

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 5 STATE PARKS AND RECREATION
PART 5 CONCESSION ACTIVITIES

19.5.5.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, State Parks Division.
[19.5.5.1 NMAC - Rp, 19.5.5.1 NMAC, 1/1/2008]

19.5.5.2 SCOPE: 19.5.5 NMAC applies to a person conducting commercial activity within the state parks system and to a person who proposes to conduct commercial activity within the state parks system, except for a park support group unless the division director determines that the commercial activity's scale requires 19.5.5 NMAC's application to such group. 19.5.5 NMAC does not apply to repair or assistance services the public hires for personal property assistance or repair within a park. 19.5.5 NMAC does not apply to contractors the division hires to perform construction or other services for the division within the state parks system.
[19.5.5.2 NMAC - Rp, 19.5.5.2 NMAC, 1/1/2008]

19.5.5.3 STATUTORY AUTHORITY: 19.5.5 NMAC is authorized pursuant to NMSA 1978, Section 9-1-5(E) and Sections 16-2-2 *et seq.*
[19.5.5.3 NMAC - Rp, 19.5.5.3 NMAC, 1/1/2008]

19.5.5.4 DURATION: Permanent.
[19.5.5.4 NMAC - Rp, 19.5.5.4 NMAC, 1/1/2008]

19.5.5.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.
[19.5.5.5 NMAC - Rp, 19.5.5.5 NMAC, 1/1/2008]

19.5.5.6 OBJECTIVE: 19.5.5 NMAC's objective is to establish standards and procedures for allowing commercial activities within the state parks system, which will provide essential, quality service to the public while preserving natural and cultural resources; provide economic development opportunities for the public; and provide revenue for the state of New Mexico.
[19.5.5.6 NMAC - Rp, 19.5.5.6 NMAC, 1/1/2008]

19.5.5.7 DEFINITIONS: [RESERVED]
[19.5.5.7 NMAC - Rp, 19.5.5.7 NMAC, 1/1/2008]
[See 19.5.1.7 NMAC for definitions.]

19.5.5.8 SUBMITTAL OF PROPOSALS FOR CONCESSION CONTRACTS:

A. An interested person seeking to operate a concession within a park or a concessionaire within a park who wishes to expand services beyond the location the concession contract authorizes may send a proposal summary including a brief description of the concession operation with the services to be offered, the concession's proposed location within the park and a description of how the concession meets the criteria in Subsection A of 19.5.5.9 NMAC to the superintendent at the park where the concession is proposed.

B. The director shall evaluate the proposal summary, with the understanding that new or replacement contracts shall be awarded on a competitive basis and notify the interested person and any existing concessionaire that:

(1) the proposal summary indicates the concession does not fit the criteria as listed in Subsection A of 19.5.5.9 NMAC; or

(2) the division will issue a request for concession proposals and the interested person may submit a proposal.

C. The division may request concession proposals when the division determines that there is a concession opportunity within a park, when a concession contract with an existing concessionaire has been terminated or expires or when an existing concessionaire no longer wishes to provide the services. The division shall consider at least the following in deciding whether to issue a request for proposals for the concession:

(1) the park's location, remoteness and, if applicable, facility accommodations;

(2) the population of the area surrounding the park and similar services being offered within the area;

(3) whether other persons have expressed an interest in providing the concession;

- (4) the proposed concession operation's size; and
- (5) whether an existing concession can provide the new and expanded service, as provided by the existing contract.

D. An interested person responding to a request for concession proposals shall submit the original of a concession proposal consisting of a cover letter and proposal summary, bound with tab dividers indicating the separately numbered paragraphs corresponding to the following numbers and information requested to the concessions administrator at the division office in Santa Fe through the superintendent at the prospective park where the concession is to be located.

