



STATE OF NEVADA
DEPARTMENT OF WILDLIFE

Wildlife Diversity Division

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MEMORANDUM

January 5, 2020

To: Nevada Board of Wildlife Commissioners, County Advisory Boards to Manage Wildlife, and Interested Publics

From: Kailey Taylor, Management Analyst, Director's Office and Megan Manfredi, Administrative Assistant, Director's Office.

Title: **Commission General Regulation 493, LCB File No. RXXX**

Description: The Commission will hold an adoption to consider a regulation relating to amending Chapter 488 of the Nevada Administrative Code (NAC). This regulation clarifies current boating law to match U.S. Coast Guard regulation.

Summary

This regulation comes after much discussion from the Regulation Simplification Committee. This Committee was formed after former Chairman Brad Johnston expressed his desire to clean up the wildlife chapters of the Nevada Administrative Code (NAC). State agencies are also required to review their NAC chapters every 10 years. The Nevada Department of Wildlife would be required to review NAC in 2021. The Regulation Simplification Committee has discussed the changes to NAC 488. These changes were made to match current U.S. Coast Guard language as well as to clarify other minor details. At the August Commission Meeting it was decided to move forward with the regulation and was subsequently submitted to the Legislative Counsel Bureau.

Recommendation:

The Department and the Regulation Simplification Committee recommend adopting CGR 493.

**PROPOSED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R149-20

October 12, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §1, NRS 488.045 and 501.181; §§2 and 3, NRS 488.045, 488.193 and 501.181; §4, NRS 488.045, 488.550 and 501.181; §5, NRS 488.045, 488.305, 501.181 and 501.243; §6, NRS 488.045, 488.261, 501.181 and 501.243; §7, NRS 488.045, 488.730, 488.750 and 501.181.

A REGULATION relating to watercraft; eliminating the requirement that a request for removal of personal information from certain lists sold by the Department of Wildlife be submitted in writing; revising provisions relating to personal flotation devices; revising provisions relating to required reporting of collisions involving vessels; revising provisions concerning marine events; revising provisions relating to temporary buoys; authorizing the Department to charge a fee for a boater education card; revising provisions governing the places where persons can obtain certain information relating to courses in boating safety; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Board of Wildlife Commissioners to adopt regulations relating to watercraft. (NRS 488.045, 488.305, 501.181, 501.243)

Existing regulations require a request for the removal of certain personal information from lists sold by the Department of Wildlife to be submitted in writing. (NAC 488.050) **Section 1** of this regulation removes the requirement that the request be submitted in writing.

Existing law requires vessels to comply with certain requirements relating to personal flotation devices. (NRS 488.193) Existing regulations require vessels to carry a certain number of life preservers of type I, II, III, IV, V special use or V hybrid under certain circumstances. (NAC 488.405) **Section 2** of this regulation removes the requirements that vessels carry life preservers of type I, II, III, IV, V special use or V hybrid, and instead requires vessels to carry a certain number of life jackets and personal flotation devices under certain circumstances. **Section 2** replaces the term “life preserver” with the phrase “life jacket.” **Section 3** of this regulation makes conforming changes.

Existing law requires the operator of a vessel involved in a collision or accident that results in damage to property in excess of \$2,000 to file a report with the Department. (NRS 488.550) Existing regulations require the operator to file a report with the Department for

damage to a vessel or other property in excess of \$500. **Section 4** of this regulation increases the threshold amount of damage required to file such a report from damage in excess of \$500 to damage in excess of \$2,000.

Existing law: (1) requires a person in charge of a regatta, boat race, marine parade, tournament or exhibition to obtain approval for the event from the Department; and (2) provides that the Director of the Department may require the person in charge of the event to enter into an agreement to reimburse the Department for expenses incurred by the Department for ensuring that the event is conducted safely. (NRS 488.305) Existing regulations authorize the Director to require the person in charge of the event to enter into such an agreement if the Department anticipates that two or more protection units will be needed in order to ensure the safety of the event. Existing regulations define “protection unit” as one officer and one patrol vessel or one patrol vehicle, or both a patrol vessel and patrol vehicle. (NAC 488.492) **Section 5** of this regulation authorizes the Director to require the person in charge of the event to enter into an agreement to reimburse the Department if the Department anticipates that one or more protection units will be needed to ensure the safety of the event. **Section 5** also revises the definition of “protection unit” to include that if two or more officers embark upon the same patrol vessel, the first officer is considered a separate protection unit from the remaining officers.

Existing law provides that the Department may issue a permit for the temporary placement of buoys for practice courses or marine events. (NRS 488.261) Existing regulations require an applicant for such a permit to submit an application to the Department which includes various information, including, without limitation, a diagram or map identifying the number of buoys and a description of their placement. (NAC 488.495) **Section 6** of this regulation eliminates the option for the applicant to submit a diagram, and instead requires the map of the buoys to be sufficiently detailed.

