

# NMAC

## Transmittal Form



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Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action: New  Amendment  Repeal  Emergency  Renumber  (ALD Use) Recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):   
Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes  No  Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

### Specific statutory or other authority authorizing rulemaking:

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

# Concise Explanatory Statement For Rulemaking Adoption:

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## Findings required for rulemaking adoption:

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### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

See attached four page document titled Statement of Reasons for Amendment of State Parks Division Rules 18.17.2 NMAC, 19.5.1 NMAC, 19.5.2 NMAC, and 19.5.6 NMAC.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Ben Shelton

Check if authority has been delegated

Title:

Acting Deputy Cabinet Secretary, Energy, Minerals and Natural Resources Department

Signature: (BLACK ink only OR Digital Signature)

Date signed:



11/25/24

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STATEMENT OF REASONS FOR AMENDMENT OF STATE PARKS DIVISION RULES 18.17.2 NMAC, 19.5.1 NMAC, 19.5.2 NMAC, AND 19.5.6 NMAC

This statement of reasons provides the basis upon which the Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division (Division) amended 18.17.2 NMAC Boating Operation and Safety, 19.5.1 NMAC General Provisions, 19.5.2 NMAC Visitor Provisions, and 19.5.6 NMAC Fees. This statement of reasons outlines the statutory background, process, and summary of the final version of the rule amendments and reasons for amending.

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. Per NMSA 1978, 16-2-7 The secretary shall promulgate and adopt rules for each park as circumstances may demand to the end that each state park may be made as nearly self-supporting as possible. Per NMSA 1978, 66-12-18 the state park and recreation division [state parks division] may promulgate regulations to carry into effect the provisions of the Boat Act.

These rule amendments are adopted under the authority of NMSA 1978, Section 16-2-7 and NMSA 1978, Section 66-12-18.

II. Process

The Division drafted proposed rule amendments based on our statutory mandate that each state park may be made as nearly self-supporting as possible. Additionally, the Division drafted proposed rule amendments based on identified needs for changes to off-highway vehicle allowances based on safety concerns. The Division staff and EMNRD legal counsel drafted the proposed amendments and distributed them to the Cabinet Secretary, Director, deputy directors, bureau chiefs, and other Division staff. After receiving internal comments, the Division prepared the proposed rule amendments for notice and public comment.

Prior to the public meeting, which was held on October 22, 2024, the Division posted the proposed amendments and public hearing notice on the Division's website. The Division published notice of the rulemaking and the hearing in the Albuquerque Journal on July 30, 2024, and the New Mexico Register on July 30, 2024. The Division also sent notice of the rulemaking and the hearing to stakeholders including landowning agencies or entities, other state agencies, concessionaires, outfitters, local communities near state parks, associations, and other interested parties, the Legislative Council Service, posted in the State Parks Division office and sent to the Small Business Regulatory Advisory Committee. The Division received eleven comments on the proposed rulemaking.

III. Language of the Replaced Rules

18.17.2 NMAC (Boating Operation and Safety)

The State Parks Division replaces 18.17.2 NMAC to include a definition of human-powered watercraft and paddle craft in Section 7 Definitions, amend the registration fees for vessels in Section 8, and require users of human-powered watercraft to wear personal flotation devices, and include human-powered watercraft in vessels that are not required to have a bailing bucket, bilge pump or any length of stout rope in Section 9.

18.17.2.7 Definitions

The Division amends subsection F of 18.17.2.7 NMAC to add the definition of human-powered watercraft. Including the definition of human-powered watercraft allows for the clarification of which vessels require the use of personal flotation devices and are required to maintain certain equipment on the vessel. The Division amends subsection G of 18.17.2.7 NMAC to add the definition of paddle craft. Including the definition of paddle craft allows for the clarification of which vessels require the use of personal flotation devices and are required to maintain certain equipment on the vessel.

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purchase; amend language for foster family free access to parks to match language in house bill 35 from the 2023 legislative session.

#### 19.5.2.11 Day Use

The Division amends subsection A of 19.5.2.11 NMAC to require that visitors shall pay required day use fees upon entering a park. These changes are based upon recommendations from the Fees Study that was completed by the Division in July 2023 as well as public comments received during our public comment period.

The Division amends subsection C of 19.5.2.11 NMAC to correct grammatical errors in the text. The subsection requires visitors to maintain sites in parks in a clean and sanitary condition.

