lack of specific disclosures will not result in a false, misleading or deceptive game promotion.
[5/1/98; Recompiled 10/15/01]

12.2.2.12 DISCLOSURE:

A. It is an unfair or deceptive act or practice to represent that a person is a “winner” or has been “selected” or is otherwise being involved in a select group for receipt of a prize or an opportunity or that a person is entering a “contest”, “sweepstakes”, “drawing” or other competitive enterprise from which a winner or select group of winners will receive a prize or opportunity when, in fact, the contest is no more than the sale of a product or service at a discounted price and, to that end, most if not all of the entrants receive prizes which have value, if at all, only when applied towards the purchase of said product or service.

B. A sponsor, user or promoter of any game promotion shall maintain written documentation in support of each and every disclosure requirement stated in these regulations. Sponsors, users or promoters shall, upon written demand from the attorney general’s office, provide that office with substantiating evidence on any required disclosure.
[5/1/98; Recompiled 10/15/01]

12.2.2.13 SEVERABILITY: If any portion of these regulations is held invalid, the remainder of the regulations and applications thereof shall remain unaffected.
[5/1/98; Recompiled 10/15/01]

12.2.2.14 SIGNATURE:

Original Adoption and Promulgation
Toney Anaya
Attorney General
Date: 9/18/77

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

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

HISTORY OF 12.2.2 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 77-2) AG REG 77-1, Game Promotion Regulations Issued Pursuant to New Mexico’s Unfair Practices Act and False Advertising Act, filed 9/19/77.

History of Repealed Material: [RESERVED]