

This rule was filed as CC 86-0, CC 86-101, CC 86-102, CC 86-201, CC 86-301, CC 86-401, CC 86-402, CC 86-403, CC 86-404, 86-405 and CC 86-406.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 12 COMMODITIES
PART 1 GENERAL PROVISIONS

12.12.1.1 ISSUING AGENCY: Regulation and Licensing Department, Securities Division.
[Recompiled 10/15/01]

12.12.1.2 SCOPE: [RESERVED]
[Recompiled 10/15/01]

12.12.1.3 STATUTORY AUTHORITY:

- A. Short title: These rules shall be known and may be cited as "Commodity Code Rules."
 - B. Authority:
 - (1) Introduction. Pursuant to the authority granted by the Model State Commodity Code, the director promulgates the following rules in order to carry out the provisions of the code.
 - (2) Public interest and investor protection. The director finds that the rules contained herein are in the public interest, necessary and appropriate for the protections of investors, and consistent with the purposes of the code.
 - (3) Severability. If any provision of these rules be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of these rules are declared severable.
- [CC 86-101 and CC 86-102, 10/3/86; Recompiled 10/15/01]

12.12.1.4 DURATION: [Permanent]
[Recompiled 10/15/01]

12.12.1.5 EFFECTIVE DATE: These rules shall become effective on October 3, 1986. [Filed October 22, 1986]
[CC 86-102, 10/3/86; Recompiled 10/15/01]

12.12.1.6 OBJECTIVE: [RESERVED]
[Recompiled 10/15/01]

12.12.1.7 DEFINITIONS: In the code, and unless the context otherwise requires:

- A. "financial institution" for purposes of Section 58-13A-2 NMSA 1978 means an institution which is regulated, supervised and examined for protection of depositors by an official or agency of a state or the United States and is insured by the federal depository insurance corporation, the federal savings and loan insurance corporation or the national credit union share insurance fund;
 - B. "futures contract" means an agreement for the purchase or sale of a commodity for delivery in the future at a price that is agreed upon when the contract is initiated, and which is undertaken primarily to assume or shift price risk without transferring title to the underlying commodity. In order to constitute a futures contract both parties are obligated to fulfill the contract at the specified price. Future contracts which contain provisions for delivery may be fulfilled by making or taking delivery or by offset.
- [CC 86-201, 10/3/86; Recompiled 10/15/01]

12.12.1.8 COMMODITY CODE INDEX:

- A. Chapter 1 - Title and authority [now 12.12.1.3 NMAC]
 - (1) CC 86-101 Short title [now Subsection A of Section 12.12.1.3]
 - (2) CC 86-102 Authority [now Subsection B of Section 12.12.1.3 NMAC]
- B. Chapter 2 - Definitions [now 12.12.1.7 NMAC]
- C. Chapter 3 - Exempt transactions [now 12.12.1.9 NMAC]
- D. Chapter 4 - Administrative procedure [now 12.12.1.10 NMAC]

- (1) CC 86-401 Administrative conferences [now Subsection A of Section 12.12.1.10 NMAC]
- (2) CC 86-402 Motions [now Subsection B of Section 12.12.1.10 NMAC]
- (3) CC 86-403 Venue [now Subsection C of Section 12.12.1.10 NMAC]
- (4) CC 86-404 Evidence [now Subsection D of Section 12.12.1.10 NMAC]
- (5) CC 86-405 Findings of fact and conclusions of Law [now Subsection E of Section 12.12.1.10

NMAC]

- (6) CC 86-406 Costs on appeal [now Subsection F of Section 12.12.1.10 NMAC]

[CC 86-0, 10/3/86; Recompiled 10/15/01]

12.12.1.9 EXEMPT TRANSACTIONS: A financial institution shall not be deemed to be a depository for purposes of Section 58-13A-5(2)(A) NMSA 1978 if it is holding the precious metals for collateral or acting in any manner as the financing agent for the purchaser of the commodity. A depository for purposes of Section 58-13A-5 NMSA 1978 may hold the metals for safekeeping purposes only.

[CC 86-301, 10/3/86; Recompiled 10/15/01]

12.12.1.10 ADMINISTRATIVE PROCEDURE:

A. Administrative conferences:

(1) Any person entitled to a hearing pursuant to Section 58-13A-20 NMSA 1978 may submit a written request to the director for an informal conference to discuss an order issued or proposed to be issued by the director. A request for an informal conference will not affect a person's right to a formal hearing pursuant to Section 58-13A-20 NMSA 1978 provided that a proper request for a hearing is made pursuant to that Section. However, any person requesting an informal conference with the director must specifically waive in writing the time deadlines for setting a formal 58-14A-24(B). Upon the granting of an informal conference the formal hearing will be indefinitely postponed pending the outcome of the informal conference. A person who has formerly waived the right to have a hearing set may reinstate a request for a formal hearing by written notice to the director.

(2) The director may, in his discretion, grant a request for an informal conference for the purpose of settlement or simplification of the issues. Evidence of conduct or statements made in informal conferences is not admissible to prove either liability or a violation of this act or the rules thereunder. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution.

(3) If consistent with Section 58-13A-20 NMSA 1978, the director may dispose of proceedings pending pursuant to that section by stipulation, agreed settlement, consent order or default.

B. Motions. Any motion made prior to the commencement of any hearing must be made in writing to the director. Motions other than those for an extension of time or for additional discovery must be accompanied by a memoranda of law and served on the opposing party. Motions shall be a maximum of ten pages in length. The director may in the director's discretion rule without a hearing upon any procedural or discovery motion not disposing of the merits of the proceeding. All motions not specifically acted upon by the director shall be deemed denied upon the filing of the final order of the director in the proceeding.

C. Venue. All hearings conducted pursuant to Section 58-13A-20 NMSA 1978 shall be conducted in the offices of the securities division or other convenient place within Santa Fe county. A party may request that the director hold the hearing in another county of the state only if the requesting party agrees to pay all costs and expenses of such a hearing.

D. Evidence. In a proceeding held pursuant to Section 58-13A-20 NMSA 1978, the formal rules of evidence do not apply and the director or hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs.

E. Findings of fact and conclusions of law. The director or hearing officer may require all parties of record to file proposed findings, conclusions or orders at the close of the hearing.

F. Costs on appeal. The party seeking review pursuant to Section 58-13A-21 NMSA 1978 shall bear all costs of appeal, including the expenses of preparation of the record and transcript.

[CC 86-401, CC 86-402, CC 86-403, CC 86-404, CC 86-405 and CC 86-406, 10/3/86; Recompiled 10/15/01]

HISTORY OF 12.12.1 NMAC.

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

CC 86-0, Commodity Code Index, 10/22/86;
CC 86-101, Short Title, 10/22/86;
CC 86-102, Authority, 10/22/86;
CC 86-201, Definitions, 10/22/86;
CC 86-301, Exempt Transactions, 10/22/86;
CC 86-401, Administrative Conferences, 10/22/86;
CC 86-402, Motions, 10/22/86;
CC 86-403, Venue, 10/22/86;
CC 86-404, Evidence, 10/22/86;
CC 86-405, Findings Of Fact And Conclusions Of Law, 10/22/86;
CC 86-406, Costs On Appeal, 10/22/86.

History of Repealed Material: [RESERVED]