#### 19.5.2.12 Camping

The Division amends subsection A of 19.5.2.12 NMAC to correct grammatical errors, to clarify the time for campsites to be vacated may vary if a park posts other hours, and to add Cerrillos Hills state park to the list of parks where camping is unavailable. Cerrillos Hills state park is a day use only park that was established in 2009 but not included on the list of parks where camping is not available under subsection A of 19.5.2.12 NMAC. The addition of language to allow posting alternative times for vacating a campsite allows for adaptive management throughout the state parks system especially for parks where staffing requires additional time for cleaning and maintaining sites.

The Division amends subsection C of 19.5.2.12 NMAC to correct grammatical errors in the text. The subsection requires visitors to maintain campsites in a clean and sanitary condition.

The Division amends subsection E of 19.5.2.12 NMAC to reduce the maximum stay limit during the peak season from May 1 through September 30. The change allows campers to reside in a park for a maximum of 7 days out of any 20 calendar day period from May 1 through September 30 and maintains the maximum 14 day out of any 20 calendar day stay limit from October 1 through April 30 annually. This reduction in stay limit during the peak visitation season allows for more rotation of campers in busy parks making sites more available to more people.

The Division amends subsection I of 19.5.2.12 NMAC to reduce the maximum stay limit for anchored boats or vessels to match the maximum stay limit proposed in subsection E of 19.5.2.12 NMAC. This reduction in stay limit during the peak visitation season allows for more rotation of campers in busy parks making sites more available to more people.

The Division amends subsection J of 19.5.2.12 NMAC to correct grammatical errors in the text. The subsection provides for reservations to be cancelled if campers do not occupy the site by 4:00 p.m. the day after the scheduled arrival date.

#### 19.5.2.13 Use of Facilities

The Division amends subsection D of 19.5.2.13 NMAC to indicate that sites with developed and designated special accessible facilities for the use of individuals with disabilities will be marked with standard ADA signage. This ensures that sites are designated for ADA priority usage and increases accessibility for persons with disabilities.

#### 19.5.2.14 Parking

The Division amends subsection A of 19.5.2.14 to reduce the time where a visitor may leave a trailer, boat or vessel that is not attached to a vehicle in parking areas or parking turnouts from 72 to 24 hours. This reduction in time is necessary to ensure that visitors are not blocking off parking areas and reducing availability of parking for other users.

#### 19.5.2.16 Off-Highway Motor Vehicles and Golf Cars

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and discussion, it was determined that waiving day use fees for NM residents should only occur during the off season to avoid overcrowding and resource issues in parks.

The Division amends subsection B of 19.5.2.34 NMAC to require that visitors purchase camping permits to camp in a park and to correct grammatical errors.. The addition of language requiring the purchase of camping permits clarifies requirements for camping in state parks.

#### 19.5.2.35 Annual Permits and Passes

The Division amends subsection B(2)(d) of 19.5.2.35 NMAC adding a New Mexico resident active-duty or veteran annual camping pass. During our public information sessions the Division received several comments indicating the public's desire to see more opportunities for veterans and military personnel to receive discounts on camping for NM state parks. The addition of this pass allows for NM active duty military personnel and NM veterans to purchase an annual camping permit at a discounted rate.

The Division amends subsection B(2)(e) of 19.5.2.35 NMAC to correct numbering after adding a previous subsection.

The Division amends subsection C of 19.5.2.35 NMAC to make annual passes valid from January 1 through December 31 annually rather than 12 months from the date of purchase. Standardizing the expiration date for all passes and making the pass term consistent enhances the Division's ability to track passes and prevent fraudulent use of passes through our reservation system.

The Division amends subsection D of 19.5.2.35 NMAC to require proof of purchase for a replacement annual camping permit to be issued. Currently there is no requirement for a proof of purchase to receive a discounted replacement permit. Implementing this requirement will help prevent fraudulent purchases of replacement annual camping permits.

#### 19.5.2.38 Foster Families

The Division amends 19.5.2.38 NMAC to add language for foster family free access to parks to match language in house bill 35 from the 2023 legislative session.

#### 19.5.2.39 Park Passes

The Division amends subsection G of 19.5.2.39 NMAC to correct grammatical errors in the text.

#### 19.5.2.42 Public Assemblies, Meetings

The Division amends subsection A of 19.5.2.42 NMAC to correct spelling errors in the text.

