

12.2.14 NMAC

TITLE 12 **TRADE, COMMERCE AND BANKING**
CHAPTER 2 **CONSUMER PROTECTION**
PART 14 **MISREPRESENTATION OF AGE AND CONDITION OF MOTOR VEHICLES**

12.2.14.1 **ISSUING AGENCY:** Office of the New Mexico Attorney General.
[12.2.14.1 NMAC - N, 4/1/2014]

12.2.14.2 **SCOPE:** Misrepresentation of age and condition of motor vehicles.
[12.2.14.2 NMAC - N, 4/1/2014]

12.2.14.3 **STATUTORY AUTHORITY:** The New Mexico Unfair Practices Act, Section 57-12-13
NMSA 1978.
[12.2.14.3 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.4 **DURATION:** Permanent.
[12.2.14.4 NMAC - N, 4/1/2014]

12.2.14.5 **EFFECTIVE DATE:** April 1, 2014, unless a later date is cited at the end of a section.
[12.2.14.5 NMAC - N, 4/1/2014]

12.2.14.6 **OBJECTIVE:**

- A.** This purpose of this rule is to:
- (1) deter misrepresentation of the age or condition of used motor vehicles in retail motor vehicle sale transactions;
 - (2) protect retail buyers in motor vehicle sale transactions through uniform disclosure of material information concerning the age or condition of used motor vehicles; Subsection A of Section 57-12-6 NMSA 1978;
 - (3) provide sellers clear legal standards as to what constitutes “to the best of seller’s knowledge” when selling used motor vehicles to retail buyers: Paragraph (2) of Subsection B of Section 57-12-6 NMSA 1978;
 - (4) establish standards for used motor vehicle damage inspections; and
 - (5) establish standards for disclosure of used motor vehicle alteration or damage inspection results to motor vehicle buyers.
- B.** This rule is not intended to restrict or limit claims to Section 57-12-6 NMSA 1978 that may be alleged under other provisions of the Unfair Practices Act, Section 57-12-1 NMSA 1978 *et seq.*
- C.** The alteration or damage inspection and disclosure standards in this rule for used motor vehicles are not intended to negate or limit obligations of sellers to disclose damage to new motor vehicles. See *Hale v. Basin Motor Co.*, 110 N.M. 314 (N.M. 1990).
- D.** Nothing in this rule is intended to increase, decrease or otherwise in any way affect the rights or responsibilities of motor vehicle manufacturers or sellers under federal motor vehicle safety laws or regulations, or under New Mexico or other state products liability laws, principles or case law.
- E.** The attorney general has concluded that this rule is in the best interest of the health, safety and general welfare of the citizens of New Mexico.
[12.2.14.6 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.7 **DEFINITIONS:**

- A.** “Alteration” shall mean damage to, repair or modification of a motor vehicle’s cab, chassis, or body which materially diminishes the value of the motor vehicle; the alteration may but need not necessarily be the result of wreck damage; goods are altered if, as measured against reasonable expectations of a consumer, the characteristics or value of a motor vehicle are diminished in a meaningful way. See *Hale v. Basin Motor Co.*, 110 N.M. 314 (N.M. 1990).

