

RULES AND REGULATIONS

Title 58—RECREATION

STATE ATHLETIC COMMISSION

[58 PA. CODE CH. 29]

Amateur Mixed Martial Arts Waiver

The State Athletic Commission (Commission) adopts § 29.30 (relating to waiver of rule for contestants with three or more amateur bouts).

A. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

This final-form rulemaking is authorized under 5 Pa.C.S. § 103(b)(1) (relating to duties of commission), which authorizes the Commission to establish policy and promulgate rules and regulations regarding professional and amateur boxing contests and exhibitions and matters pertaining thereto. This final-form rulemaking is further authorized under 5 Pa.C.S. § 302 (relating to definitions), which defines “boxing” as “The act of attack and defense with the fists, practiced as a sport. The term includes all variations of the sport permitting or using other parts of the human body, including, but not limited to, the foot, knee, leg, elbow or head.”

C. Background and Purpose

The Commission has regulated amateur and professional mixed martial arts (MMA) competition in this Commonwealth since Chapter 29 (relating to mixed martial arts) became effective on February 27, 2009. MMA is a sport using a combination of boxing, kickboxing, wrestling, karate, taekwondo, jujitsu, muay thai and other martial arts techniques, including grappling, kicking and striking. Presently, 45 states and tribal organizations permit or regulate professional MMA. Forty-four states and tribal organizations permit or regulate amateur MMA. Amateur MMA is legal but unregulated in 13 of those states and directly regulated by the athletic commissions of 21 states.

Striking to the opponent’s head while on the ground (commonly referred to as “ground and pound”) is an act which constitutes a foul for amateur contestants under § 29.29(b)(3)(i) (relating to acts constituting fouls), but not under § 29.12 (relating to acts constituting fouls). In addition, amateur contestants are required to wear shin/instep pads under § 29.27(c) (relating to equipment), while professional contestants are not. See § 29.7 (relating to proper attire of contestants). Section 29.30 is based on requests by many of the more experienced amateur contestants to permit these techniques as a bridge to their professional debuts, when striking to the head while on the ground is permitted and shin and instep pads are not required.

Section 29.30 permits the Commission to waive the “striking to the head while on the ground” and shin/instep pad requirement for more experienced amateur contestants. The waiver is at the discretion of the Commission and shall be requested by amateur contestants to a particular contest who agree to conduct the contest with a waiver of the “striking to the head while on the ground” rule and the shin/instep pad requirement. In reviewing waiver requests, the Commission will take into account

several factors, including the win-loss records of both participants and the individual conditioning, training, experience and skill level of the contestants.

D. Comments Received

Notice of proposed rulemaking was published at 42 Pa.B. 4720 (July 28, 2012) followed by a 30-day public comment period. The Commission received two public comments. The Commission did not receive comments from the House and Senate State Government Committees. However, the Commission did receive a comment from Representative Daryl Metcalfe, the Chairperson of the House State Government Committee, who expressed support for the proposed rulemaking. Representative Metcalfe stated that the “proposed regulation is a common sense solution that maintains the safety of amateur MMA contestants competing in Pennsylvania while providing them with an opportunity to gain necessary experience to advance within the sport.”

The Commission received a public comment from Mick Morrow of Fight Club Pittsburgh who suggested that waivers be automatic after three verifiable bouts if the amateur fighter had a letter of recommendation from “any reputable Mixed Martial Arts Training Facility.” A training facility would be considered reputable if it has trained at least three different fighters who “have competed successfully in previous Mixed Martial Arts Events.” The Commission declines to incorporate this automatic waiver, which would be based solely on the recommendation of individuals from the training facility who may have a vested interest in the fighter’s career. The Commission will base its determination on whether a waiver will be granted on the more empirical factors in the regulation, including the win-loss record, conditioning, training, experience and skill level of each individual contestant. Information about many of these factors will necessarily be obtained from communications with and recommendations from the fighter’s trainer and training facility. However, the Commission determined that it is in the best interest of the health and safety of the contestants if the Commission, rather than the MMA fighter’s training facility, makes the waiver determination. This commentator also suggested that the regulation contain a 1-week period for the Commission to act on waiver requests “to facilitate the orderly planning process of all Mixed Martial Arts Promotions.” The Commission declines to impose a time period for review of waiver requests when it does not have similar time periods for any other application review. It is anticipated that waiver determinations will be made within 2 to 3 days of submission of fight line-ups and when applicable information requested on the waiver form has been provided.