### 19.5.6 NMAC (Fees)

The Division amends 19.5.6 NMAC to change fees for day use and camping permits, , add a parking fee to the Rio Grande Nature Center state park, change entrance fees at Living Desert Zoo and Gardens state park and Smokey Bear historical park, change utility fees, add a RV dump station use fee, , remove outdated wording, increase special use permit fees, add a short term concession permit, eliminate wildlife blind fees, and implement a regular review of fees based off the Chained Consumer Price Index for Urban Consumers.

#### 19.5.6.8 Day Use Permit (use fees)

The Division amends subsection A of 19.5.6.8 NMAC to implement differentiated day use fees for NM residents and non-residents, make school bus fees applicable to non-residents only, and implement a dump station fee for

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The Division amends subsection B of 19.5.6.18 NMAC to delete outdated language. Language referencing fees prior to December 1, 2018 has been deleted as it is no longer relevant.

The Division amends subsection C of 19.5.6.18 NMAC to delete outdated language. Language referencing fees prior to December 1, 2018 has been deleted as it is no longer relevant.

The Division amends subsection F of 19.5.6.18 NMAC to delete wildlife blinds rental fees and renumber following sections. The Division does not currently rent wildlife blinds.

19.5.6.19 Fee Changes

The Division adds 19.5.6.19 NMAC to require the Division to review the fees in 19.5.6 NMAC every five years and provide the opportunity to amend fees to reflect inflation as evidenced in the Chained Consumer Price Index for Urban Consumers. The addition of a requirement to review fees on a regular basis eliminates stagnation in the fee structure and avoids large fee increases in future years.

V. Rule

See 18.17.2 NMAC, 19.5.1 NMAC, 19.5.2 NMAC, and 19.5.6 NMAC which are attached.

VI. Conclusion

The Division considered the potential impacts of the rule amendments on small businesses and does not expect adverse effects to small businesses. EMNRD informed the Small Business Regulatory Advisory Commission as required by law and received no comment. After conducting multiple public information sessions around the state and virtually, we received a significant amount of input regarding our rule amendments. This input was used to better inform our decisions and incorporated into our final rule amendments. After conducting a public hearing in Santa Fe and receiving public comments, and considering comments from the Division's personnel, EMNRD, through the State Parks Division, adopts amendments to 18.17.2 NMAC, 19.5.1 NMAC, 19.5.2 NMAC and 19.5.6 NMAC summarized above in Section III and attached as stated in Section IV. The amendments shall become effective on January 1, 2025.



\_\_\_\_\_  
Cabinet Secretary or Designee

Date: 11/14/24

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**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 5     STATE PARKS AND RECREATION**  
**PART 1        GENERAL PROVISIONS**

**19.5.1.1        ISSUING AGENCY:** Energy, Minerals and Natural Resources Department, State Parks Division.  
[19.5.1.1 NMAC - Rp, 19.5.1.1 NMAC, 01/01/2025]

**19.5.1.2        SCOPE:** 19.5.1 NMAC applies to persons using the New Mexico state parks system.  
[19.5.1.2 NMAC - Rp, 19.5.1.2 NMAC, 01/01/2025]

**19.5.1.3        STATUTORY AUTHORITY:** 19.5.1 NMAC is authorized pursuant to Subsection E of Section 9-1-5 NMSA 1978 and Section 16-2-2 *et seq.* NMSA 1978.  
[19.5.1.3 NMAC - Rp, 19.5.1.3 NMAC, 01/01/2025]

**19.5.1.4        DURATION:** Permanent.  
[19.5.1.4 NMAC - Rp, 19.5.1.4 NMAC, 01/01/2025]

**19.5.1.5        EFFECTIVE DATE:** January 1, 2025, unless a later date is cited at the end of a section.  
[19.5.1.5 NMAC - Rp, 19.5.1.5 NMAC, 01/01/2025]

**19.5.1.6        OBJECTIVE:** 19.5.1 NMAC's objective is to identify general provisions and definitions, which apply to parts in Title 19, Chapter 5.  
[19.5.1.6 NMAC - Rp, 19.5.1.6 NMAC, 01/01/2025]

**19.5.1.7        DEFINITIONS:**

A.     **"Authorized areas"** means locations, places, sites, regions, zones or spaces identified by the director or, for purposes of hunting or fishing, the state game commission. These areas may be defined with signs or other appropriate proclamation or means. For purposes of bowfishing, authorized areas include all parks where fishing is allowed.

B.     **"Boating and rafting excursions"** means a guiding service for boating or rafting trips offered to the general public.

C.     **"Capital improvement"** means a construction project by a concessionaire to the concession premises that is not maintenance or repair and that costs at least \$1,000.