Existing law prohibits a person born on or after January 1, 1983, from operating a motorboat under certain circumstances. Existing law provides that such a person may operate a motorboat if he or she obtains a certificate from the Department evidencing his or her: (1) successful completion of a course in safe boating; or (2) passage of a proficiency examination. (NRS 488.730) Existing regulations provide that the Department will issue the certificate, without a fee, if the person submits certain information to the Department and completes and passes, with a minimum score of 80 percent, the Boat Nevada correspondence course and self test or a proficiency examination. (NAC 488.573) **Section 7** of this regulation authorizes the Department to charge a fee for the issuance of the certificate.

Existing regulations provide that a person may obtain information on available courses in safe boating, including, the Boat Nevada correspondence course and a self test, by various avenues, including, visiting the Internet website of Boat Nevada. (NAC 488.573) **Section 7** of this regulation removes the option to obtain this information from the Internet website of Boat Nevada, and instead makes the information available on the Internet website of the Department.

Section 1. NAC 488.050 is hereby amended to read as follows:

488.050 Upon the ~~written~~ request of a person who has obtained a certificate of number or a certificate of ownership, the Department shall remove the name and other personal information of the person from any list sold by the Department.

Sec. 2. NAC 488.405 is hereby amended to read as follows:

488.405 1. Except as otherwise provided in this section, a person shall not use any vessel, regardless of its method of propulsion:

(a) Which is less than 16 feet in length, unless there is at least one life ~~preserver of type I, II or III~~ *jacket* on board for each person; or

(b) Which is 16 feet or more in length, unless there is at least one life ~~preserver of type I, II or III~~ *jacket* on board for each person and at least one ~~life preserver of type IV~~ *personal flotation device , which is capable of being thrown,* on board.

2. The requirements of subsection 1 do not apply to the operation of a racing shell, rowing scull, racing canoe or racing kayak which is:

(a) Manually propelled;

(b) Recognized by a national or international racing association for use in competitive racing;

~~and~~

(c) Designed to carry and does carry only equipment which is solely for competitive racing

~~]; and~~

(d) Competitively racing or practicing for a competitive race.

3. The requirements of paragraph (b) of subsection 1 do not apply to a person who uses a canoe or kayak that is enclosed by a deck and spray skirt if:

(a) ~~The~~ *Except as otherwise provided in paragraph (b), the* person has on board a life ~~preserver of type I, II or III;~~ *jacket;* or

(b) The person wears a life ~~preserver of type V~~ *jacket for* special use approved *by the United States Coast Guard* for that use.

4. On any vessel, a life ~~preserver of type V~~ *jacket of* special use or ~~type V~~ hybrid *type* may be used in lieu of a life ~~preserver~~ *jacket* of *another* type ~~I, II or III~~ if ~~it~~ *the life jacket of special use or hybrid type* is approved by the United States Coast Guard and:

(a) If it is ~~of type V~~ *of* special use, is worn and used in accordance with the instructions marked on it.

(b) If it is ~~of type V~~ *of* hybrid ~~I~~ *type*, is worn while the vessel is underway, except when the user is in an enclosed space.

5. ~~For the purposes of this section, the types of life preservers are as follows:~~

~~—(a) Type I is a life preserver which has over 20 pounds of buoyant force and is designed to turn an unconscious person in water to a position where his or her face is out of the water;~~

~~—(b) Type II is a buoyant vest which has at least 15.5 pounds of buoyant force and is designed to turn an unconscious person in water to a position where his or her face is out of the water;~~

~~—(c) Type III is a buoyant vest or jacket which has at least 15.5 pounds of buoyant force but is not designed to turn an unconscious person in water;~~

~~—(d) Type IV is a throwable device, such as a ring buoy or buoyant cushion;~~

~~—(e) Type V hybrid is a personal flotation device which has 7.5 pounds of buoyant force when it is not inflated, and 22 pounds of buoyant force when it is inflated; and~~

~~—(f) Type V special use is a personal flotation device approved by the United States Coast Guard for a restricted use or activity.~~

~~—6.] For the purposes of this section, a vessel is being used if the vessel:~~

(a) Is upon the waters of this State, including, without limitation, if it is tied or fastened to a dock, mooring or shore; and

(b) Is not aground on the shore.

Sec. 3. NAC 488.410 is hereby amended to read as follows:

488.410 1. Each life ~~preserver~~ *jacket or personal flotation device* required by NAC 488.405 to be on board a vessel must be:

(a) In serviceable condition;

(b) Legibly marked with the number of approval of the United States Coast Guard;

(c) Of appropriate size *and type* to fit the person for whose use it is intended; and

(d) Noninflatable, if the person for whose use it is intended is:

(1) Waterskiing;

(2) On a personal watercraft;

(3) Under 16 years of age; or

(4) Participating in a commercial activity, including, without limitation, a boat livery.

