

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

(a) Joyce Dillard, email, May 17, 2016

(1) Comment: In this regulation you extend the meaning of the Administrative Procedure Act to include Bagley-Keene meetings. In doing so, you have limited public speech (First Amendment) by limiting receipt of written comments. Comments should be accepted up to the time the agenda item is called.

Response: The Commission must comply with both the Administrative Procedure Act (APA) and the Bagley-Keene Open Meeting Act.

Subsection 665(b)(5)(A) of the proposed meeting procedure regulation provides that written comments must be received in the Commission office no later than noon five days prior to a regular Commission meeting, or in person at the meeting. This subsection allows for the acceptance of oral and written comments up to the time the agenda item is called.

Subsection 665(b)(5)(A)3. of the proposed regulation provides that written comments received in the Commission office after noon five days prior to the meeting will only be delivered to the meeting if required by the APA. This subsection allows for the acceptance of written comments after the five-day deadline in those instances in which the minimum written notice period required by the APA has not been concluded by five days prior to the meeting.

(b) April Wakeman, email, June 14, 2016, and oral comments, June 23, 2016

(1) Comment: We particularly support item (b)(3)(B) limiting time spent on a single agenda item through prior notice...Prior notice of the time limits will allow supporters to organize their testimony.

Response: Support noted.

(2) Comment: We are concerned about item (b)(5)(A), (b)(5)(A)1. and 2. wherein written materials are available to the commissioners upon request (A), and may be included in the meeting materials [1] or may be available at the meeting [2]. We suggest that:

- “upon request” be deleted from (A) [“upon request” seems redundant and implies all materials are not normally available]
- “may” should be replaced with “shall” with the added proviso “unless deemed inappropriate by the president or the president’s designee.” [subsections (A)1. and 2.]

While acknowledging some materials should not be distributed due to subject matter or perhaps length, the public deserves certainty that submissions will be seen by the Commissioners.

Response: As described on page 10 of the ISOR, “upon request” is included in subsection (b)(5)(A) to clarify that Commissioners are not required to wait for a meeting binder to receive public comments, and that comments not included in a meeting binder are available to Commissioners at any time upon request. Subsections (b)(5), (b)(5)(A)1. and (b)(5)(A)2. should be read in concert with subsection (b)(5)(C), which states that in the event multiple written comments expressing the same views are received, an example or summary of the comments may be included in the meeting materials, to reduce the volume of materials, but still provide that all opinions will be represented in the meeting materials (ISOR, page 13).

(3) Comment: These procedures are a good step forward in assuring the public that their concerns will be addressed in a fair and impartial manner.

Response: Comment noted.

(c) Joyce Dillard, email, June 16, 2016

(1) Comment regarding subsection (b)(3)(A)2.b.: It is not clear how delivery at the meeting location can occur between one to two hours prior if: 1. The location is not open; 2. Security has not been notified that deliveries are expected; 3. Meeting has no staff on duty; 4. Location is off site, i.e. a hotel, with no designated contact and availability of that contact person to receive information.

Response: Commission staff will be assigned to be present at the meeting location at least two hours prior to the meeting in order to receive requests for extended time to speak.

(2) Comment regarding subsection (b)(5)(B): It is not clear how delivery of written comments can occur if by 5 PM prior to the first day of the meeting if the location is closed such as a weekend or holiday.

Response: Subsection (b)(5)(B) states the written comments intended for an emergency meeting must be received *no later than* 5:00 p.m. the day prior to the emergency meeting (or in person at the meeting location). In the event an emergency meeting is held on a Monday or the day after a holiday, written comments should be delivered to the Commission office by 5:00 p.m. on the last business day prior to the meeting. Alternately, a person may deliver the written comments in person at the meeting.

(3) Comment regarding subsection (b)(5)(B): It is not clear how delivery of written comments can occur if by 5 PM prior to the first day of the meeting if the location is off site, i.e. a hotel, with no designated contact and availability of that contact person to receive information.

Response: Subsection (b)(5)(B) should be read in concert with subsections (b)(5)(D) and (b)(5)(E). Written comments are not accepted if sent to a meeting facility. Written comments should be delivered to the *Commission office* or via email to fgc@fgc.ca.gov. Alternately, a person may deliver the written comments in person at the meeting.

(4) Comment regarding subsection (b)(6)(B): It is not clear how delivery of materials can occur on the prior day if the location is closed such as a weekend or holiday.

Response: Subsection (b)(6)(B) states that requests for approval of audio or visual materials must be sent via email to fgc@fgc.ca.gov by 5:00 p.m. the day prior to the meeting (or in person at the meeting location between one and two hours prior to the start of meeting). There is no provision for submitting audiovisual materials for approval to the meeting location the day prior to the meeting.

(5) Comment regarding subsection (b)(6)(B): It is not clear how delivery of materials can occur 1-2 hours prior if: 1. Location has not opened to the public two hours prior to the meeting; 2. Security has not been notified that deliveries are expected; 3. Location is off site, i.e. a hotel, with no designated contact and availability of that contact person to receive information

Response: Commission staff will be assigned to be present at the meeting location at least two hours prior to the meeting in order to receive requests for approval of audio or visual materials.

