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**STATEMENT OF REASONS FOR AMENDMENT OF STATE PARKS DIVISION
RULES 19.5.2, 19.5.6, AND 19.5.7 NMAC**

This Statement of Reasons provides the basis upon which the Energy, Minerals and Natural Resources Department (EMNRD) amends the State Parks Division's (Division) rules, 19.5.2 NMAC, Park Visitor Provisions; 19.5.6 NMAC, Park Fees; and 19.5.7 NMAC, Filming in State Parks. It outlines the statutory background, the process for the amendments, a summary of the proposed amendments, and the reasons for adopting the amendments.

I. Statutory Authority

The Secretary is generally authorized to make and adopt rules necessary to carry out EMNRD's duties at NMSA 1978, 9-1-5(E). The Secretary is the issuing authority, unless the Secretary specifically delegates that authority in writing. EMNRD's general duties and purposes are set out at NMSA 1978, 9-5A-1 through 9-5A-7.

These rule amendments are adopted under the authority of NMSA 1978, Section 16-2-7 and Laws of 2019, Chapter 132, which provides that "Foster parents and children in the custody of foster parents who are residents of the state shall be provided free admission to state-owned museums and state parks; provided that eligibility for free admission shall be contingent upon demonstration of proof of identity, residency and status as a foster parent or child in the custody of a foster parent, in accordance with rules of the...Energy, Minerals and Natural Resources Department, for free day-use admission to State Parks."

II. Process

The Division drafted the proposed amendments to implement the rules required by Laws 2019, Chapter 132. Once Division staff drafted the proposed amendments, the proposed changes were distributed to the Cabinet Secretary, Deputy Cabinet Secretary, State Parks Division Director, State Parks Division Deputy Director, and EMNRD legal counsel for internal review and comment. The Division then prepared the proposed amendments for notice and public comment.

Notice of the rulemaking and a public hearing was published in the Albuquerque Journal on May 10, 2019, and the New Mexico Register on April 23, 2019. In addition, EMNRD distributed notice of the rulemaking including e-mailing the notice to the Legislative Council Service, posting notice on the Department of Information Technology's Sunshine Portal, posting notice on the Division's website, and distributing the notice for posting at the Division's regional offices and parks. On June 11, 2019, EMNRD held a public hearing on the proposed rule amendments at 9:00 a.m. in Porter Hall at the Wendell Chino Building, 1220 S. St. Francis Drive, in Santa Fe. The Division did not receive any comments regarding the proposed rule amendments. After the public hearing, the Division prepared the final rule amendments for adoption.

III. Provisions in the Amended Rules

19.15.2 NMAC (Park Visitor Provisions)

19.5.2.38 NMAC – Foster Families

The Division proposed to add a new section 19.5.2.38 NMAC to reflect Laws of 2019, Chapter 132, which provides for free day-use admission to state parks for foster parents and children in the custody of foster parents who are New Mexico residents. Eligibility is contingent upon demonstration of proof of identity, residency, and status as a foster parent or child in the custody of a foster parent in accordance with State Parks Division rules. The proposed rule provides that to obtain a free annual day use pass for entry to parks the foster parent shall present a current New Mexico driver's license or other state of New Mexico issued photo identification and a current New Mexico Children, Youth and Families Department foster parent certification card. This will establish proof of identity and residency and status as a foster parent as required by Laws 2019, Chapter 132.

19.5.2.39 NMAC – Park Passes to 19.5.2.43 NMAC – Research and Collections

The Division proposed to renumber 19.5.2.38 to 19.5.42 NMAC, as 19.5.2.39 to 19.5.2.43 NMAC, to reflect the addition of a new section and amend internal cross-references within those sections to reflect the renumbering.

19.5.6 NMAC (Park Fees)

19.5.6.15 NMAC – Special Use Permit

The Division proposed to amend the internal cross reference from 19.5.2.39 NMAC to 19.5.2.40 NMAC to reflect the renumbering in 19.5.2 NMAC.

19.5.7 NMAC (Filming in State Parks)

19.5.7.3 NMAC – Statutory Authority

The Division proposed to change the citation format for the statutory authority to reflect the style required by 1.24.10.12 NMAC.

19.5.7.9 NMAC – Activities Not Requiring A Film Permit

The Division proposed to amend the internal cross reference from 19.5.2.39 NMAC to 19.5.2.40 NMAC to reflect the renumbering of sections in 19.5.2 NMAC.

IV. Issues

The final version of amendments to 19.5.2, 19.5.6, and 19.5.7 NMAC summarized above do not differ from the version the Division initially proposed, except for the correction of a typographical error, the misspelling of superintendent in 19.5.2.42(A) NMAC. The Division did not receive any comments.

V. Final Rule Amendments

See 19.5.2, 19.5.6, and 19.5.7 NMAC, which are attached.

VI. Conclusion

The Division reviewed the proposed rule amendments for adverse effects to small businesses and determined that the proposed changes do not have adverse effects. These changes will not result in adverse competition, products, or fees that would impact small businesses.

