

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 13 REQUIREMENTS FOR SPOT DELIVERY OF MOTOR VEHICLES

12.2.13.1 ISSUING AGENCY: Office of the New Mexico Attorney General.
[12.2.13.1 NMAC - Rp/E, 12.2.13.1 NMAC, 8/1/2012]

12.2.13.2 SCOPE: Motor vehicle dealers.
[12.2.13.2 NMAC - Rp/E, 12.2.13.2 NMAC, 8/1/2012]

12.2.13.3 STATUTORY AUTHORITY: New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq.
[12.2.13.3 NMAC - Rp/E, 12.2.13.3 NMAC, 8/1/2012]

12.2.13.4 DURATION: Permanent.
[12.2.13.4 NMAC - Rp/E, 12.2.13.4 NMAC, 8/1/2012]

12.2.13.5 EFFECTIVE DATE: August 1, 2012, unless a later date is cited at the end of a section.
[12.2.13.5 NMAC - Rp/E, 12.2.13.5 NMAC, 8/1/2012]

12.2.13.6 OBJECTIVE:

A. The purpose of this rule is to accomplish two principal objectives:
 (1) deter unfair business practices in the sale of motor vehicles that result in economic harm, and
 (2) provide clear legal standards for the sale of motor vehicles where the sale of the vehicle is contingent upon approval of financing of the vehicle.

B. The attorney general's office has received numerous complaints from consumers where the motor vehicle dealer asserts that the transaction is contingent upon financing of the vehicle or approval of financing, but where adequate disclosure of this contingency is not made in a timely manner, where the dealer asserts the right to cancel the contract based on a failure of this contingency or right to unilaterally renegotiate the terms of the sale, or where the dealer sells the consumer's trade-in vehicle prior to confirmation of financing and finalization of the transaction thus converting the use and possession of the consumer's trade-in vehicle.
[12.2.13.6 NMAC - Rp/E, 12.2.13.6 NMAC, 8/1/2012]

12.2.13.7 DEFINITIONS: The following terms have the meanings set forth herein.

A. "Motor vehicle dealer" means:
 (1) any person who sells or solicits or advertises the sale of new, demonstration or used motor vehicles and who is licensed pursuant to the motor vehicle code; or

(2) any person who sells four or more motor vehicles in a calendar year whether licensed or not.
B. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries. This includes but is not limited to automobiles, trucks of all varieties, motor cycles, recreational vehicles, reconstructed motor vehicles, specialty constructed motor vehicles, road tractors, all of which may be for personal, household, or commercial use.

C. "Purchase price" means the actual price before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit disability insurance, or any other charges incidental to the purchase.

D. "Revocation" means the cancellation, voiding or annulment of the contract or withdrawing of acceptance to purchase the motor vehicle.

E. "Spot delivery" means a contingent motor vehicle sale transaction by which the buyer is allowed to take possession of the motor vehicle pending the finalization of financing.

[12.2.13.7 NMAC - Rp/E, 12.2.13.7 NMAC, 8/1/2012]

12.2.13.8 SPOT DELIVERY GENERALLY: In a sale conditioned on financing, it is an unfair trade practice for a motor vehicle dealer who delivers a new, demonstration or used motor vehicle to a buyer to.

A. Orally or in writing represent to the buyer at the time of signing the purchase order agreement or sales transaction document that the sale is final and complete if the financing contingency is unmet.

- B.** Refuse to void and nullify the contract if financing is not finalized within 20 calendar days from the date of delivery of the motor vehicle.
- C.** Fail to return to the buyer, within a reasonable time, all sums of money paid or collateral including a trade-in provided by the buyer and held by the motor vehicle dealer.
- D.** Accept a trade-in and then sell or remove the trade-in from the lot where the transaction occurred before the financing of the purchased motor vehicle has been finalized and the sale completed.
- E.** Fail to pay the retail value of the trade-in vehicle or the assigned value of the trade-in itself, as well as all other monies or things due the buyer should the motor vehicle dealer sell or remove the trade-in from the lot before the financing has been finalized. The risk of loss during the period shall be assessed against the motor vehicle dealer.
- F.** Fail to timely pay the lender the monthly scheduled payment, should a payment become due before the sale is final. The buyer will reimburse the dealer for such a payment if the contract is rightfully revoked in accordance with this rule.
- G.** Charge the buyer for any costs associated with the refurbishing, repair or maintenance of the trade-in or for any sums paid by the motor vehicle dealer to pay off the outstanding debt owed on the trade-in. However, should the buyer rightfully revoke the contract, buyer will reimburse the motor vehicle dealer for payments made on the outstanding balance of the trade in.
- H.** Fail to include the following statement in no less than bold 12 point type, conspicuously placed on the purchase order agreement or sales transaction document and signed ONLY by the buyer subject to the financing contingency: **SPOT DELIVERY:** Buyer has the right to void this purchase if financing is not approved within 20 calendar days after delivery of vehicle. Buyer has the right to the return of any trade-in and all money paid by buyer, if buyer voids this contract under this paragraph. To exercise this right, buyer must return the vehicle to the dealer in the same condition as received (normal wear and tear excepted), within 48 hours of receipt of notice that financing was not approved. Dealer shall not charge any fees as long as the vehicle is returned as provided in this paragraph.
- I.** Charge any usage fee or any other type of surcharge to the buyer in association with the rightful revocation of the purchase order agreement or sales transaction document as provided by this rule.
- J.** Fail to maintain for a period of three years in the dealer file jacket the following documents regardless of whether the sales transaction is finalized:
- (1) copies of all credit applications, transmittals sent to or received from any lender, or any documents related to the approval or denial of financing, offers or counteroffers of financing, or requests for additional information related to a request for financing;
 - (2) copies of every signed purchase agreement or sales transaction document; and
 - (3) a log recording the date the dealership notified the buyer of the changes to the contract, with a detailed description of the changes to the terms and conditions of the sale of the vehicle, and the date upon which the purchaser agreed to each of the changes.
- K.** Fail to provide a copy of every signed purchase order agreement or sales transaction document to the buyer at the time of signing.
- L.** Make any statement or representation to the buyer, orally or in writing, either before or after the purchase order agreement or sales transaction document is signed, that misleads the buyer as to his rights of revocation under this rule, including but not limited to, misrepresenting to the buyer his right to revoke acceptance of the contract and “walk away” without incurring any legal obligation should the motor vehicle dealer fail to meet the contingency financing agreement.

[12.2.13.8 NMAC - Rp/E, 12.2.13.8 NMAC, 8/1/2012]

12.2.13.9 SEVERABILITY: If any portion of this rule is held invalid, the remainder of the rule and application thereof shall remain unaffected.

[12.2.13.9 NMAC - Rp/E, 12.2.13.9 NMAC, 8/1/2012]

HISTORY OF 12.2.13 NMAC:

History of Repealed Material: [RESERVED]

Other: 12.2.13 NMAC, Requirements for Spot Delivery of Motor Vehicles, filed 4/16/2012 - Repealed effective 6/1/2012. Replaced by emergency 12.2.13 NMAC Requirements for Spot Delivery of Motor Vehicles, effective 8/1/2012.