- (1) Business plan for the proposed concession that identifies:
 - (a) the type of business;
 - (b) the park name and the business' specific location within the park;
 - (c) services to be offered;
 - (d) proposed concession fee;
 - (e) the percentage mark up of goods and services to be offered;
 - (f) a description of how the business will be operated;
 - (g) an assurance statement that the concessionaire will follow all federal, state and local statutes or ordinances and regulations or rules;
 - (h) a proposed maintenance schedule;
 - (i) a building and improvements schedule outlining any proposed capital improvements, including a plan for the financing of the capital improvements, if applicable;
 - (j) identification of all investors or potential investors; and
 - (k) a current financial statement.
- (2) A market analysis that:
 - (a) defines the market area;
 - (b) identifies existing concessions and other similar ventures within the market area and an indication of their success;
 - (c) provides the results of any existing public demand survey; and
 - (d) estimates the economic impact to the park and neighboring community.
- (3) Plan for advertising and promoting the proposed concession and the park.
- (4) Environmental evaluation of the effects of operating the proposed business that addresses solid and liquid waste generation/removal; air quality; water quality; and compliance with federal, state and local environmental laws.
- (5) A cultural property evaluation that includes the identification and significance of cultural properties in the project area and outlines the project impact on cultural properties and proposed impact mitigation, which follows appropriate state or federal cultural property legislation, guidelines and standards, and is coordinated with appropriate federal and state agencies, including the state historic preservation office.
- (6) Statement of the proposed terms and conditions relating to revenue generated to the state and term of agreement.
- (7) Identification of required permits from other agencies and authorization or pre-approval, as required.
- (8) Description of past business or other experience that demonstrates the interested person's ability to operate the concession.
- (9) Projected revenue statement.

E. The division shall not evaluate incomplete proposals. The division may request additional information from the interested person as necessary for the proposal's review and evaluation.

F. The division may allow persons submitting proposals the opportunity to discuss the proposals with the division and revise the proposals, but may accept proposals without these discussions. The division may permit interested persons to revise their proposals after submittal of proposals and prior to the division's acceptance for the purpose of obtaining best and final offers. The division may conduct negotiations with interested persons who submit proposals the division finds to be reasonably likely to be selected.

G. The division should notify the interested person of its decision to accept or reject the proposal. During the review process, the division reserves the right to seek comment on a proposal from the public, federal and state agencies and other appropriate entities. If the division requests comments, it may take additional time to review and evaluate a proposal and reach a decision to accept or reject the proposal.

H. When an existing concession contract expires, the division shall not give the existing concessionaire preference for selection. The division may consider performance and the amount of capital investment in the selection process.

[19.5.5.8 NMAC - Rp, 19.5.5.8 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.9 CRITERIA FOR GRANTING CONCESSION CONTRACTS: The secretary shall consider at least the following in determining whether or not to grant a concession contract.

A. Concessions shall:

- (1) provide a needed service or a service in which visitors have shown a substantial interest and the service is not adequately provided within the park or within the area;
- (2) provide services to the general public rather than a particular individual or group;
- (3) enhance, improve, protect and conserve park natural, historical and cultural resources;
- (4) provide reasonable revenue to the state in exchange for the concession agreement;
- (5) include facilities, if required, that are of sufficient size to support the proposed activity and that are harmonious in form, line, color and texture with the surrounding landscape; and
- (6) be consistent with the park management and development plan in effect for the park in which the concession is to be located.

B. The division shall not grant new concession contracts unless the director and secretary have approved a park management and development plan that identifies the concession development.

C. Concessionaires shall:

- (1) provide evidence to the division that the concessionaire possesses a sufficient level of experience and adequate financial resources to operate the concession in an efficient and professional manner; and
- (2) not have past concession performance problems, such as repeated noncompliance with previous or current concession contracts or concession permits or 19.5.5 NMAC.

[19.5.5.9 NMAC - Rp, 19.5.5.9 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.10 CONCESSION CONTRACT PROVISIONS: Following a proposal's acceptance, the division shall enter into negotiations with the successful offeror for a concession contract to operate the concession or with a concessionaire to amend an existing concession contract. To the extent 19.5.5.10 NMAC contradicts an existing concession contract in effect on May 15, 1997, 19.5.5.10 NMAC shall not apply to those contracts unless they are renegotiated or amended. The concession contract's provisions shall be consistent with the following requirements.

