

This rule was filed as 1 NMAC 2.4.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 4 REQUIREMENTS FOR THE ADVERTISING AND SALE OF MOTOR VEHICLES

12.2.4.1 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]

12.2.4.2 SCOPE: Motor vehicle dealers.
[5-1-98; Recompiled 10/15/01]

12.2.4.3 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]

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

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[Compiler's note: The words *or paragraph*, above, are no longer applicable.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

12.2.4.6 OBJECTIVE:

A. The purpose of these regulations is to accomplish two principal objectives. The first is to deter unfair and deceptive practices that result in economic harm to consumers. The second is to provide clear legal standards for motor vehicle advertising to facilitate dealer compliance and fair competition and to make evaluation of particular practices easier.

B. The attorney general's office has long been concerned about unfair and deceptive practices in connection with the advertising and sale of motor vehicles. The attorney general's consumer protection division has received numerous written consumer complaints and telephone calls alleging such practices. Indeed, the division receives such complaints virtually every day. The consumer protection division has also received a substantial number of telephonic and written complaints from motor vehicle dealers concerning other dealers' use of deceptive advertising as an unfair method of competition.

C. The complaints that have come to the attention of the attorney general's office have involved a large number of specific unfair or deceptive practices. These practices can be grouped into a number of more general categories. These include, but are not limited to: advertising vehicles for sale at prices lower than the actual prices at which the dealers will sell the vehicles; advertising fictitious discounts or trade-in allowances; failing to make required disclosure concerning credit terms; misrepresenting or failing to disclose material information concerning the age, condition and/or prior usage of motor vehicles. It is precisely such concerns that these regulations address.

D. The experience of the attorney general's office also indicates that the advertising and sale of motor vehicles is a particularly appropriate area for the promulgation of regulations. The sheer number of complaints, the number of dealers about whom consumers have complained and the fact that a significant number of complaints have been received from dealers concerning the use of unfair methods of competition in the industry all lead to the conclusion that regulations are necessary to ensure that advertising and sales practices are not unfair or deceptive, that such practices conform to legitimate consumer expectations and that all dealers are placed on an equal competitive footing. The attorney general has therefore concluded that regulation of the advertising and sale of motor vehicles is in the best interest of the health, safety and general welfare of the citizens of New Mexico.

E. These regulations provide a basis for evaluating motor vehicle advertising. They reflect provisions of New Mexico law, but do not necessarily cover every possible deceptive advertising practice. Therefore, it is not

intended that literal compliance with these regulations be an absolute protection against liability for deceptive advertising. Dealers must review their advertising in light of the purpose of the regulations.

F. Before promulgating these regulations, notice of the proposed action was published pursuant to AG 92-3-1.3(A) [now 12.2.1.9 NMAC], and a public hearing was held on July 9, 1992 in Santa Fe. All comments received during the hearings were considered in the revision of the regulations finally promulgated. Consumers had already effectively spoken to this office and expressed their concerns through their written complaints and telephone calls. Representatives of the motor vehicle industry and the advertising industry testified at the hearings. This office also solicited written comments on the regulations. The comments received reflect the views of the New Mexico automotive dealers association representing the interests of new vehicle dealers and the independent automobile dealers association representing the interests of used vehicle dealers. All comments received were considered. [5-1-98; Recompiled 10/15/01]

12.2.4.7 DEFINITIONS: All vehicles may be classified as one of the following:

A. "Used" shall mean

(1) a vehicle that has previously been sold to a retail buyer who has taken possession of the vehicle and the vehicle has been driven a total of at least two hundred (200) miles by one or more retail buyers; or

(2) a vehicle for which the manufacturer's certificate of origin or the manufacturer's statement of origin has been surrendered to a registration authority, unless the certificate or statement has subsequently been returned, uncancelled, to the dealer or a substitute certificate or statement has been issued to the dealer.

B. "Demonstrator" shall mean a vehicle which is not used but which has been placed in demonstration or courtesy service regardless of the miles it has been driven.

C. "New" means a vehicle which is neither used nor a demonstrator.

D. "Rebate" means a reduction in price of a vehicle created, at least in part, by a payment of money by a third party either to the dealer or the purchaser of the vehicle.

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

12.2.4.8 VEHICLE CATEGORIES:

A. It is an unfair or deceptive trade practice for a dealer to describe a vehicle as new when it is either used or a demonstrator or to describe a vehicle as a demonstrator when it is used.

B. It is an unfair or deceptive trade practice for dealers to use any phrase containing the word "new" to describe a vehicle which is not new.