- B.** “Body” shall mean the external structure of the motor vehicle, exclusive of the cab and chassis.
- C.** “Cab” shall mean the compartment of a motor vehicle where the driver and passengers sit.
- D.** “Chassis” shall mean the frame, structural components of the motor vehicle and suspension.
- E.** “Flat rate manual cost” shall mean estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry.
- F.** “Good faith estimate of cost” for alteration or repair shall mean a good faith estimate of the flat rate manual cost of prior alteration or repair discovered in the used motor vehicle alteration or damage inspection contemplated by this rule, and disclosed in substantially the manner shown in the model inspection report which accompanies this rule, but “good faith estimate of cost” shall not be interpreted as a warranty as to actual cost which is unknown to the seller, nor is “good faith estimate of cost” intended to be a substitute for disclosure of actual cost if known to the seller.
- G.** “Inspection” or “reasonable inspection” shall mean an investigation of the age and condition of a motor vehicle for evidence of prior alteration or prior repair due to alteration or wreck damage. Inspections shall be consistent with 12.2.14.10 NMAC.
- H.** “Inspection report” shall mean the inspection report provided for in 12.2.14.10 NMAC or equivalent form, including the model inspection report form which accompanies this rule.
- I.** “Qualified person” shall mean a person who is qualified by an industry recognized program or who possesses the requisite knowledge, skill or experience to perform the used motor vehicle inspection required by this rule and by the accompanying model inspection report form, in order to find evidence of:
- (1) painting and refinishing;
 - (2) structural and non-structural damage repair;
 - (3) repair of motor vehicle, cab, chassis and body; or
 - (4) previous alteration.
- J.** “Repair or repairing” shall mean to restore or attempt to restore a motor vehicle’s cab, chassis, or body to industry standards.
- K.** “Retail buyer” or “buyer” shall mean a person who is not in the business of buying and selling motor vehicles and who buys or agrees to buy a motor vehicle from a retail seller.
- L.** “Retail seller” or “seller” shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates who is licensed pursuant to Section 66-4-1 NMSA 1978 or who regularly and principally engages in the business of selling motor vehicles to retail buyers for profit, but does not include selling motor vehicles:
- (1) to a lessee pursuant to a purchase option under a motor vehicle lease agreement;
 - (2) to other motor vehicle dealers licensed with the New Mexico New Mexico motor taxation and revenue department-motor vehicle division pursuant to Subsection A of Section 66-4-1 NMSA 1978; or
 - (3) to persons, other than retail buyers, licensed or regulated by another state or jurisdiction.
- M.** “Sales price” shall mean the actual stated price on the contract 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 of disability insurance, or any other charges incidental to the sale.
- N.** “Unibody” shall mean a motor vehicle construction technique in which the body is integrated into a single unit with the chassis rather than having a separate body-on-frame.
- O.** “Used” motor vehicle shall mean a used motor vehicle as defined in 12.2.4.7 NMAC.
[12.2.14.7 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.8 AFFIDAVIT REQUIRED:

- A.** A seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that states to the best of the seller’s knowledge whether there has been an alteration or chassis repair due to wreck damage, except where not required. Subsections B and C of Section 57-12-6 NMSA 1978.
- B.** When a seller in good faith:
- (1) conducts a motor vehicle inspection in compliance with 12.2.14.10 NMAC;
 - (2) completes an inspection report pursuant to 12.2.14.11 NMAC;
 - (3) provides the inspection report to the buyer; and
 - (4) maintains the inspection report in seller’s records for four years,
- the seller may be deemed to have complied with Section 57-12-6 NMSA 1978.

C. When a seller determines that an affidavit is required pursuant to Subsection B of Section 57-12-6 NMSA 1978, the seller shall attach a report which substantially complies with 12.2.14.11 NMAC to the affidavit to disclose the prior alteration or repair.

D. When unsafe alterations or repairs are identified or discovered by an inspector during the inspection, the unsafe alterations or repairs shall be disclosed in the inspection report provided for in 12.2.14.11 NMAC, and a copy of the inspection report shall be provided to the buyer.

E. A seller shall not represent to the buyer that the absence of any information or condition of the motor vehicle on a Carfax, Autocheck or other motor vehicle history report is proof that the motor vehicle has never been altered or repaired.

F. When a seller determines that an affidavit is required pursuant to Subsection B of Section 57-12-6 NMSA 1978, a copy of the affidavit shall also be maintained by the seller for four years.

G. Nothing in this regulation shall limit the obligation of a seller of a motor vehicle to make required disclosures pursuant to Section 57-12-6 NMSA 1978, of alteration or chassis repair due to wreck damage discovered by or previously known to the seller.