A. The concession contract's term shall be limited to the shortest period possible and the term shall not exceed five years unless justified by at least the following: the amount of a concessionaire's investment, the capital improvements made or to be made on the premises and the types of services offered. Under no circumstances shall the concession contract's term exceed 30 years. The division may terminate the concession contract for the concessionaire's noncompliance with the concession contract or 19.5.5 NMAC, or if the division's lease or other agreement with the landowner (*e.g.* United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir terminates.

B. Each concession contract shall include a legal description or a detailed map that defines the area in which the concession will operate.

C. A concession contract is subject to limitations applicable federal and state agencies place on the division. The division reserves the right to install park facilities and utilities and to use the park for authorized purposes. The division reserves the right to close the park or the concessionaire's operations for reasonable law enforcement or safety purposes.

D. A concession contract shall require the concessionaire to pay the division a monthly concession fee, based on a flat fee or a percentage of the concessionaire's net receipts from sales and services. The concessionaire shall submit the concession fee and a monthly report detailing net receipts from sales and services on a division provided form to the concessions administrator at the division office in Santa Fe. The concession fee and monthly report shall be postmarked no later than 5:00 p.m. on the 25th day of the month after the reporting month, unless the 25th falls on a Saturday, Sunday or state-recognized holiday in which case the concession fee and monthly report shall be postmarked no later than 5:00 p.m. of the next business day. The concessionaire's failure to submit the concession fee and monthly report shall result in a penalty fee of 10 percent of the concession fee for the month that is late or \$50.00, whichever is greater.

E. The concession contract shall include a schedule for construction. If the schedule for construction includes improvements to publicly owned property, the division may authorize the concessionaire in writing to expend a percentage of amounts due the division in lieu of remitting them to the division for construction and

alterations to publicly owned property to benefit the park. Improvements shall be consistent with the park management and development plan and the concessionaire shall obtain the division's, and if applicable the landowner's, prior approval for the improvements.

F. The concession contract shall require the concessionaire to have liability insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as co-insured, and indemnifying the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, for public liability, personal injury and property damage in amount equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time along with worker's compensation insurance, if applicable, prior to taking control of the concession premises.

G. The concession contract shall require the concessionaire, prior to taking control of the concession premises, to have the greater of:

(1) financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of 10 percent of the gross receipts from sales and services for the prior year; or

(2) financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of \$5,000 annually, by performance bond or irrevocable letter of credit; if the receipts are anticipated to be less than \$50,000, the division shall consider the concession operation's size and nature and may reduce the financial assurance amount.

H. The concessionaire shall properly maintain concession facilities and real property the concessionaire intends to use in operating the concession and capital improvements the concessionaire makes to the premises. The concessionaire shall complete maintenance with due diligence, in a commercially reasonable manner, so as to ensure visitors' health, safety and welfare. The concessionaire shall prepare an annual operation and maintenance plan, which requires the superintendent's approval. The superintendent shall submit a copy of the approved operation and maintenance plan to the concessions administrator. The approved operations and maintenance plan shall become part of the file the concessions administrator maintains.

I. The concessionaire shall comply with appropriate local, state and federal laws and shall comply with current applicable environmental regulations or rules and building code requirements, including those for accessibility, historical preservation and cultural properties protection. The concessionaire shall obtain applicable permits prior to beginning construction and provide copies to the superintendent.

J. Concessions offering food services shall comply with federal statutes and regulations, state statutes and rules and county or municipal ordinances regarding food sanitation.

K. A concession's advertising and signs within the park shall be subject to the director's prior written approval, and the appropriate federal agency or other state agency if applicable. Approvals shall become a part of the file the concessions administrator maintains. Advertising through any media, including the internet, shall acknowledge that the concession premises are within the park in which the concession is located. Printed information using the logo of the division or a federal agency or other state agency requires prior written approval from the division or the federal agency or other state agency.

L. No concession contract shall be amended except by written instrument executed by the parties and approved by the New Mexico board of finance and applicable state or federal agencies.