C. It is an unfair or deceptive trade practice for a dealer to use any description which would lead a reasonable person to believe that

(1) a vehicle is new if the vehicle is not new or

(2) that a vehicle is a demonstrator if the vehicle is used.

D. It is an unfair or deceptive trade practice for a dealer to represent expressly or by implication in an advertisement for a used vehicle or a demonstrator that the dealer obtained the vehicle from the manufacturer unless the advertisement clearly and conspicuously discloses the fact that the vehicle is used or a demonstrator. Examples of implied representations that a dealer obtained a vehicle from the manufacturer include but are not limited to the following:

(1) "program car";

(2) "factory program car";

(3) "factory auction car";

(4) "special purchase car";

(5) "special factory purchase".

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

12.2.4.9 SPOT DELIVERIES: It is an unfair or deceptive trade practice for any dealer to advertise or otherwise represent a vehicle as new if the vehicle has been delivered to a retail buyer who signed a contract obligating the buyer to pay the purchase price of the vehicle in exchange for the vehicle and the vehicle has been driven a total of at least two hundred (200) miles by one or more retail buyers; provided, however, that this section shall not be construed to prohibit a dealer from titling a vehicle that has been spot delivered as a new vehicle or providing new vehicle financing or warranty coverage for a vehicle that was previously spot delivered, if the vehicle is otherwise eligible for a new vehicle, financing or warranty coverage.

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

12.2.4.10 DISCOUNTS:

A. Manufacturers are required by federal law to label new automobiles with a suggested retail price. See 15 USC 1232. Automobiles as defined by federal law include passenger cars and station wagons. Federal law does not require similar labeling for other vehicles.

B. It is an unfair or deceptive trade practice to advertise a discount price or price savings for a new motor vehicle unless the discount or savings claim is made in reference to a reference price that is objectively verifiable using data not solely subject to the dealer's control, such as the manufacturer's suggested retail price or the invoice price, and:

- (1) the claim is not deceptive;
- (2) the dollar amount of the reference price meets any applicable requirement such as Section 15 [now 12.2.4.15 NMAC]; and
- (3) the resulting price meets the requirements of these regulations.

C. It is an unfair or deceptive trade practice for a dealer to raise any price of a vehicle to increase or create any discount, savings or rebate for the period of a sale and then decrease the price after the sale.

D. It is an unfair or deceptive trade practice for a dealer to use a reference price as the basis for a discount price or price savings claim unless the dealer clearly and conspicuously discloses:

- (1) the source of the reference price, such as manufacturer's suggested retail price or invoice price; and
- (2) the amount of the reference price.

E. It is an unfair or deceptive trade practice for a dealer to use a reference price greater than the manufacturer's suggested retail price as a basis for a discount or savings claim unless the dealer clearly and conspicuously discloses that:

- (1) the reference price is greater than the manufacturer's suggested retail price; and
 - (2) the amount by which the reference price exceeds the manufacturer's suggested retail price.
- [5-1-98; Recompiled 10/15/01]

12.2.4.11 "OVER INVOICE/UNDER INVOICE" DISCOUNT CLAIMS: It is an unfair or deceptive trade practice for a dealer to use the term "invoice" or "invoice price" in advertising unless the term is used in reference to the manufacturer's or distributor's total invoice price on a vehicle and the advertisement clearly and conspicuously includes one or both of the following disclosures:

- A. "the invoice may not represent actual dealer cost"; or
 - B. "the factory invoice refers to the manufacturer's or distributor's total invoice price".
- [5-1-98; Recompiled 10/15/01]

12.2.4.12 BELOW MARKET FINANCE CHARGE:

A. If dealer participation in "buying down" an interest rate may affect the final price of the vehicle, it is an unfair or deceptive trade practice for a dealer to fail to clearly and conspicuously disclose that fact in any advertisement offering the interest rate.

B. It is an unfair or deceptive trade practice for a dealer to advertise below market financing rates unless the advertisement clearly and conspicuously discloses all the terms which must be met in order to qualify for that advertised rate. Examples are large down payments, hidden finance charges, unusual terms of the loan or higher selling prices.

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

12.2.4.13 HIDDEN DISCLOSURES:

A. It is an unfair or deceptive trade practice for a dealer to obscure or make misleading any material fact in any advertisement or sales presentation by the use of layout, headlines, illustrations, footnotes, style, sound, length of time, lighting, color or type size of an advertisement or any portion of an advertisement.