[12.2.14.8 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.9 [RESERVED]

[12.2.14.9 NMAC - N, 4/1/2014; Repealed, 8/31/2016]

12.2.14.10 REASONABLE INSPECTION: The following motor vehicle inspection shall be conducted by qualified persons and shall be deemed reasonable pursuant to Subsection B of Section 57-12-6 NMSA 1978 by:

- A.** inspecting the motor vehicle for evidence of repainting such as:
 - (1) differences in paint color or texture;
 - (2) mismatched sizes of metallic sparkle in the paint;
 - (3) embedded dirt or deep scratches in the top coat of the paint; and
 - (4) uneven paint thickness;
- B.** inspecting the motor vehicle for evidence of any repair or alteration, with the inspection involving only minimal disassembly, for:
 - (1) uneven gaps between sheet metal panels;
 - (2) differences between the headlamps;
 - (3) paint overspray on moldings and trim;
 - (4) paint tape edges in the jams;
 - (5) hammer damage;
 - (6) replaced body panels due to impact;
 - (7) holes drilled and plugged in jams or shell of the motor vehicle;
 - (8) damage inside the trunk or under the spare tire; and
 - (9) signs of corrosion or lack of corrosion protection;
- C.** inspecting the motor vehicle chassis for evidence of such things as:
 - (1) pinched weld flange underneath the motor vehicle;
 - (2) weld sites;
 - (3) signs of repair to unibody structural parts;
 - (4) signs of buckles or non-original equipment manufacturer (“OEM”) welding repair to unibody structural parts;
 - (5) signs of corrosion, or lack of corrosion protection; and
 - (6) other non-OEM alteration or repair that may have been performed to the chassis;
- D.** inspecting the motor vehicle’s caulking and seam sealer for differences and inconsistencies;
- E.** inspecting the motor vehicle’s identification number tags;
- F.** inspecting the motor vehicle parts for labels that say replacement department of transportation “(R-DOT)”;
- G.** inspecting the motor vehicle for alterations or repairs not consistent with repair industry standards; and
- H.** performing reasonable additional inspection or inquiry into the age and condition of the motor vehicle when reasonably necessary to assure compliance with this rule.

[12.2.14.10 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.11 PREVIOUS WRECK DAMAGE OR ALTERATION INSPECTION REPORT:

The seller's inspection report shall be in substantially the form which accompanies this rule and shall include the following information:

- A. seller's name;
- B. address, including city, state, and zip code;
- C. the year, make and model of the motor vehicle;
- D. the motor vehicle identification number;
- E. the exterior color of the motor vehicle;
- F. an odometer reading of the motor vehicle;
- G. a "yes" and "no" check box to indicate any discovered safety issues revealed by the inspection; if "yes" is checked, the inspection report shall identify such issues with particularity;
- H. a "yes" and "no" check box to indicate any discovered chassis or structural damage revealed by the inspection; if "yes" is checked, the inspection report shall identify such damage with particularity;
- I. a "yes" and "no" check box to indicate any discovered non industry-standard repair revealed by the inspection; if "yes" is checked, the inspection report shall identify such repair with particularity;
- J. a "yes" and "no" check box to indicate any discovered unrepaired damage revealed by the inspection; if "yes" is checked, the inspection report shall identify such damage with particularity;
- K. whether a good faith estimate of the cost of prior alteration or damage repair discovered on inspection exceeds six percent of the estimated sales price of the motor vehicle;
- L. date of inspection;
- M. cost for the inspection;
- N. contact information for the business/individual who performed the inspection, including city, state, and zip code and telephone number;
- O. the printed or typed name of the qualified person who performed the inspection;
- P. the signature of the qualified person who conducted the inspection; and
- Q. a statement to the effect that "prior damage/repair inspection is based on good faith observation, minimal disassembly and without use of computerized measuring system(s)," that the inspection report is not a warranty, and containing a citation to this rule, 12.2.14.1 NMAC;
- R. the seller's inspection report may also include:
 - (1) a statement whether the motor vehicle was placed on a lift to inspect the chassis as part of the inspection;
 - (2) a statement whether a paint mil thickness gauge was used to measure paint thickness as part of the inspection; or
 - (3) reasonable additional detail about the condition of the chassis, body panels and paint of the motor vehicle which was revealed by the inspection and is believed by the inspector to be useful to a buyer.