After conducting a public meeting in Santa Fe and receiving no comments, the Energy, Minerals and Natural Resources Department through the State Parks Division adopts the amendments to 19.5.2, 19.5.6, and 19.5.7 NMAC summarized above in Section III and attached as stated in Section V. The amendments shall become effective on June 25, 2019.

4/13/19
Date:


Sarah Cottrell Propst, Cabinet Secretary

This is an amendment to 19.5.2 NMAC, adding a new Section 38 and amending Sections 39, 40, 41 and 42, effective 6/25/2019.

19.5.2.38 FOSTER FAMILIES: Foster parents and children in their custody who are New Mexico residents are entitled to free day use of parks. To obtain a free annual day use pass for entry to parks the foster parent shall present a current New Mexico driver's license or other state of New Mexico issued photo identification and a current New Mexico children, youth and families department foster parent certification card.
[19.5.2.38 NMAC – N, 6/25/2019]

[19.5.2.38] 19.5.2.39 PARK PASSES:

A. Concessionaires. The director or director designee (see Subsection Q of 19.5.7 NMAC) may issue park passes to concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents for access to and from the concession. Concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents using the park, lake or facilities away from the concession premise shall pay the appropriate fees.

B. Contractors. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue park passes to division contractors, suppliers or agents or other persons providing services to a park for access to the park. Division contractors, suppliers or agents or other persons providing services to a park using the park or its facilities for purposes other than providing services to a park shall pay the appropriate fees.

C. Access to private property. The director or director designee may issue park passes to persons needing to pass through a park to access private property. Persons with such park passes shall only use the park passes to travel through the park. If they use the park or its facilities they shall pay the appropriate fees.

D. Park support groups and volunteers. The director or director designee may issue park passes to individuals who are members of a park support group that has entered into an agreement with the department or, as provided in division policy, to volunteers who significantly contribute to the division.

E. Complimentary park passes. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue complimentary passes as rainchecks to visitors for unused services or to resolve visitor complaints about park operation or maintenance.

F. Official use passes. The director may issue "official use only" passes to state government executive branch officials with direct oversight of the division, park advisory board members and state legislators for the performance of their official duties.

G. Advertising and promotions. To promote the parks or in exchange for advertising or promotion of parks, the director may issue free or discounted park passes or not charge fees if the director obtains the secretary's approval after the division provides the secretary with written justification showing that the issuance of park passes for promotion or advertising or not charging fees for promotional purposes provides a benefit to the division. Reduced rates for advertising must be equal to or exceed the value of the park passes that the division provides in exchange for receiving the reduced rates.

[19.5.2.39 NMAC - Rn, 19.5.2.38 NMAC, 6/25/2019]

[~~19.5.2.39~~] 19.5.2.40 SPECIAL USE PERMITS:

A. The division shall authorize public assemblies involving groups of more than 10 people; public assemblies involving groups of 10 people or less that are using stages, platforms or structures; or special events within the state parks system only by special use permit and only after payment of associated fees. Persons shall submit applications for special use permits to the superintendent of the park where the special event or public assembly is proposed at least 15 calendar days prior to the special event or public assembly, or at least 30 calendar days prior to the special event if the special event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. The director may waive the time limits for submittal of special use permit applications where arrangements can be made in a shorter time without placing an undue administrative burden on staff or when no special arrangements are necessary.

B. Persons shall complete the division-provided special use permit, which may include the park where the special event or public assembly is proposed; the location of the proposed special event or public assembly within the park; the date of the proposed special event or public assembly; start and end times for the proposed special event or public assembly; the number of people expected to attend; a detailed description of the proposed special event or public assembly; the applicant's name, address and phone number; a hold harmless requirement if the applicant is a non-governmental entity; insurance coverage; and designation of the type of proposed special event or public assembly (*i.e.* special use, marine event, park event, etc.).

C. The superintendent shall approve the special use permit, approve the special use permit with conditions or deny the special use permit as provided in [~~19.5.2.39 through 19.5.2.41~~] 19.5.2.40 through 19.5.2.42 NMAC. The superintendent shall not issue a special use permit for a period of more than 14 consecutive calendar days without the director's approval. The director may approve a special use permit for more than 14 consecutive calendar days if the event will exceed 14 consecutive calendar days. The park may charge fees in addition to the special use permit fee to cover costs of additional staff, facilities, etc. needed for the special event or public assembly. The division may enter into an agreement with the special use permittee to have the special use permittee pay a fee equal to the estimated fees, such as day use fees, that individuals attending the special event would have paid in fees in lieu of such fees.

D. No person shall violate a condition or restriction attached to or indicated on the special use permit. The division may revoke a permit if the permit holder violates 19.5.2 NMAC. The superintendent may also revoke a special use permit for any of the conditions that constitute grounds for denial of a special use permit as provided in Subsection B of [~~19.5.2.40~~] 19.5.2.41 NMAC for special events and Subsection B of [~~19.5.2.41~~] 19.5.2.42 NMAC for public assemblies, or for violation of the terms and conditions of the special use permit. Such a revocation shall be made in writing, with the reasons for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation may be made to be followed by written confirmation within 72 hours.

