

Agenda Item 9

STAFF ANALYSIS PUBLIC HEARING AND ACTION BY THE BOARD REGARDING THE PROPOSED ADOPTION OF CHRB RULE 1415, PUBLIC PARTICIPATION AT MEETINGS, TO DEFINE THE RULES REGARDING PUBLIC PARTICIPATION DURING MEETINGS OF THE BOARD.

Regular Board Meeting
March 17, 2022

ISSUE:

The California Horse Racing Board (Board) noticed the originally proposed text of Board Rule 1415, Public Participation at Meetings, to the public on May 21, 2021. The proposed addition was subject to a public hearing on July 7, 2021. The final rulemaking package was submitted to the Office of Administrative Law (OAL) on October 26, 2021. OAL informed the Board that the rule did not meet the requirements of the California Administrative Procedures Act (APA), so OAL could not approve the file without modification. The Board subsequently proposed changes to modify the proposed regulation to bring the rulemaking into compliance with the APA.

ANALYSIS:

The original rulemaking file, submitted to OAL on October 26, 2021, had elements that lacked clarity such that it failed to comply with the APA. The originally proposed text lacked enough clarity to fail scrutiny under the APA review. To correct these deficiencies, the text of proposed Board Rule 1415 was modified, and a document was added to the rulemaking file. Additionally, an addendum to the Initial Statement of Reasons (ISOR) was added to the rulemaking record to correct any discrepancies between the ISOR and the proposed text, and to add supplemental content to the ISOR for additional clarity.

The 15-day notice of modification to the text was open from February 28, 2022 to March 15, 2022. One written comment was received and is included for reference.

BACKGROUND:

Business and Professions Code (BPC) [section 19440](#) provides that all licenses granted under the Horse Racing Law are subject to the rules, regulations, and conditions prescribed by the Board.

Government Code (GC) [section 11125.7\(b\)](#) provides that if a board wishes to establish a standing ruling that discussion of agenda items will be given a specified amount of time, or that public comment will be limited to a certain amount of time, the board may do so by adopting an administrative regulation.

Updated 03/16/2022 to reflect comment received

GC section 11125.7(d) specifies that a state body cannot prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body.

RECOMMENDATION:

This item is presented for Board discussion and action.

CALIFORNIA HORSE RACING BOARD
TITLE 4. CALIFORNIA CODE OF REGULATIONS
ARTICLE 1. RACING BOARD POWERS AND JURISDICTION
RULE 1415. PUBLIC PARTICIPATION AT MEETINGS.

1415. Public Participation at Meetings.

During meetings of the California Horse Racing Board (Board) subject to the Bagley-Keene Open Meeting Act (Government Code § 11120 et seq.), the following rules regarding public participation apply:

(a) Time.

(1) A member of the public will have ~~a maximum of~~ two minutes to speak per agenda item ~~and two minutes to speak during the general public comment period.~~

(2) A member of the public who requires translation or interpretive services will have ~~a maximum of~~ four minutes to speak per agenda item.

(3) ~~The Chairperson may limit~~ ~~modify~~ the amount of time members of the public are allocated for individual comments ~~to less than two minutes per agenda item if the number of commenters wishing to speak would otherwise exceed 30 minutes per agenda item, depending on the number of speakers. A change to the amount of time allocated for individual comments will apply equally to all speakers.~~

(4) A member of the public may not transfer his or her unused time for public comment to another member of the public.

~~(5) The Chairperson may limit the total amount of time allocated for items not on the agenda or for a particular agenda item and may publish such limitations in advance on the agenda for the meeting.~~

~~(6) (5) If the total amount of time allocated for public comments is limited by the Chairperson, individuals~~ Any member of the public who does not receive the opportunity to speak due to the expiration of the allocated time set forth in subdivision (a)(3) may submit comments in writing during the meeting. To be included as an addendum to the public Board materials packet ~~administrative record~~, written comments must be limited to items listed on the agenda or within the Board's jurisdiction and be provided to a designated staff member ~~and such comments will be made part of the record.~~

(b) Rules of Organization and Order.