B. It is an unfair or deceptive trade practice for a dealer to use any disclosure or disclaimer in an advertisement unless the disclosure or disclaimer is clear and conspicuous and in close proximity to the terms it modifies.

C. It is an unfair or deceptive trade practice for a dealer to use television advertisements with disclosures that are in such fine print or appear on the screen so briefly that they cannot be easily read.

D. Comment. Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement or search for inconspicuous disclaimers. Dealers shall not advertise by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement.

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

12.2.4.14 “FREE GIFTS”:

A. It is an unfair or deceptive trade practice for a dealer to represent that another product or service is being offered “free” or at no cost with the sale if a product or service usually is sold at a price arrived at through bargaining, rather than at a fixed price. FTC Guidelines at 16 CFR 251.1(g).

B. It is an unfair or deceptive trade practice for a dealer to use the word “free” or words of like meaning and import when describing a gift or other item to be given to a customer who purchases a product or service if the selling price of the product or service is increased as a result of the “free” item or if the product or service can be purchased for a lesser price without the “free” item.

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

12.2.4.15 TRADE-INS:

A. It is an unfair or deceptive trade practice for a dealer to use a guaranteed trade-in amount or range of amounts in any advertising.

B. It is an unfair or deceptive trade practice for a dealer to use a multiple, such as “double”, or other type of increased trade-in allowance in any advertising.

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

12.2.4.16 REBATES:

A. It is an unfair or deceptive trade practice for a dealer to advertise rebates if the dealer raises the price of the vehicle prior to a sale in order to compensate for the allowance of the rebate.

B. It is an unfair or deceptive trade practice for a dealer to advertise the existence of a rebate or a price that takes into account a rebate unless the advertisement discloses the existence, amount and source of the rebate.

C. It is an unfair or deceptive trade practice for a dealer to advertise any rebate unless the dealer maintains sufficient documentation to demonstrate that the sale prices of vehicles sold in connection with such promotions have not been increased to compensate for the rebate and the dealer makes such documentation available for inspection and copying by the attorney general’s office upon written request during normal business hours.

D. It is an unfair or deceptive trade practice for a dealer to advertise as a rebate any price reduction which is not a rebate.

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

12.2.4.17 ON APPROVED CREDIT: It is an unfair or deceptive trade practice for a dealer to advertise a specified finance rate and then have a customer sign a contract with a higher finance rate, unless the advertisement discloses the information specified in Section 18 [now 12.2.4.18 NMAC] for the loan program under which the low rate is offered and:

- A. the customer declines to participate in the program advertised; or
- B. the customer is not financially eligible for that loan program; or
- C. the transaction is not eligible for the loan program.

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

12.2.4.18 CREDIT ADVERTISING:

A. The Truth in Lending Act and accompanying regulations govern credit advertising. The following are triggering terms that require certain disclosures to be made in the advertisement:

- (1) the amount or percentage of any down payment (expressed as either a percentage or dollar amount);
- (2) the number of payments;
- (3) the amount of any payment (expressed either as a percentage or dollar amount);
- (4) the amount of any finance charge; and

- (5) the period of repayment (the total time required to repay).
 - B. If any one of the triggering terms appear, it is an unfair or deceptive trade practice to fail to clearly and conspicuously disclose in the advertisement:
 - (1) the amount or percentage of the down payment;
 - (2) the terms of repayment; and
 - (3) the annual percentage rate. If the annual percentage rate may be increased after consummation of the credit transaction, such as an adjustable rate loan, that fact must be disclosed.
 - C. If an advertisement mentions the amount of any payment, expressed as a dollar amount, that payment must be based on a sales price no less than the price required to be used under Section 21 [now 12.2.4.21 NMAC].
- [5-1-98; Recompiled 10/15/01]

12.2.4.19 LEASE ADVERTISING:

- A. The Truth in Lending Act and accompanying regulations regulate consumer leases because they represent an alternative to buying on credit. Also, unless certain information is provided, a consumer might easily confuse leasing with purchasing on credit.
 - B. If an advertisement promoting a “consumer lease” contains any of the following triggering terms, then five specific disclosures must also be included in the advertisement and it is an unfair or deceptive trade practice to fail to make all five disclosures. The triggering terms are:
 - (1) the amount of any payment;
 - (2) the number of required payments; and
 - (3) a statement that any or no down payment or other payment, is required at the beginning of the lease.
 - C. If any triggering term is used in a consumer lease advertisement, then it is an unfair or deceptive trade practice to fail to clearly and conspicuously make all five of the following disclosures in that advertisement:
 - (1) a statement that the transaction advertised is a lease;
 - (2) the total amount of any payment (such as security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required;
 - (3) the number, amounts, due dates or periods of scheduled payments, and the total number of such payments under the lease;
 - (4) a statement of whether the customer has the option to purchase the leased property and at what time and price (the method of determining the price may be substituted for disclosure of the price); and
 - (5) a statement of the amount or method of determining the amount or any liabilities the lease imposes upon the customer at the end of the term, and, if the customer has such liability, a statement that the customer shall be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term.
- [5-1-98; Recompiled 10/15/01]

