

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Department of State
State Athletic Commission

(2) I.D. Number (Governor's Office Use)

16-37

IRRC Number: 2641

(3) Short Title

Communicable Disease Testing

(4) PA Code Cite

58 Pa. Code §21.8

(5) Agency Contacts & Telephone Numbers

Primary Contact: Gregory P. Sirb, Executive Director,
State Athletic Commission
717-787-5720

Secondary Contact: Martha H. Brown, Counsel
State Athletic Commission
717-787-6802

(6) Type of Rulemaking (check one)

☒ Proposed Rulemaking
☐ Final Order Adopting Regulation
☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

☒ No
☐ Yes: By the Attorney General
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Commission proposes to amend its current regulations pertaining to professional boxers and kickboxers to permit annual testing for human immunodeficiency virus (HIV) and communicable diseases to be initiated up to six months prior to the date of annual licensure application, thereby adopting the recommendation of the American Association of Boxing Commissions (ABC) and the Commission's own Medical Advisory Board. The intent of the amendment is to conform to national standards while still protecting professional boxers, who frequently come into direct contact with the blood of an opponent in a boxing contest or exhibition, from contracting a communicable disease that can have significant long-term health consequences for professional boxers.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The proposed amendments are authorized under section 103 of the State Athletic Code (5 Pa.C.S. § 103), which authorizes the Commission to establish policy and promulgate rules and regulations regarding professional boxing contests and exhibitions and all matters pertaining thereto.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendment to the testing regulation is needed to conform Pennsylvania testing practices to national standards on the timing of testing. While annually testing professional boxers for HIV, Hepatitis B and Hepatitis C helps to protect boxers from the devastating health consequences of contracting any of these diseases, the current regulation requiring initiation of the tests no more than 60 days prior to the annual application for licensure is overly burdensome to boxers, in light of the fact that most boxers compete in many states and are thus being tested in many states.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation will contribute to the further spread of communicable diseases among professional boxers.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Professional boxers will directly benefit from the proposed regulation through the ability to utilize a test conducted up to six months in advance of application for licensure. However, members of the public who visit boxing contests and exhibitions will also indirectly benefit because regular testing for boxers will ensure that the public will be less likely to be exposed at ringside to infected blood and bodily fluids of professional boxers.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one will be adversely affected by the proposed regulation, as regular annual testing of professional boxers will still occur.

Regulatory Analysis Form

- (15) List the persons, groups or entities that will be required to comply with the regulation.
(Approximate the number of people who will be required to comply.)

All licensed professional boxers and kickboxers would have to comply with the regulation. As of December 31, 2006, there were 320 professional boxer and 10 professional kickboxers registered with the Commission.

- (16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Communications with and soliciting input from the public in the development and drafting of this regulation included affording a random selection of individuals from the following categories with the opportunity for a 30-day predraft comment review period: all five current physician members of the Medical Advisory Board and five other physicians who are presently licensed as ringside physicians by the Commission; eight professional boxing promoters; seven professional boxing managers; eight professional boxers; and four boxing seconds or trainers. The Commission also forwarded an exposure draft to the Association of Boxing Commissions (ABC). Only the ABC and one promoter commented on the draft, with the ABC concurring in full with the proposed changes. The promoter, Vernoca L. Michael of Philadelphia, applauded the Commission for mandated testing of boxers for HIV/AIDS and suggested that the Commission undertake to further educate fighters, trainers, managers and promoters about the disease. The Commission responds that it already provides HIV/AIDS education to boxers upon request. The application for professional boxing licensure asks whether the boxer understands the HIV/Hepatitis B and Hepatitis C testing procedures and contains a check box for the applicant to indicate whether he would like more information about the HIV/AIDS virus. If the applicant indicates that more information is requested, the Commission forwards a packet of information about the HIV/AIDS virus provided by the Pennsylvania Department of Health. Ms. Michaels also stated that further clarification is needed to indicate the actual timeframe for testing. The Commission finds that the time period of six months, as stated in the regulation, is clear.

- (17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

Professional boxers will still pay annual testing fees. However, no legal, accounting or consulting procedures will be implicated in complying with the regulations and therefore, no other additional costs are estimated.

- (18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

N/A

- (19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

N/A

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	0	0	0	0	0	0
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:	0	0	0	0	0	0
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY 2003-2004	FY 2004-2005	FY 2005-2006	FY 2006-2007 (budgeted)
State Athletic Commission	\$ 364,094.75	\$ 375,060.98	\$ 358,265.09	\$ 423,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered because it is apparent that HIV and communicable disease testing is needed to help protect the health of professional boxers.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered because the Commission sought to adopt the recommendations of the Association of Boxing Commissions and its own Medical Advisory Board.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Of the six states contingent to Pennsylvania, the boxing commissions of four states (Ohio, Maryland, New Jersey and New York) have adopted similar requirements for HIV, Hepatitis B and Hepatitis C testing. Delaware has no boxing commission and West Virginia requires a pre-fight physical examination only. The rulemaking will not put Pennsylvania at a competitive disadvantage.