D.     **"Commercial activity"** means for-profit sales or services but does not include the operation of vending machines unless the vending machine is operated as part of a larger concession operation.

E.     **"Commercial charter bus"** means a bus transporting a group of persons who pursuant to a common purpose, and under a single contract at a fixed price, have acquired the exclusive use of a bus to travel together under an itinerary.

F.     **"Commercial filming"** means the use of motion picture, videotaping, sound recording or other moving image or audio recording equipment that involves the advertisement of an event, product or service; or the creation of a product for sale including film, videotape, television broadcast or documentary of participants in commercial sporting or recreation events for the purpose of generating income.

G.     **"Commercial photography"** means still images taken with a camera that the photographer intends to sell.

H.     **"Concession"** means commercial activity conducted within a park the department has authorized in writing.

I.     **"Concessionaire"** means the owner or operator of a concession who operates pursuant to a department-issued concession contract.

J.     **"Concessions administrator"** means a division employee who maintains records and documentation concerning concession contracts and concession permits.

K.     **"Concession contract"** means an agreement between the department and a person, or business entity, which allows the concessionaire to provide services, merchandise, accommodations or facilities within a park. The concessionaire may or may not occupy a permanent structure or location within the park. The concession contract's term shall not exceed 30 years pursuant to Section 16-2-9 NMSA 1978.

L.     **"Concession permit"** means a permit the department issues to a person or business entity to provide commercial activities, including services or goods in a park for a period of up to one year. The fee for a

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concession permit is established in 19.5.6 NMAC. Services the division may include under a concession permit include guiding and outfitting services for fishing, boating and rafting excursions; educational and park resource protection services; and other services or goods, including commercial services, that enhance visitors' experience and enjoyment, such as sales of firewood, propane, ice, food or refreshments.

- M. "Concession permittee" means the holder of a department-issued concession permit.
- N. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.
- O. "Department" means the energy, minerals and natural resources department.
- P. "Director" means the director of the energy, minerals and natural resources department, state parks division.
- Q. "Director designee" means persons the director appoints including deputy directors, bureau chiefs, regional managers and park superintendents.
- R. "Division" means the energy, minerals and natural resources department, state parks division.
- S. "Flotation assist device" means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water's surface.
- T. "Geocaching" means an outdoor treasure-hunting activity in which the participants use a global positioning system receiver or other navigational means to hide or find containers called "geocaches" or "caches".
- U. "Gross receipts from sales and services" means the total amount of receipts from sales and services.
- V. "Guide" means an individual or an employee of an outfitter who is hired to escort or accompany clients in fishing, rafting or boating.
- W. "Letter boxing" means an outdoor hobby that combines elements of orienteering, art and puzzle solving. Letter boxers hide small, weatherproof boxes in publicly accessible places and distribute clues to finding the boxes in printed catalogs, on websites or by word of mouth. The activity is characterized by the boxes containing a logbook and a rubber stamp. Letter boxers stamp the box's logbook with personal rubber stamps and use the box's stamp to imprint their personal logbooks as proof they found the box.
- X. "Net receipts from sales and services" means the total amount of receipts from sales and services, less the amount of gross receipts taxes.
- Y. "Off highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:
  - (1) "all-terrain vehicle", which means a motor vehicle 50 inches or less in width, having an unladen dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;
  - (2) "off-highway motorcycle", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and has handlebar-type steering control;
  - (3) "snowmobile", which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or part by skis, belts, cleats, runners or low-pressure tires;
  - (4) "recreational off-highway vehicle", which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:
    - (a) a steering wheel for steering control;
    - (b) non-straddle seating;
    - (c) maximum speed capability greater than 35 miles per hour;
    - (d) gross vehicle weight rating no greater than 1,750 pounds;
    - (e) less than 80 inches in overall width, exclusive of accessories;
    - (f) engine displacement of less than 1,000 cubic centimeters; and
    - (g) identification by means of a 17-character vehicle identification number; or
  - (5) by rule of the department of game and fish, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes.
- Z. "Other power-driven mobility device" means any mobility device powered by batteries, fuel or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion including golf cars, electronic personal assistance mobility devices, such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.
- AA. "Outfitter" means a person or company who employs guides.
- BB. "Park" means an area designated as a state park within the state parks system and that the division manages or owns.



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CC. "Park" or "parking" means the leaving of a vehicle, camping unit or trailer, whether occupied or not, in a location, other than when engaged in loading or unloading.