12.2.4.20 ADVERTISED PRICES AVAILABLE TO ALL:

- A. It is an unfair or deceptive trade practice for a dealer to sell a vehicle to a customer for more than the advertised price of the vehicle.
 - B. It is an unfair or deceptive trade practice for a dealer to sell a vehicle at a price above the advertised price of the vehicle regardless of whether the advertised price has been actually communicated to the purchaser prior to the sale; provided that this provision does not prevent dealers from requiring customers to present a coupon or copy of the advertisement to obtain the advertised price if the advertisement clearly and conspicuously discloses that a coupon or copy of the advertisement must be presented.
- [5-1-98; Recompiled 10/15/01]

12.2.4.21 DEALER PRICE ADVERTISING:

- A. It is an unfair or deceptive trade practice for a dealer to advertise the price of a new motor vehicle unless the advertised price is the full cash price for which the dealer will sell the vehicle. The only charges that may be excluded from the advertised price are:
 - (1) federal and state taxes;
 - (2) license fees;
 - (3) vehicle registration; and

(4) dealer transfer service fees, if the advertisement clearly and conspicuously discloses, in close proximity to the advertised price, the amount of any such fee and that the fee is a dealer imposed fee; provided, however, that it is an unfair or deceptive trade practice for a dealer to fail to disclose in writing to a buyer purchasing a vehicle on which no security interest is retained that the buyer may register the vehicle on his own without paying a dealer transfer service fee.

B. It is an unfair or deceptive trade practice for a dealer to use any qualification when advertising the price of a vehicle such as “with trade”, “with acceptable trade”, “with dealer-arranged financing” or “with down payment.”

C. If a price advertisement for a vehicle discloses a rebate, cash back, discount savings claim or other incentive, it is an unfair or deceptive trade practice for a dealer to fail to disclose in the advertisement the full cash price of the vehicle as well as the price of the vehicle after deducting the incentive.

D. It is an unfair or deceptive trade practice for a dealer to fail to include the price of standard or optional equipment with which all cars sold by the dealer are minimally equipped in the advertised price of the vehicle; provided, however, that the cost of additional options or services requested by the purchaser may be added at the time of sale to the purchase price.

E. It is an unfair or deceptive trade practice for a dealer to use an illustration of a motor vehicle in an advertisement unless the illustration is that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available, then the dealer must clearly and conspicuously disclose that the illustration is not the vehicle being advertised.

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

12.2.4.22 ADVERTISED VEHICLE AVAILABILITY:

A. When a dealer advertises a specific type of vehicle for sale that is not readily available, it is an unfair or deceptive trade practice to fail to disclose the vehicle’s lack of availability.

B. It is an unfair or deceptive trade practice for a dealer to advise prospective customers that an advertised vehicle is available when the vehicle is not available for sale, or that an advertised vehicle is not available for sale when the vehicle is available for sale.

C. It is an unfair or deceptive trade practice for a dealer to advertise a particular vehicle or type of vehicle for sale at a special price, unless the advertisement discloses the number or stock numbers of the vehicles in stock for sale at that price.

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

12.2.4.23 NO DOWN PAYMENT: It is an unfair or deceptive trade practice for a dealer to advertise that no down payment is required in connection with the purchase of a vehicle when a down payment or trade-in is in fact required. If only a trade-in is required a dealer may advertise that fact.

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

12.2.4.24 CONTRACT ADDITIONS WITHOUT CUSTOMER’S KNOWLEDGE:

A. It is an unfair or deceptive trade practice for a dealer to negotiate the terms of a sale and then add the cost of such items as extended warranty, credit life, dealer preparation, undercoating, etc., to the contract without the customer’s knowledge and consent.

B. It is an unfair or deceptive trade practice for a dealer to use “documentary fee” or other similar term for any charges other than those actually required by law for processing of documents.