M. Either the division or a concessionaire may request to amend the concession contract provisions or to renegotiate the contract at any time during the contract term. A concessionaire shall make such a request in writing to the superintendent. Within 30 calendar days of receipt of such a request, the division should either notify the concessionaire of its decision or schedule a meeting with the concessionaire to negotiate the contract. If the concessionaire seeks to amend the contract provisions or to renegotiate the contract in order to expand services beyond those authorized by the concession contract, the concessionaire shall comply with 19.5.5.8 NMAC. The concessionaire shall also submit a copy of a request for amendment to the concessions administrator.

N. Upon expiration or termination of the concession contract the following shall apply to disposal or removal of improvements.

(1) Upon expiration or termination of the concession contract, the incoming concessionaire shall purchase the permanent improvements that have been placed on the concession premises with the secretary's prior written approval. Sale of improvements and personal property shall be at appraised value and conducted as follows. The current concessionaire shall at concessionaire's own expense provide an appraisal conducted by a licensed independent appraiser six months prior to expiration of the contract. Any person submitting a concession proposal pursuant to 19.5.5.8 NMAC, for an existing concession where such appraised improvements exist, shall provide, with his or her proposal, proof of financing based on the appraisal. Upon award the incoming concessionaire may

accept the appraisal or at the incoming concessionaire's expense conduct a second appraisal. If neither appraisal is acceptable to both the prior concessionaire and the incoming concessionaire a third appraiser acceptable to both may be sought. The third appraisal shall be binding on both the prior concessionaire and incoming concessionaire.

(2) If upon the expiration or termination of the concession contract there is not an incoming concessionaire, within 120 calendar days after expiration or termination the concessionaire shall remove the personal property and any permanent improvements the division has directed the concessionaire to remove from the concession premises at the concessionaire's own costs and the concessionaire shall restore the concession premises to a safe and natural condition after removing permanent improvements that the division has not authorized the concessionaire to leave in place.

O. A concessionaire shall establish and maintain a system for record keeping that uses generally accepted accounting principles. A concessionaire shall submit a year-end financial statement a New Mexico independent certified public accountant prepared that includes an income statement, balance sheet and statement of cash flows no later than 90 calendar days after the end of the concession fiscal year to the concessions administrator at the division office in Santa Fe. The level of certified public accountant assurance certification may be an audit, review or compilation of the financial statements. The division shall consider the amount of the concessionaire's gross receipts from sales and services and length of term of the concession contract when determining the level of certification required.

P. The department and, if applicable, the federal agency or other state agency shall have access to and may examine and audit a concessionaire's pertinent books, documents, papers and other records related to the concession business operated pursuant to the concession contract during the concession contract's term and for three years after the concession contract has expired. A concession shall make such records available at the concession operation or at the division's office in Santa Fe upon demand during usual business hours. Such records include financial, employer and equipment records.

Q. If the division operates the park in which the concession is located pursuant to a lease with a local, state or federal agency, the concession contract is subject to the lease agreement between the division and the agency and may require the appropriate agency's approval.

[19.5.5.10 NMAC - Rp, 19.5.5.10 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.11 CONCESSION CONTRACT APPROVAL BY NEW MEXICO BOARD OF FINANCE:

Concession contracts require the New Mexico board of finance's approval. After the parties have agreed on contract terms and signed the concession contract, the division shall submit the concession contract to the board of finance for approval.

[19.5.5.11 NMAC - Rp, 19.5.5.11 NMAC, 1/1/2008]

19.5.5.12 ASSIGNMENT AND SUBCONTRACTS OF CONCESSION CONTRACTS:

A. A concessionaire shall not transfer, sell, subcontract, encumber, assign, extend, renew, assign management responsibilities, exchange concession business or property or assign rights a concession contract grants, without the secretary's prior written approval. In addition, the above transactions may also require the approval of the New Mexico board of finance and the appropriate federal or state agency. Subcontracts are subject to the concession contract's terms and provisions.

B. The secretary may choose not to approve a transfer, sale, subcontract, encumbrance, assignment, extension, renewal, assignment of management responsibilities, exchange of concession business or property or an assignment of rights that a concession contract grants at the secretary's discretion or may place appropriate conditions on approval, including modification of the concession contract's terms and conditions as a condition of approval. The secretary shall not unreasonably withhold a sale or transfer or place unreasonable conditions or modifications on a concession contract as a condition of approval.