(6) Comment: Please take into consideration Low Income Persons or (Disadvantaged) Communities who have little access to the Internet to email.

Response: The proposed regulations do not require the use of the Internet or email except for the submittal of audio and visual presentations for Commission and committee meeting presentations. The public may submit comments in writing via mail/courier/hand delivery to the Commission office prior to the meeting and may submit oral and/or written comments in person at the meeting.

(7) Comment regarding subsections (b)(6)(C): You have not addressed First Amendment issues regarding any approvals needed by the Executive Director.

Response: Subsection (b)(6)(C) states that a request for an audio or visual presentation for a Commission or committee meeting may be denied if the material is deemed not relevant to the agenda item, contains inappropriate material, or contains unauthorized copyrighted materials. This subsection is intended to reduce the possibility of violations of law caused by speech not protected by the First Amendment.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

See Attachment A to the Initial Statement of Reasons. No other alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

If the proposed regulations are not adopted, Commission goals and objectives for effective meetings would not be realized.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This change will only affect Commission meeting procedures.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California.

The Commission does not anticipate any benefits to the health and welfare of California residents, worker safety, or the environment.

The Commission anticipates benefits regarding increased transparency and openness of the Commission's business, efficiency of Commission processes, consistency in Commission activities, public engagement with the Commission, and Commission responsiveness to the public.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

Pursuant to Section 206 of the Fish and Game Code, the California Fish and Game Commission (Commission) holds no fewer than eight regular meetings per year in various locations throughout the State. Commission meetings are subject to the requirements of the Bagley-Keene Open Meeting Act (Government Code Sections 11120-11132).

In addition, the Commission's Marine Resources Committee (MRC), Wildlife Resources Committee (WRC) and Tribal Committee each hold approximately three meetings per year. Committees receive in depth information on topics and make recommendations to the Commission on those topics. The Commission may also establish other committees from time-to-time. Committee meetings are also subject to the Bagley-Keene Open Meeting Act if two Commission members are appointed to the committee.

AB 2609, signed into law in September 2012, added Section 108 to the Fish and Game Code. This statute required the Commission to adopt rules to govern business practices and processes.

Current regulations in Section 665, Title 14, California Code of Regulations (CCR), provide that the time allotted for each speaker wishing to address an agenda item shall be set by the presiding Commissioner.

PROPOSED REGULATIONS

This regulatory proposal will amend Section 665, Title 14, CCR, Meeting Procedures, as follows:

- Define the number of members constituting a quorum to conduct Commission and committee meetings, and clarify that a meeting must be immediately adjourned if a quorum is no longer present;
- Provide that no more than two commissioners may attend committee meetings;
- Provide that a motion shall pass or fail only upon a majority vote of the membership present and voting; more than one motion related to an agenda topic may be made and voted upon; and, if no motion receives a majority vote of the membership present and voting, the agenda item shall be continued to a subsequent Commission meeting;
- Establish a deadline for public requests for meeting agenda items;
- Specify that, except for emergency meetings of the Commission, agenda items are approved by majority vote of the Commission; and that agendas for emergency meetings of the Commission are established by the president or president's designee;
- Specify that committee agenda items may not include items scheduled for action by the Commission, unless otherwise directed by majority vote of the Commission;

- Specify that the Commission president or his designee may add item items to meeting agendas;
- Establish deadlines, consistent with the Bagley-Keene Open Meeting Act, for public distribution of agendas;
- Outline the process and timeline for WRC and MRC recommendations;
- Specify the process for public participation in Commission and committee meetings including:
 - when public testimony will be taken;
 - appropriate public forum topics;
 - time limits for public comment at Commission meetings and methods the public may use to receive additional time;
 - when and how to submit written comments;
 - when and how to submit audio and visual presentations and how to receive approval of the presentation from the executive director; and
 - potential consequences of disruptive behavior; and
- Clarify that if any deadline or due date falls on a Saturday or holiday, it shall be adjusted pursuant to Government Code Sections 6707 and 6800.

The revised proposed regulation clarifies the time deadlines for (1) requests for extended time to speak at emergency meetings; (2) submission of audio or video materials for emergency meetings; and (3) submission of written materials for emergency meetings.

BENEFITS OF THE PROPOSED REGULATION

The proposed regulation is anticipated to result in increases in

- the openness and transparency of Commission business;
- active public engagement with the Commission;
- Commission responsiveness to the public;
- efficiency of Commission process; and
- consistency of Commission activities.

CONSISTENCY WITH EXISTING STATE REGULATIONS

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The legislature has delegated authority to the Commission to adopt rules to govern its business practices and processes (Section 108, Fish and Game Code). Commission staff has searched the California Code of Regulations and has found no other State regulations related to the Commission meeting procedures.

At its June 23, 2016 meeting, the Commission adopted the regulations as provided in the May 10, 2016 continuation notice.