The Commission also received a public comment from the Pennsylvania Psychological Association (PPA) stating that it does not support § 29.30. The PPA stated that permitting blows to the head increases the danger of chronic traumatic encephalopathy (CTE), essentially a type of brain injury that may result from a single blow or over time. As the PPA pointed out, CTE is no longer confined to boxers. The PPA did not point to medical literature on the incidence of CTE in MMA competition (either amateur or professional). The Commission notes in response that blows to the head are a legal part of the sport of professional MMA, as well as sports like boxing, football and ice hockey. However, while the overall injury rate in MMA competition is similar to that in other combat sports, the knockout rate is lower in MMA

competition than in boxing, suggesting a reduced risk of traumatic brain injury (TBI) in MMA competition. Bledsoe, G. H., et al. (2006). "Incidence of injury in professional mixed martial arts competitions." *Journal of Sports Science and Medicine*, 136-142.

Finally, the Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and notified the Commission that it had concerns which were divided into two categories. The first category related to the protection of the public health, safety and welfare. IRRC requested that the Commission "consider and provide citations to the most recent medical studies on the potential dangers associated with head injuries, such as chronic traumatic encephalopathy." The Commission previously cited a study which is specific to MMA competition. The Commission is also aware of a research study approved and beginning this fall at the Penn State Milton S. Hershey Medical Center examining whether new types of magnetic resonance imaging can detect physical changes in the brain in an MMA fighter following a knock-out or concussion.

The following medical studies address the potential dangers associated with head injuries:

McKee, A. C., et al. (2009). "Chronic traumatic encephalopathy in athletes: progressive tauopathy following repetitive head injury." *Journal of Neuropathology and Experimental Neurology*, 68(7), 709-735.

National Institute of Neurological Disorders and Stroke (2002). "Traumatic brain injury: hope through research." NIH Publication No. 02-158.

Tommasone, B. A., et al. (2006). "Contact sport concussion incidence." *Journal of Athletic Training*, 41(4), 470-472.

The National Institutes of Health publication discusses TBI in general, the signs and symptoms, causes and risk factors and treatment. The publication points out that the vast majority of TBI (97%) is not due to sports injuries but to automobile/motorcycle/bicycle accidents, falls (in older adults), violence (such as firearm assaults and child abuse) and half involved alcohol use.

The Tommasone article is a review of other studies and addresses the question of the incidence of concussion in football, boxing, ice hockey, judo, karate, tae kwon do, rugby and soccer. For this review, concussion was defined as "a mild brain injury resulting from a direct blow to the head resulting in physiological changes in brain function" and is a type of mild TBI. The review found that, among team sports for high school males, ice hockey athletes demonstrated the highest incidence of concussion (3.6 per 1,000 athlete-exposures) and soccer athletes the lowest incidence of concussion (0.18 per 1,000 athlete-exposures). At the professional level, similar concussion incidence rates were found in both ice hockey athletes (6.5 per 1,000 player-games) and rugby players (9.05 per 1,000 player-games). The study did not include MMA, but when compared with other individual male sports (karate and tae kwon do), boxing had the highest incidence of concussion in professional athletes (0.8 per 10 rounds) and amateur athletes (7.9 per 1,000 man-minutes).

The McKee study reviewed 51 neuropathologically confirmed cases of CTE, largely in boxers, and looked at the pathological features of CTE. It found CTE to be a neuropathologically distinct, slowly progressive neurodegenerative disease with a clear environmental etiology. However, the article also stated that most sports-related head injury is minor and a small number of individuals develop long-lasting or progressive symptoms when there

is repetitive concussion or mild TBI, the precise incidence of CTE after repetitive head injury is unknown.

The Commission believes this final-form rulemaking adequately protects the health and safety of the contestants because it preserves the protections of the amateur rules while providing amateur MMA contestants in this Commonwealth the opportunity to gain the necessary experience to advance in their chosen sport and striking to the head while on the ground is permitted in professional competition. The rules adopted by the Association of Boxing Commissions (which also regulates MMA) allow for strikes to the head. These rules have been broadly adopted across the Nation. The Commission, like other state/tribal commissions that regulate MMA events, fully understands the hazards of the sport. This final-form rulemaking was approved by the Commission's Medical Advisory Board and is consistent with other states' amateur MMA regulations. Without these transitional provisions, many of the MMA amateur fighters in this Commonwealth may not be prepared to turn professional and, if they do, they may be at greater risk in the ring.