[19.5.2.40 NMAC - Rn & A, 19.5.2.39 NMAC, 6/25/2019]

[19.5.2.40] 19.5.2.41 SPECIAL EVENTS:

A. Special events are allowed in a park if the applicant has obtained a special use permit from the superintendent.

B. The superintendent shall deny a special use permit if such activities would:

- (1) cause injury or damage to park resources;
- (2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;
- (3) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;
- (4) substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;
- (5) present a danger to the public health and safety;
- (6) result in significant conflict with other existing uses; or
- (7) not comply with the laws or policies of the landowner (*e.g.* United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.).

C. As a condition of the special use permit's issuance, the superintendent may require:

(1) for non-New Mexico government or non-federal government applicants, the filing of a bond payable to the director, in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used, and other costs resulting from the event; or

(2) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (*e.g.* United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner.

D. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the special event is allowed.

[19.5.2.41 NMAC – Rn, 19.5.2.40 NMAC, 6/25/2019]

[19.5.2.41] 19.5.2.42 PUBLIC ASSEMBLIES, MEETINGS:

A. Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within parks. A special use permit issued by the park ~~superintendent~~ superintendent is required for public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views that involve groups of:

- (1) more than 10 people; or
- (2) 10 people or less who are using stages, platforms or structures.

B. The superintendent shall, without unreasonable delay, issue a special use permit on proper application unless:

(1) a prior application for a special use permit for the same time and place has been made that has been or will be granted and the activities authorized by that special use permit do not reasonably allow multiple occupancy of that particular area;

(2) it reasonably appears that the event will present a danger to the public health or safety; or

(3) the event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, interference with program activities or impairment of public use facilities.

C. If the superintendent denies a special use permit, the superintendent shall inform the applicant in writing with the reasons for the denial set forth.

D. The superintendent shall designate on a map, which shall be available in the office of the superintendent, the locations available for public assemblies. Locations may be designated as not available if such activities would:

(1) cause injury or damage to park resources;

(2) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(3) substantially impair the operation of public use facilities or services of division concessionaires or contractors; or

(4) present a danger to the public health and safety.

E. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

F. It is prohibited for persons engaged in activities permitted or authorized pursuant to ~~[19.5.2.41]~~ 19.5.2.42 NMAC to obstruct or impede pedestrians or vehicles, harass park visitors, interfere with park programs or create security or accessibility hazards.

[19.5.2.42 NMAC - Rn & A, 19.5.2.41 NMAC, 6/25/2019]

[~~19.5.2.42~~] 19.5.2.43 RESEARCH AND COLLECTIONS:

A. Academic research activities, including plant and animal collecting, are allowed in a park if the person or entity has obtained a research permit through the division's resource program.

B. The division shall deny a research permit if such activities would:

(1) cause undue injury or damage to park resources;

(2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;

(3) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(4) substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;

(5) present a danger to the public health and safety;
(6) result in significant conflict with other existing uses;
(7) not comply with the laws or policies of the landowner (*e.g.* United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers; New Mexico state land office, etc.); or

(8) not comply with federal or state laws concerning threatened and endangered species or cultural resources.

C. As a condition of the research permit's issuance, the division may require:

(1) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (*e.g.* United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner; or

(2) the permittee to submit to the resource program a written report summarizing the data collected within six months of completion of the permitted activity.

D. The research permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the research activity is allowed.

E. The park may charge fees to cover costs of additional staff, facilities, etc. needed for the research activities.

[19.5.2.43 NMAC - Rn, 19.5.2.42 NMAC, 6/25/2019]

This is an amendment to 19.5.6 NMAC, Section 15, effective 6/25/2019.

19.5.6.15 SPECIAL USE PERMIT: \$15.00 (see [~~19.5.2.39~~ 19.5.2.40 NMAC)
[19.5.6.15 NMAC - Rp 19 NMAC 5.6.15, 5/1/2004; A, 1/1/2008; A, 1/1/2013; A,
6/25/2019]

This is an amendment to 19.5.7 NMAC, Sections 3 and 9, effective 6/25/2019.

19.5.7.3 STATUTORY AUTHORITY: 19.5.7 NMAC is authorized pursuant to [~~NMSA 1978, Section 9-1-5(E) and Section 16-2-2 et seq.~~] Subsection E of Section 9-1-5 NMSA 1978 and Section 16-2-2 et seq. NMSA 1978.

[19.5.7.3 NMAC - N, 1/1/2008; A, 6/25/2019]

19.5.7.9 ACTIVITIES NOT REQUIRING A FILM PERMIT:

A. An individual or entity does not need to obtain a film permit:

- (1)** when using a camera or other audio or video recording device for the individual's or entity's own personal use in areas open to visitors;
- (2)** for commercial photography, so long as the project does not require a film permit for any of the reasons stated in 19.5.7.8 NMAC; or
- (3)** when filming, photographing or audio recording a news event that occurs in a park.

B. When a film permit is not required pursuant to Subsection A of 19.5.7.9 NMAC, a special use permit may be required pursuant to [~~19.5.2.39~~] 19.5.2.40 NMAC, depending on the scope of the activity.

[19.5.7.9 NMAC - N, 1/1/2008; A, 1/1/2013; A, 6/25/2019]