(1) ~~Except as otherwise directed by the Chairperson, public comments at meetings shall be received on a "first come, first serve" basis.~~ In order to provide public comment as set forth in subdivision (a)(1) or (a)(2), a member of the public is encouraged, but not required, to submit a request to provide public comment that includes their name, the agenda item number, and the

topic they wish to address. Completed public comment requests should be submitted to a designated staff member prior to the start of the public comment period. Speakers will be called in the order in which the public comment requests are received unless otherwise grouped or organized by topic and/or organization.

~~(2) The Chairperson may take comments out of order.~~

~~(32) A speaker shall address only the Board during public comment and shall not direct comments at other members of the public in attendance, except with express, advance permission of the Chairperson.~~

~~(43) A speaker shall yield the floor to any member of the Board who wishes to ask a question or otherwise speak during the speaker's comment. Yielding the floor to a Board member will toll the speaker's allotted time.~~

~~(A) If a member of the Board wishes to speak to a commenter or ask a clarifying question, the two minutes allowed for the public comment will be paused and additional time will be granted to the speaker to respond to the Board member.~~

~~(5) A speaker shall refrain from profane, lewd, abusive, or repetitious commentary to the extent that such commentary is disruptive to the meeting.~~ (64) A speaker shall limit comments to the subject matter of the agenda item being heard and or, if commenting during the general public comment period, to matters that are subject to the Board's jurisdiction.

~~(75) A member of the public may not disrupt any other attendee(s) from viewing, hearing, or legitimately participating in any material portion of the meeting.~~

~~(86) A member of the public shall not bring signs, flags, banners, exhibits, marquees, or other demonstrative objects into the meeting room. A member of the public may carry and/or display paper materials no larger than an 8.5 x 11 inch letter-sized paper in the meeting room, provided that such paper materials are displayed below shoulder height, and do not otherwise obstruct the view of any other attendee(s).~~

~~(97) The Chairperson may require a member of the public to leave the meeting, or limit that individual's opportunity to provide public comment, if that individual has purposely violated this Regulation or otherwise purposefully disrupted or otherwise impedes the orderly conduct of the meeting, or expressly encouraged another to do so. Prior to removal or limiting the individual's public comment, the Chairperson shall notify the person that they have failed to comply with meeting procedures, request that they comply, and inform them of the consequences of non-compliance.~~

~~(10) The Board may not prohibit a public comment or otherwise enforce this Regulation based on any view expressed, which may include criticism of acts, omissions, policies, programs, or~~

~~services of the Board.~~

Authority cited: Sections 19440,
Business and Professions Code.

Reference: Sections 11121 and 11125.7,
Government Code.

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Subject: Comments on Proposed CHRB Rule 1415 (Public Participation at Meetings)
Date: Monday, March 14, 2022 9:36:33 AM

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I comment as a member of Kill Racing Not Horses, one of the animal welfare groups who submitted written and oral comments on this Proposed Rule 1415 last year. First, WHERE are the Written Comments received by the CHRB on this Proposed Rule last year? All that is linked on your “Pending Rules” webpage is the transcript of the July 7, 2021, Public Hearing. The Written Comments should be publicly accessible as well. http://www.chrb.ca.gov/pending_rules.html

Secondly, we continue to object to the limitation of visual aids in CHRB Public Meetings to 8.5x11” size paper [Section (b) (6)]. Unlike most other public agencies, the CHRB thus far has not used nor allowed digital presentations projected on a screen as highly constructive aids to very time-limited Public Comments in its Meetings. If the CHRB persists in this antiquated methodology, it should at least allow members of the Public to use Visual Aids during their Comment to the Board which are readily visible to the Board, Staff and other members of the Public in attendance.

We are grateful that the Office of Administrative Law’s review required many of the changes we suggested and requested in our Written and Oral Comments last year.

Martha Sullivan
Kill Racing Not Horses