C. It is an unfair or deceptive trade practice for a dealer to negotiate the terms of a sale and then add the cost of “comptroller inventory adjustment”, “floor plan, handling, overhead and advertising”, or any other charges, however denominated, that represent additional dealer profit, are part of the overhead expenses of running a dealership, are necessary incidents of the sale of a vehicle, do not represent payment for a bona fide product or service or are fictitious.

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

12.2.4.25 EXTENDED WARRANTIES: It is an unfair or deceptive trade practice for a dealer to misrepresent or fail to accurately disclose the terms or conditions of an extended service contract.

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

12.2.4.26 USE OF INITIALS OR ABBREVIATIONS: It is an unfair or deceptive trade practice for a dealer to use initials or abbreviations in an advertisement of a motor vehicle, including the window sticker and supplementary sticker, unless all such initials or abbreviations are clearly defined in the advertisement or window sticker; provided, however, that abbreviations may be used for such options and features as air conditioning, power steering and power brakes in classified and similar advertisements if such abbreviations are commonly understood by consumers.

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

12.2.4.27 SUPPLEMENTAL STICKER PRICES:

A. When a dealer is selling a vehicle for which a federal Monroney window sticker is required pursuant to 15 USC 1232, it is an unfair or deceptive trade practice to charge or attempt to charge a customer more than the manufacturer's suggested retail price unless the dealer's asking price or supplemental price is clearly and conspicuously disclosed on a supplemental sticker adjacent to the Monroney sticker.

B It is an unfair or deceptive trade practice for a dealer to misrepresent the reasons for additional charges listed on a supplemental sticker.

C. It is an unfair or deceptive trade practice for a dealer to list on a supplemental sticker a charge which:

- (1) the dealer did not incur;
- (2) is otherwise accounted for on the Monroney sticker; or
- (3) is otherwise reimbursed.

D. It is an unfair or deceptive trade practice for a dealer to represent, by a sticker or other means, that options have been added to a vehicle before they have been added.

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

12.2.4.28 LEMON VEHICLES: It is an unfair or deceptive trade practice for a dealer or manufacturer to sell a vehicle knowing that it has been returned to a dealer or manufacturer under the terms of the Motor Vehicle Quality Assurance Act, Section 57-16A-1 NMSA 1978 et seq., or any similar law of any other state unless prior to sale the dealer clearly and conspicuously discloses in writing to any prospective purchaser that the vehicle was returned to the manufacturer due to one or more defects under the New Mexico Lemon Law or the Lemon Law of another state and the nature of the defects if known.

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

12.2.4.29 SELF-REGULATION PROGRAMS:

A. The attorney general may refer any complaint alleging a violation of these regulations by a dealer participating in an approved self-regulation program to the program. Not more than forty-five (45) days of receiving a complaint by referral from the attorney general, the program shall provide the attorney general with a written report describing the substance of the complaint and the program's disposition of the complaint.

B. At a minimum, an approved self-regulation program shall include:

- (1) substantive standards determined by the attorney general to be identical to or more stringent than the standards set forth in these regulations; and
- (2) an enforcement procedure that the attorney general determines to be fair and impartial, responsive to complaints and likely to enforce compliance with the program's substantive standards.

C. Not less than every twelve (12) months, or more frequently if requested by the attorney general, the program shall submit a written report to the attorney general containing the following information:

- (1) copies of all complaints received by the program;
- (2) the number of complaints against each dealer;
- (3) the disposition of each complaint;
- (4) the number of complaints received by type of complaint; and
- (5) any other information or documents the attorney general may request.

D. All records of the program shall be available for inspection and copying by the attorney general upon request during normal business hours.

E. All proceedings of the program concerning consumer complaints shall be open to the public.

F. All consumer complaints, complaint resolutions regardless of the source of the complaint and decisions of the program shall be available for inspection and copying by the public upon reasonable notice during normal business hours.

G. The attorney general may withdraw approval of a program at any time upon a finding by the attorney general that the program has failed to comply with the requirements of these regulations or that the program, while complying, has failed to effectively and meaningfully regulate the practices of the dealers participating in the program.
[5-1-98; Recompiled 10/15/01]

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

12.2.4.31 SIGNATURE:
Original Adoption and Promulgation
Tom Udall
Attorney General
Date: 5/12/93

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

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

HISTORY OF 12.2.4 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 93-1, Regulations for the Advertising and Sale of Motor Vehicles Issued Pursuant to the Unfair Practices Act and the False Advertising Act, filed 6/2/93.

History of Repealed Material: [RESERVED]