Regulatory Analysis Form

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will have no impact on the regulations of other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Commission provides an opportunity for public input into its activities, including its rulemaking proposals, at its regularly scheduled meetings. The dates, times and places of the Commission's meetings are available from the State Athletic Commission, 2601 North 3rd Street, Harrisburg, PA 17110; phone (717) 787-5720.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

No change to reporting, record keeping, or other paperwork is required by this proposed regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Commission and the Department have perceived no special needs of any subset of groups or persons affected for which special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Department will review the proposed regulations promulgated under this section yearly to determine whether new requirements should be promulgated.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

Angus M. Elliott
BY: _____

(DEPUTY ATTORNEY GENERAL)

SEP 14 2007

DATE OF APPROVAL

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

State Athletic Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16-37

DATE OF ADOPTION: _____

BY: *Charles P. Bednarik*

Charles P. Bednarik

TITLE: Chairman, State Athletic Commission
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is approved as
to form and legality.
Executive or Independent
Agencies.

BY: _____

Andrew C. Clark

AUG 22 2007

DATE OF APPROVAL

(Deputy General Counsel
(Chief Counsel,
Independent Agency
~~Strike inapplicable~~
~~title~~)

- [] Check if applicable
Copy not approved.
Objections attached.
- [] Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE ATHLETIC COMMISSION
58 Pa. Code §21.8
COMMUNICABLE DISEASE TESTING

The State Athletic Commission (Commission) proposes to amend § 21.8 (relating to boxers) as they pertain to the testing of professional boxers for communicable diseases, to read as set forth in Annex A.

A. Effective Date

The amendments would be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

B. Statutory Authority

The amendments are authorized under section 103(b)(1) of the State Athletic Code (Code) (5 Pa.C.S. § 103(b)(1)), which authorizes the Commission to establish policy and promulgate rules and regulations regarding professional boxing contests and exhibitions and all matters pertaining thereto. The amendments are further authorized by section 501 of the Code (5 Pa.C.S. § 501), which permits the Medical Advisory Board to recommend changes or additions to the health and safety rules and regulations of the Commission.

C. Background and Purpose

The Commission's present regulations require testing of professional boxers and kickboxers for human immunodeficiency virus and communicable diseases, including Hepatitis B and Hepatitis C. The current regulation requires that the testing have been initiated no more than 60 days prior to the date of an annual license application. The proposed regulation would permit testing to be done up to 6 months prior to the date of an annual license application.

The change is based on the recommendation of the Medical Advisory Board of the State Athletic Commission, made in the fall of 2006, to change the time frame from 60 days to 6 months. The Commission adopts this recommendation and has determined that the current time period of 60 days is overly burdensome and unnecessary. Most Pennsylvania boxers compete in several of the surrounding states, many of which have testing requirements similar to those in the Commonwealth. Thus, boxers who regularly compete are tested often, with a cost of approximately \$50 to \$70 for the panel of tests including HIV, Hepatitis B and Hepatitis C. This change is also in conformance with the Association of Boxing Commissions (ABC), which recommends that each boxer provide a negative test result for HIV and Hepatitis B and C to the regulating commission, with tests no older than 6 months from the date the blood was tested. The ABC states that most boxing commissions which are member states currently use the 6-month timeframe for testing.

D. Description of the Proposed Amendments

As a condition for initial licensure or annual renewal of a license as a professional boxer, an applicant is required to be tested for human immunodeficiency virus and communicable diseases as defined in § 1.1 (relating to definitions), which currently includes testing for Hepatitis B and Hepatitis C. The Commission is proposing that the time period for the initiation of testing be extended from no more than 60 days prior to the date of an annual license application to no more than 6 months prior to the date of an annual license application. The Commission does not intend to eliminate the requirement for testing as a condition of licensure, but simply to extend the period of time for which the completed tests may be utilized for licensure purposes. Under § 25.1 (relating to general provisions), this rulemaking would apply to professional kickboxers as well.

E. Compliance with Executive Order 1996-1

The Commission reviewed this rulemaking and considered its purpose and likely impact upon the public and regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation (February 6, 1996). The proposed amendment addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

As part of its review, the Commission also afforded the opportunity for a 30-day predraft comment by forwarding an exposure draft of Annex A to a random selection of individuals from the following categories of individuals: all five physicians who are members of the Medical Advisory Board and five additional physicians who are presently licensed as ringside physicians by the Commission; eight professional boxing promoters; seven professional boxing managers; eight professional boxers; and four boxing seconds or trainers. The Commission also forwarded an exposure draft to the Association of Boxing Commissions (ABC). Only the ABC and one promoter commented on the draft. The Commission considered the two comments in drafting the proposed regulation.