[12.2.14.11 NMAC - N, 4/1/2014; A, 8/31/2016]

12.2.14.12 DISCLOSURE IN LIEU OF INSPECTION FOR HIGH MILEAGE/AGED MOTOR

VEHICLES: In lieu of the used motor vehicle damage inspection contemplated by 12.2.14.9 NMAC and the used motor vehicle damage inspection report contemplated by 12.2.14.11 NMAC, the seller of a motor vehicle which either: is 10 or more years old based on its model year or has more than 125,000 odometer miles, may provide the buyer of such a motor vehicle with a conspicuous written disclosure on a separate form containing a statement to the effect that "because of age in excess of 10 years or mileage in excess of 125,000 this motor vehicle has not received a used motor vehicle damage inspection pursuant to 12.2.14.1 NMAC, *et seq.*, and buyer may obtain an independent inspection of the motor vehicle at buyer's own expense before purchase, if buyer so chooses." Seller of a motor vehicle subject to this section is nonetheless obligated to make required disclosures pursuant to Section 57-12-6 NMSA 1978. Should the seller of such a high mileage/aged vehicle nevertheless choose to obtain a damage inspection and report on such a motor vehicle, the seller shall provide the inspection report and any applicable affidavit to the buyer as with any other used motor vehicle.

[12.2.14.12 NMAC - N, 8/31/2016]

12.2.14.13 SEVERABILITY: If any part of this rule is held invalid, the remainder of the rule and applications thereof shall remain unaffected.

[12.2.14.13 NMAC - N, 4/1/2014; Rn, 12.2.14.12 NMAC, 8/31/2016]

12.2.14.14 USED MOTOR VEHICLE ALTERATION OR DAMAGE INSPECTION FORM:

Seller Name and Contact Information: _____

Year _____ Make _____ Model _____ Color _____

VIN _____ Odometer _____

None
Noted Yes Describe, if yes (attach separate page
if needed).

DISCOVERED SAFETY ISSUES _____

CHASSIS OR STRUCTURAL

DAMAGE _____

NON INDUSTRY-STANDARD

REPAIR _____

UNREPAIRED

DAMAGE _____

CHASSIS INSPECTION

None
Noted Yes Location – Details, if yes

Frame/Unibody Repair/Welds _____

Frame Machine Pinch

Marks _____

Other _____

BODY PANEL INSPECTION

None
Noted Yes Location – Details, if yes

Replaced Body

Panels _____

Damaged/Repaired Body

Panels _____

Uneven Body Panel Gaps _____

Other _____

PAINT INSPECTION

None
Noted Yes Location – Details, if yes

Difference in Paint

Color/Texture _____

Uneven Paint

Thickness _____

Aftermarket Overspray/Mask-

lines _____

Other _____

Was motor vehicle placed on a lift to inspect chassis? __Yes__No

Other Inspection Comments:

(Note discovered damage, alterations or repairs not otherwise disclosed on this form.)

Was a paint mil thickness gauge used to measure paint thickness? __Yes__No

Good faith estimate whether discovered prior alteration/damage/repair cost exceeds six percent of sales Price: __Yes__No

Cost of Inspection: \$ _____

Date of Inspection: _____

Inspector Name: _____

Inspector Contact Information: _____

Inspector Signature: _____

PRIOR ALTERATION/DAMAGE/REPAIR INSPECTION IS BASED ON GOOD FAITH OBSERVATION, MINIMAL DISASSEMBLY AND WITHOUT USE OF COMPUTERIZED MEASURING SYSTEM(S). See NMAC 12.2.14.1, *et seq.*, (NOT A WARRANTY.)

[12.2.14.14 NMAC - N, 8/31/2016]

HISTORY OF 12.2.14 NMAC: [RESERVED]