2. For the purposes of paragraph (a) of subsection 1, a life ~~preserver~~ *jacket or personal flotation device* that is inflatable is in serviceable condition only if:

(a) The inflation mechanism is functional and armed;

(b) Each inflation indicator is green;

(c) Each inflation chamber is capable of holding air; and

(d) The oral inflation tube is functional.

Sec. 4. NAC 488.445 is hereby amended to read as follows:

488.445 1. Except as otherwise provided in subsection 4, the operator of a vessel shall submit to the Department a report, on a form provided by the Department or the United States Coast Guard, whenever as a result of an occurrence involving the vessel or its equipment:

- (a) A person dies;
- (b) A person is injured and receives medical treatment beyond first aid;
- (c) Damage occurs to the vessel and other property which totals more than ~~[\$500;]~~ \$2,000; or
- (d) A person disappears from the vessel under circumstances indicating his or her death or injury.

2. The report must be submitted within 48 hours after the occurrence if a person dies within 24 hours after the occurrence, is injured and receives medical treatment beyond first aid, or disappears from the vessel.

3. The report must be submitted within 10 days after the occurrence or death if an earlier report is not required by subsection 2.

4. If the operator of the vessel cannot submit the report, the owner shall submit it.

Sec. 5. NAC 488.492 is hereby amended to read as follows:

488.492 1. The Department shall not approve a marine event if the Director of the Department determines that providing the personnel and resources of the Department which would be necessary to ensure that the marine event is conducted safely will impair the ability of the Department to perform its other duties.

2. The Director may require a person in charge of a marine event to enter into an agreement to reimburse the Department as a condition of approval of the marine event if the Department reasonably anticipates that ~~[at least two]~~ *one or more* protection units will be needed to ensure that the marine event is conducted safely. In determining whether the person in charge of such a

marine event must enter into an agreement to reimburse the Department, the Director shall consider:

- (a) The type and nature of the marine event;
- (b) Whether the marine event will substantially increase or disrupt the normal traffic on the water;
- (c) Whether the marine event requires special consideration to be taken to ensure the safety of the spectators; and
- (d) Any other relevant factors that will assist the Department in determining whether the marine event will be conducted safely.

3. The Director shall not require a person in charge of a minor marine event to enter into an agreement to reimburse the Department as a condition of approval of the marine event if the Department reasonably anticipates that:

- (a) There will be small crowds of spectators attending the marine event; and
- (b) ~~Not more than one~~ No protection unit will be needed to ensure that the marine event is conducted safely.

4. The amount for which a person in charge of a marine event must agree to reimburse the Department must be estimated based on the following:

- (a) For each officer or employee of the Department to work at the marine event:
 - (1) At the hourly rate for the officer or employee at his or her existing pay grade;
 - (2) For overtime, at a rate that is equal to one and one-half the hourly rate of the officer or employee; and
 - (3) A per diem allowance and travel expenses provided for state officers and employees generally while performing official duties of the Department unless the person in charge of the

marine event makes the necessary arrangements for the prepayment of meals and lodging for the Department personnel and the amount of the arrangements is equal to or greater than the state rate.

(b) For each vessel, \$70 per hour, plus the cost of the fuel used.

(c) For each vehicle, \$31 per day, plus a rate equal to the standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax.

5. An agreement to reimburse the Department must include a provision which states that the person in charge of the marine event agrees that, if the amount of the actual cost incurred by the Department is greater than the amount of the estimated cost set forth in the agreement, the amount which must be reimbursed to the Department will be increased by the amount by which the actual cost exceeds the estimated cost or by an amount equal to 5 percent of the estimated cost, whichever is less.

6. The Director may require, as part of an agreement to reimburse the Department, the person in charge of a marine event to furnish a bond to ensure that reimbursement is made.

7. A person in charge of a marine event who has executed an agreement to reimburse the Department pursuant to this section shall remit a certified check for the appropriate amount to the Department not later than 14 days after the completion of the marine event.

8. The Department shall deposit any money received pursuant to an agreement to reimburse the Department into the Wildlife Account in the State General Fund to be used to offset the costs incurred by the Department to ensure that the marine event to which the agreement relates was conducted safely.

9. An agreement to reimburse the Department must include a provision pursuant to which the person in charge of a marine event agrees to defend, protect, indemnify and hold harmless the

State of Nevada, the Department and its officers, agents and employees from and against any and all claims, losses, suits and actions resulting from the activities of the person in charge of the marine event, its subcontractors, agents or employees under the written agreement and to pay all claims, damages, judgments, legal costs or any other expense or liability related thereto.