C. A concessionaire who seeks to subcontract services the concession contract authorizes shall submit a proposed subcontract to the superintendent who shall attach a forwarding letter with recommendations concerning the proposed subcontracting to the concessions administrator. The division may request additional information from the concessionaire as necessary for the subcontract's review and evaluation. The division shall notify the concessionaire after the proposed subcontract's receipts of its decision to approve or reject the subcontract. The concessionaire shall submit the subcontract for approval at least 90 calendar days prior to the subcontract's intended effective date to allow for approval by the board of finance and the appropriate federal or state agency, if required.

[19.5.5.12 NMAC - Rp, 19.5.5.12 NMAC, 1/1/2008]

19.5.5.13 REVIEW OF DECISIONS BY THE DEPARTMENT:

A. Requests for review or written responses.

(1) If the division proposes to terminate a concession contract for noncompliance with the contract terms, the division shall send a notice of proposed termination to the concessionaire identifying the areas of noncompliance. The notice shall provide that the concessionaire may request review by the secretary of the division's proposal to terminate by responding in writing to the proposal to terminate within 15 calendar days after the notice of the proposed termination's receipt. The notice shall provide that proposed termination shall be effective 30 calendar days after the concessionaire's receipt of the notice if the concessionaire does not request review. The division may include in a concession contract provisions that provide other reasons for termination and a review process for terminations based upon those reasons.

(2) If the division decides to terminate a concession contract immediately without notice due to a life endangering situation, the concessionaire may request review by the secretary or respond in writing within 15 calendar days after termination.

(3) If the division does not approve a concessionaire's request for transfer, sale, subcontract or any other transaction requiring approval as set forth in Subsection A of 19.5.5.12 NMAC, the concessionaire may request review by the secretary or respond in writing within 15 calendar days after receipt of notice that the division did not approve the transfer, sale, subcontract or other transaction.

B. Review by the secretary shall consist of an informal oral response by the concessionaire in which the concessionaire may present justification, facts, etc. that support continuing the concession's operation. If the concessionaire requests review of a decision, the department shall meet with the concessionaire within 15 calendar days following the request. The secretary may designate an employee of the department, but not of the division, to hear the concessionaire's response.

C. The secretary shall consider the concessionaire's written or oral response. The secretary shall send a final notice to the concessionaire either affirming or withdrawing the decision within 15 calendar days after the written response's receipt or within 15 calendar days after the oral response. The secretary's decision shall be final and is not subject to further review or appeal within the department.

[19.5.5.13 NMAC - Rp, 19.5.5.13 NMAC, 1/1/2008]

19.5.5.14 CONCESSION PERMITS:

A. A concession permit is valid for one year or less. For outfitters and guides, the concession permit's full one-year period is from April 1st until March 31st annually. All other concession permits are valid for 12 months from the date of issue, unless otherwise indicated on the concession permit. The concession permit activity is allowed only on the date or dates of activity approved in the permit.

B. A person applying for a concession permit shall obtain a concession permit application from the superintendent at the park where the applicant intends to operate. The application shall require the following information: a detailed description and location of the proposed activity, when the proposed activity will take place and the number of people involved; the applicant's information including name, address and telephone number; the applicant's New Mexico tax identification number and proof of insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as additional insured; and a hold harmless agreement signed by the applicant. The person shall complete the application and return it to the superintendent along with the concession permit fee (see 19.5.6 NMAC). An outfitter or guide shall submit a concession permit application to the superintendent by March 1st if the applicant intends to hold a concession permit for the full permit term beginning April 1st.

C. The superintendent shall review the application and determine whether the service or activity meets the following criteria:

- (1) does not significantly adversely impact an existing concessionaire's operation;
- (2) provides a needed service to park visitors or a service in which the public has shown a substantial interest;
- (3) enhances, improves or protects park resources or enjoyment thereof; and
- (4) meets the concession permit definition in 19.5.1.7 NMAC.

D. The superintendent should contact the applicant within 15 calendar days if the application is incomplete. The superintendent may request additional information from the applicant as necessary for the application's review and evaluation. The regional manager shall submit applications the superintendent and regional manager approve to the concessions administrator for the division's processing and review and the secretary's final approval.