IRRC recommends that language be added to the final-form rulemaking to prevent promoters from requiring potential contestants to request the waivers and to have contestants affirm that they are doing so because they plan to transition from amateur MMA status to professional status. The Commission does not share IRRC's concern that promoters may not provide events for amateur contestants unless they agree to seek the waiver. In 2011, there were 52 sanctioned MMA events in this Commonwealth, which included amateur bouts on the card. Commonwealth rules do not permit all amateur shows. The Pro-Am events average eight amateur fights per event. The amateur fights at these events were under the existing amateur rules. Approximately 30% of the amateur contestants in Pro-Am events are making their debut fights as amateurs and clearly would never qualify for the waiver. Even if there would be pressure from a promoter for an amateur to fight under the waiver provisions, the amateur contestant must apply for and receive the waiver. The final determination for a waiver rests with the Commission and not with the training facility or the promoter. Each waiver request will be reviewed on its own merits, taking into consideration the win-loss record, conditioning, training, experience and skill level of each individual contestant. If the contestant is not deemed to be sufficiently prepared or qualified, a waiver will not be granted. Finally, if there is coercion by the promoter, this could be cause for discipline of the promoter license by the Commission. Therefore, the Commission declines to make these changes.

IRRC questioned why the Commission determined that the waiver provisions should be authorized after three amateur bouts and not with even more experience. In the experience of the Commission, the average MMA contestant in this Commonwealth who transitions to professional competition does so after the completion of four to six bouts as an amateur. Therefore, the ability to apply for a waiver after three verified bouts is timed to be at least midway (if not more) through the career of the average amateur fighter who turns professional. Furthermore, the waiver is not required and amateur fighters may continue to compete entirely under the amateur rules as long as they wish.

The second category of IRRC concerns related to implementation procedures and clarity. IRRC questioned how a contestant would apply for the waiver. The Commission will provide a form for a contestant requesting a waiver

to complete. Like all Commission applications, the completed form may be personally delivered, mailed, faxed or e-mailed to the Commission. IRRC queried how the second contestant would be aware of the waiver request and if both contestants would be required to apply for the waiver at the same time. Both contestants would typically become aware of and apply for the waiver at the same time based on submission of fight line-ups for the upcoming event. Like boxing, MMA contestants are matched up for an event by licensed matchmakers who are employed by licensed promoters. See § 21.7 (relating to matchmakers). The matchmakers shall take into account the weights, win-loss records, abilities and physical condition of contestants before submitting to the Commission a list of proposed bouts for the upcoming event. This list shall be submitted to the Commission at least 5 days prior to the event. Should contestants wish to fight under the waiver provision, they will both be aware of the matchup and therefore the need to apply for a waiver when they agree to the event.

IRRC questioned how far in advance before a contest would an application for waiver be made and how long would the Commission take to review and decide on the request. As previously noted, contestants will be aware of the need to apply for a waiver at least a week before the event. Waiver determinations will be made by the Executive Director of the Commission within 2 to 3 days of submission of applicable information, including fight line-ups. Contestants would be notified in writing of the decision on the waiver. As with any decision of the Executive Director, the waiver determination is appealable to the Commission and the Commission's decision is appealable to the Commonwealth Court.

E. Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Department of State (Department) or the Commission because the Commission is self-supporting and does not use General Fund moneys. The Commission will not incur additional costs in enforcing this final-form rulemaking. The regulation will not have adverse fiscal impact on the Commonwealth or its political subdivisions. Additional paperwork requirements for the Commonwealth or the private sector are limited to amateur contestants applying for waivers. There is not a fee to request the waiver. The final-form rulemaking will not have adverse fiscal impact on mixed martial artists, boxers, promoters, referees, judges and timekeepers currently regulated by the Commission.

F. Sunset Date

The Commission and the Department monitor the regulations of the Commission on a continuing basis. Therefore, a sunset date has not been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 17, 2012, the Commission submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 4720, to IRRC and the Chairpersons of the House and Senate State Government Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided

with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 3, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 4, 2013, and approved the final-form rulemaking.

H. Additional Information

Individuals who require information about the final-form rulemaking may contact Gregory P. Sirb, Executive Director, State Athletic Commission, 2601 North Third Street, Harrisburg, PA 17110.

I. Findings

The Commission finds that:

(1) Public notice of intention to adopt this regulation was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

(3) Amendments were not made to the final-form rulemaking that would enlarge the original purpose of the proposed rulemaking as published at 42 Pa.B. 4720.

(4) This regulation is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this preamble.

J. Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 29, are amended by adding § 29.30 to read as set forth at 42 Pa.B. 4720.

(b) The Commission shall submit this order and 42 Pa.B. 4720 to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commission shall certify this order and 42 Pa.B. 4720 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

CHARLES BEDNARIK,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 2242 (April 20, 2013).)

Fiscal Note: Fiscal Note 16-53 remains valid for the final adoption of the subject regulation.

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