10. As used in this section:

(a) “Agreement to reimburse the Department” means an agreement entered into by a person in charge of a marine event with the Department in accordance with NRS 488.305 pursuant to which the person agrees to reimburse the Department for expenses incurred by the Department to ensure that the event is conducted safely.

(b) “Protection unit” means one officer and one patrol vessel or one patrol vehicle, or both a patrol vessel and patrol vehicle. *If two or more officers embark upon the same patrol vessel, the first officer is considered a separate protection unit from the remaining officers.*

Sec. 6. NAC 488.495 is hereby amended to read as follows:

488.495 1. A person who wishes to obtain a permit for the temporary placement of a buoy for practice courses or marine events must submit an application to the Department on a form provided by the Department. The application must be submitted at least 30 days before the date of the proposed placement and must include:

(a) The name and telephone number of the person responsible for ensuring that the conditions of the permit are complied with; and

(b) A ~~diagram or~~ map *of sufficient detail* identifying the number of buoys to be placed and a description of the placement of the buoys.

2. If a permit for the temporary placement of a buoy for a practice course is issued, any buoy placed in the water under authority of the permit:

- (a) May not interfere with the normal flow of traffic for boats or with the use of water or shoreline areas already in use by other recreational users;
- (b) May not be left in place overnight;
- (c) Must be in an area which is of sufficient size so that the course is a minimum of 100 feet from any shoreline and 500 feet from any beach frequented by bathers or swimmers;
- (d) Must be placed for recreational purposes unless otherwise authorized pursuant to a permit issued for a marine event; and
- (e) Must be in compliance with all other applicable federal and state regulations.

↪ No practice course may have more than six turns as determined by the placement of the buoys, and only one motorboat at any given time may be driven or navigated through a practice course.

3. The Department shall collect:

(a) For the issuance of a permit for the temporary placement of a buoy for practice courses for which 10 buoys or less are needed, a fee of \$25. If more than 10 buoys are needed, a fee of \$50 must be collected.

(b) For a permit for the temporary placement of buoys for marine events, a fee of \$50. The Department shall not collect a fee for a permit issued to a charitable organization for the temporary placement of buoys for marine events.

4. A permit for the temporary placement of a buoy for practice courses or marine events may be revoked or suspended if:

- (a) The person responsible for the temporary placement of the buoy fails to comply with all applicable statutes and regulations concerning the buoy; or
- (b) The buoy becomes a hazard to navigation.

5. The Department shall:

(a) Remove any buoys which are determined to be unlawfully placed; and

(b) Assess an administrative fine of \$100 for the removal of such buoys and assess an additional fine in an amount equal to the cost to the Department in labor and equipment for the removal.

6. The provisions of this section do not apply within the Lake Mead National Recreation Area. The placement of any buoy within that area must be in accordance with the conditions or restrictions on a use or activity imposed by the Superintendent of the Lake Mead National Recreation Area pursuant to the provisions of subparagraph (2) of paragraph (a) of 36 C.F.R. § 1.5 and effective on October 8, 1994. The provisions of such conditions or restrictions may be enforced by the Department.

7. A copy of the conditions or restrictions specified in subsection 6 may be obtained free of charge from the Superintendent of the Lake Mead National Recreation Area, ~~[601 Nevada Highway, Boulder City, Nevada 89005]~~ or from the main or any regional office of the Department.

Sec. 7. NAC 488.573 is hereby amended to read as follows:

488.573 1. The Department shall issue a boater education card ~~[-, without fee,]~~ to any person who submits the information required in subsection 2 of NRS 488.750 and who:

(a) Completes the Boat Nevada correspondence course and self test with a minimum score of 80 percent; or

(b) Receives a minimum score of 80 percent on a proficiency examination.

2. A person who wishes to take a proficiency examination pursuant to subsection 1 may request an examination appointment at any office of the Department during regular business hours, Monday through Friday.

3. A person may obtain the Boat Nevada correspondence course and self test by:

(a) Requesting the material in person at any of the offices of the Department;

(b) Mailing a request in writing to the Department of Wildlife, 1100 Valley Road, Reno, Nevada 89512; or

(c) Visiting the Internet website of [~~Boat Nevada at <http://www.boatnevada.org>.~~] *the Department.*

4. A person may obtain information on available courses in safe boating by:

(a) Requesting the information in person or by telephone from any of the regional offices of the Department;

(b) Mailing a request to the Department of Wildlife, 1100 Valley Road, Reno, Nevada 89512; or

(c) Visiting the Internet website of [~~Boat Nevada at <http://www.boatnevada.org>.~~] *the Department.*