E. The concession permittee shall not maintain fixed assets within the park.

- F.** The concession permittee's business address shall be outside of the park.
- G.** Concession permittees, their employees and their clients shall pay applicable fees associated with a park's use. See 19.5.6 NMAC.
- H.** A concession permit is valid only within the park for which it is issued. However, a concession permittee may use a single concession permit for Heron Lake state park and El Vado Lake state park or Elephant Butte Lake state park and Caballo Lake state park and Percha Dam state park.
- I.** The division shall not issue a concession permit until the applicant has provided proof of insurance for public liability for personal injury and property damage, which shall at a minimum provide a \$1,000,000 limit for each occurrence and a \$2,000,000 general aggregate limit in which the state of New Mexico, department and division, and if applicable the landowner from which the division leases the land or reservoir, are named as co-insured.
- J.** Concession permittees, their employees and their clients are subject to appropriate state rules and federal regulations.
- K.** Concession permits are not transferable. A concession permittee shall not sell or transfer a concession permit for any reason. The department shall not refund a portion of the permit fee if the permittee ceases business during the permit year.
- L.** The director may limit the number and type of concession permits issued for a park in order to protect park resources. In determining whether to limit the number or type of concession permits, the director shall consider factors such as impact to the park infrastructure or impact to natural resources such as vegetation, erodible soils, etc. The director may prescribe special requirements and conditions for concession permits when it is in the division or state's best interests, including limitations on use of park resources, grounds and facilities; designation of a specific area within a park in which a concession permittee is allowed to operate; designation of specific days or hours during which a concession permittee is allowed to operate; limitations on prices the concession permittee charges; requirements for submission of use and price data including number of customers and charges for services provided; and training requirements.
- M.** A permittee shall not violate a condition or restriction of the concession permit or 19.5.5 NMAC. The division may immediately cancel a concession permit if the permittee violates the concession permit or 19.5.5 NMAC.
[19.5.5.14 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.15 OUTFITTERS AND GUIDES:

- A.** An outfitter may apply for one concession permit and purchase guide cards for guides the outfitter employs who will be conducting guided fishing, boating or rafting trips. The outfitter shall provide the superintendent with a list of guides authorized to conduct guided trips for the outfitter and request the number of guide cards the outfitter wishes to purchase at the time the outfitter submits a concession permit application and fee. The fee for a guide card shall be the same as the fee for a concession permit. See 19.5.6 NMAC. During the concession permit's term, the outfitter shall have public liability insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as principal beneficiaries and shall have, if applicable, workers' compensation insurance in force and effect with a carrier licensed to do business in New Mexico. The public liability insurance shall cover personal injury and property damage in amounts equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time.
- B.** The number of guides on the outfitter's guide list may exceed the number of guide cards the outfitter purchased. However, at no time shall the number of guides conducting commercial activity in a park exceed the number of guide cards the division issued to the outfitter. Only guides whose names appear on the guide list may conduct guided trips.
- C.** Each guide shall be able to present a guide card to a state park official at all times when the guide is conducting commercial activity in a park. A person shall not conduct commercial guiding activities without having a guide card in his or her possession. An outfitter or guide shall present the guide card to a state park official when requested to do so.
- D.** The outfitter is responsible for all guide cards the division issues to the permittee and for updating the guide list as necessary and providing the updated guide list to the superintendent.
- E.** Each outfitter shall submit an annual report that provides information concerning the outfitter's activities for the preceding year to the superintendent by April 15th. Annual reports shall include dates of guided trips, number of trips on each date and total number of clients on each date or a statement that no trips were made during the year.