F. Fiscal Impact and Paperwork Requirements

The proposed amendment will have no adverse fiscal impact on the Department of State or the Commission. The proposed amendment will also have no adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose any additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector. The proposed amendment will have no adverse fiscal impact on the professional boxers the Commission regulates.

G. Sunset Date

The Commission and the Department monitor the regulations of the Commission on a continuing basis. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission submitted a copy of this proposed regulation on September 26, 2007, to the Independent Regulatory Review Commission (IRRC), the Senate State Government Committee and the House State Government Committee. In addition to submitting the proposed rulemaking, the Commission has provided IRRC and the committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), if IRRC has comments, recommendations or objections regarding any portion of the proposed rulemaking, it will notify the Commission within 30 days of the close of the public comment period. The notification will specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of comments, recommendations and objections by the Commission, the General Assembly, and the Governor prior to publication of the regulations.

I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Gregory P. Sirb, Executive Director or the State Athletic Commission, 2601 North 3rd Street, Harrisburg, PA 17110, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16-37 (Communicable Disease Testing), when submitting comments.

CHARLES BEDNARIK
Chairman of the State Athletic Commission

ANNEX A

Title 58. Recreation

PART I. STATE ATHLETIC COMMISSION

SUBPART B. BOXING

CHAPTER 21. PROFESSIONAL BOXING

* * * * *

§ 21.8. Boxers.

(a) Professional boxers shall be licensed by the Commission. The Commission will not license or renew the license of a professional boxer unless the license application is accompanied by a report from a Department of Health facility, a laboratory possessing a permit from the Department of Health under 28 Pa. Code § 5.11 (relating to permit, requirements, application and conditions) or a report from a laboratory licensed in another jurisdiction that meets the requirements to be issued a permit under 28 Pa. Code § 5.11, and is acceptable to the Commission, which indicates that the applicant has been tested for any virus, antibody, antigen or etiologic agent determined to cause or indicate the presence of human immunodeficiency virus and any other communicable disease and the results of those tests were negative. The tests shall have been initiated no more than [60 days] 6 months prior to the date of filing the application. A boxer whose application for license has been denied has the right to a hearing before the Commission under 2 Pa.C.S. § § 501—508 (relating to practice and procedure of Commonwealth agencies). The applicant shall apply, in writing, to the Commission requesting a hearing. The Commission will conduct a hearing within 10 business days from the receipt of the written request.

* * * * *

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

DATE:

SUBJECT: Proposed Rulemaking:
State Athletic Commission
Communicable Disease Testing (16-37)

TO: Andrew C. Clark, Deputy General Counsel
Office of General Counsel

FROM: Martha H. Brown, Assistant Counsel 

There are no significant legal and policy issues presented by this regulation, amending section 21.8 (relating to boxers) of the regulations of the State Athletic Commission (SAC), found at 58 PA Code Part I, as they pertain to the testing of professional boxers for communicable diseases. The amendments are authorized under section 103 of the State Athletic Code, 5 Pa. C.S. §103.

Please review the regulation package and, if acceptable as submitted, forward it through the appropriate channels. Thank you for your assistance.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

MHB:mab



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE ATHLETIC COMMISSION
2601 NORTH THIRD STREET
HARRISBURG, PA 17110
(717) 787-5720**

September 26, 2007

The Honorable Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Re: Proposed Rulemaking of the State Athletic Commission
Communicable Disease Testing (16-34)

Dear Chairman Coccodrilli:

Enclosed is a copy of the proposed regulation of the State Athletic Commission pertaining to communicable disease testing.

The State Athletic Commission, as always, will be pleased to provide your committee with any assistance it may require during the course of its review of this regulation.

Sincerely,

A handwritten signature in cursive script that reads "Martha H. Brown".

Martha H. Brown
Counsel, State Athletic Commission

MHB/mab
Enclosures

cc: Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Gregory Sirb, State Athletic Commission

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 16-37
SUBJECT: COMMUNICABLE DISEASE TESTING
AGENCY: DEPARTMENT OF STATE

2007 SEP 26 PM 12:24

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/26	M. Sprizzari	STATE GOVERNMENT COMMITTEE OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
9/26	Patience Hill	
9/26	S.C.	STATE GOVERNMENT COMMITTEE OF THE PENNSYLVANIA SENATE
9/26	L. Lank	
9/26/07	St. Helvest	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
9/24/07	C. Lee - Brown	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 26, 2007