DD. "Park management and development plan" means a plan used as a guide for expansion, services, programs and development for the park.

EE. "Park support group" means an organization as defined in Section 6-5A-1 NMSA 1978, or an organized group of individuals that volunteers time, services or funds to promote and support the division or an individual park and whose principal purpose as authorized by the division is to complement, contribute to and support, aid the function of or forward the division's or park's purposes.

FF. "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

GG. "Personal flotation device" means a United States coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

HH. "Rally" means a parking area or facility designated for group functions.

II. "Receipts" means consideration in money and in trade received from sales and charges for services.

JJ. "Regional manager" means a division employee responsible for several parks within a region.

KK. "Resident" means an individual with a valid New Mexico state identification card or NM license plate on the vehicle.

LL. "Resource program" means a division employee or employees responsible for the natural and cultural resource protection program.

MM. "Sales and services" means transactions by a concessionaire, or a concessionaire's agents or employees, for which the concessionaire receives consideration in money or money's worth in connection with the concession business operated pursuant to the concession contract.

NN. "Secretary" means the secretary of the department.

OO. "Special event facility" means an entire building or structure such as a visitor center, lodge, pavilion or group shelter, or an area designated by the superintendent.

PP. "Special use permit" means a permit the division has issued to a person for a non-commercial activity or event in a park.

QQ. "State parks system" means land and water in a park.

RR. "Superintendent" means a division employee who is in charge of a specific park; which includes a park superintendent or park manager.

SS. "Vehicle" means an automobile, car, van, sport-utility truck, pickup truck, motorcycle, wagon, buggy or similar device that is used or may be used to transport persons or property on a highway, except devices moved exclusively by human power.

TT. "Vending machine" means a coin-operated beverage, snack or service machine subject to division approval.

UU. "Visitor" means a person who reserves park facilities or enters a park. This definition does not include department employees who are on duty, concessionaires or their employees operating their concession or on duty employees of an entity that owns the property where the park is located.

VV. "Wheelchair" means a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or both indoor and outdoor locomotion.

WW. "Working days" means Monday through Friday, excluding state holidays.  
[19.5.1.7 NMAC – Rp, 19.5.1.7 NMAC, 01/01/2025]

#### History of 19.5.1 NMAC:

**Pre NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

SPRD 67-1, Rules and Regulations, 07/17/1967;

SPRD 68-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 10/17/1968;

SPRD 69-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 09/11/1969;

SPRD 71-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 11/10/1971;

SPRD 72-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 06/05/1972;

SPRD 73-3, New Mexico Pleasure Boating Requirements and State Park Regulations, 09/14/1973;

SPRD 74-1, New Mexico Pleasure Boating Requirements and State Park Regulations, 02/19/1974;

SPRD 75-1, New Mexico State Park and Recreation Commission Regulations, New Mexico Boating Law, 1975 Edition, 02/24/1975;

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SPRD 77-1, New Mexico State Park and Recreation Commission Regulations, New Mexico Boating Law, 1977 Edition, 04/15/1977;

SPRD 79-1, New Mexico Park Regulations and Boating Laws, 07/31/1979;

SPRD 82-1, New Mexico Park Regulations and Boating Laws Revised in 1981, 05/17/1982;

SPRD 87-1, New Mexico State Park Regulations and Boating Laws, Revised in 1987, 05/06/1987;

EMNRD PRD 87-3, Rules Governing Motorboat Registration and Numbering, Boat Titling and Excise Tax Collections, Security Participation under The Boat Act, 08/06/1987;

EMNRD PRD 89-1, Boat Act Regulations, 12/21/1989;

EMNRD PRD 89-2, New Mexico State Park Regulations, 12/21/1989;

EMNRD PRD 92.1, Boat Act Regulations, 05/20/1992.

**History of Repealed Material: [RESERVED]**

**Other History:**

Those portions of EMNRD PRD 89-2, New Mexico State Park Regulations, filed 12/21/1989 and EMNRD PRD 92.1, Boat Act Regulations, filed 05/20/1992 were renumbered, reformatted and replaced by 19 NMAC 5.1, General Provisions, filed 12/17/1996.

19 NMAC 5.1, General Provisions, filed 12/17/1996 renumbered, reformatted, amended and replaced by 19.5.1 NMAC, General Provisions; effective 12/31/2002.

19.5.1 NMAC, General Provisions; filed 12/31/2002, was repealed and replaced by 19.5.1 NMAC, General Provisions; effective 01/01/2025.