- F.** An outfitter or guide shall not take more than three clients on a wade trip or more than three clients on a float boat at one time.
 - G.** Outfitters and guides are subject to boat safety inspections at all times while boating.
 - H.** Commercial boat use on the San Juan river, Navajo Lake state park is allowed only from the Texas hole and downstream.
 - I.** Outfitters shall identify their boats with the outfitter's company name prominently and clearly printed on the vessel on both the port and starboard sides. Lettering shall be at least three inches in height.
 - J.** Outfitters or guides shall display a concession permittee vehicle pass while conducting commercial activities within the boundaries of a state park. The concession permittee vehicle pass does not exempt the holder from paying park fees if the outfitter or guide is using the park or its facilities for personal use.
 - K.** Outfitters shall submit trip ticket information using the internet-based trip ticket reporting system for commercial trips. The outfitter, or the outfitter's guide or agent, shall complete this form prior to the trip commencing. The guide conducting the trip shall carry a copy of the trip ticket for the duration of the commercial trip. A person shall not conduct commercial fishing or hunting activities within a state park without having a valid trip ticket in his or her possession.
- [19.5.5.15 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.16 PROHIBITED COMMERCIAL ACTIVITIES: The following commercial activities are prohibited within the state parks system:

- A.** commercial activity without written authorization pursuant to a concession contract, concession permit, film permit or special use permit;
- B.** services or activities not benefiting the visitor's experience;
- C.** services or activities that may threaten the public's health or safety;
- D.** services or activities that may threaten or damage park resources;
- E.** sale of goods or services outside of a specifically-defined location designated for a concession, unless authorized in a concession permit, special use permit or cooperative agreement; and
- F.** solicitation of unwanted business.

[19.5.5.16 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; Repealed, 1/1/2013; 19.5.5.16 NMAC - Rn, 19.5.5.17 NMAC, 1/1/2013]

19.5.5.17 CONCESSION MANAGEMENT PROCEDURES: The superintendent is the division's designated representative with concessionaires and concession permittees in day-to-day operations. Concessionaires shall direct questions concerning a concession contract or permit, including responsibilities pursuant to the contract or permit and interpretation of a contract's or permit's terms to the superintendent. Concessionaires or concession permittees shall direct questions, problems or complaints to the superintendent. The concessions administrator shall maintain historical, fiscal and administrative records at the division office in Santa Fe to ensure compliance with the concession contract. The concessions administrator shall notify the director of a concession contract's expiration at least nine months prior to the expiration date.

[19.5.5.17 NMAC - Rp, 19.5.5.15 NMAC, 1/1/2008; 19.5.5.17 NMAC - Rn, 19.5.5.18 NMAC, 1/1/2013]

19.5.5.18 INSPECTIONS:

- A.** Concessionaires are subject, with prior notice, to a state park official's inspection of the concession premises for public safety and health reasons and to monitor compliance with the concession contract and operation and maintenance plan. Concessionaires shall always maintain a safe and healthy environment for the public and the concessionaire's employees. If applicable, the landowner from which the division leases the land or reservoir may inspect the concession premises.
- B.** The department shall have the right to close down a concession operation at any time without prior notice in order to protect the safety and health of parks, visitors and staff.
- C.** Concession operations shall comply with applicable codes and rules or regulations of applicable authorities.

[19.5.5.18 NMAC - Rp, 19.5.5.16 NMAC, 1/1/2008; 19.5.5.18 NMAC - Rn & A, 19.5.5.19 NMAC, 1/1/2013]

19.5.5.19 PREFERENCES FOR BLIND PERSONS: The department shall comply with NMSA 1978, Section 22-14-27 in assuring that it gives blind persons the commission for the blind licenses preference in the establishment and operation of vending machines with the state parks system when blind persons may properly and satisfactorily operate vending machines.

[19.5.5.19 NMAC - Rp, 19.5.17 NMAC, 1/1/2008; 19.5.5.19 NMAC - Rn, 19.5.5.20 NMAC, 1/1/2013]

History of 19.5.5 NMAC:

Pre NMAC History: None.

History of Repealed Material:

19.5.4 NMAC (filed 12/12/02), Lease Lot Provisions, repealed 1/1/2008.

Other History:

19 NMAC 5.5, Concession Activities, filed 12/17/96, was renumbered, reformatted, amended and replaced by 19.5.5 NMAC, Concession Activities; effective 12/31/02.

19.5.5 NMAC, Concession Activities (filed 12/12/02) replaced by 19.5.5 NMAC, Concession Activities, effective 1/1/08.