

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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Regulatory Analysis Form
(Completed by Promulgating Agency)
(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of State, State Athletic Commission

(2) Agency Number:
Identification Number: 16-53

IRRC Number: 2958

(3) PA Code Cite: 58 Pa. Code Chapter 29

(4) Short Title: Amateur Mixed Martial Arts Waiver

(5) Agency Contacts (List Telephone Number and Email Address):
Primary Contact: Gregory P. Sirb, Executive Director - 717-787-5720 - gsirb@pa.gov
Secondary Contact: Martha H. Brown, Assistant Counsel - 717-783-0736 - martbrown@pa.gov

(6) Type of Rulemaking (check applicable box):
 Proposed Regulation
 Final Regulation
 Final Omitted Regulation
 Emergency Certification Regulation
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The State Athletic Commission is amending Chapter 29, Subchapter B (relating to amateur mixed martial arts) in order to permit the Commission to waive two rules for amateur mixed martial arts (MMA) contestants in certain cases: the rule against striking to the head while on the ground and the rule requiring contestants to wear shin and instep pads.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The amendments are authorized under 5 Pa. C.S. §§ 103(b)(1) and 302 (relating to duties of commission; and definitions), which authorize the Commission to establish policy and promulgate rules and regulations regarding professional and amateur boxing contests and exhibitions and all matters pertaining thereto. The Athletic Code broadly defines boxing to include 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.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This regulation is not mandated by any federal or state law or court order, or federal regulation. There are no relevant state or federal court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Commission has regulated amateur and professional mixed martial arts (MMA) competition in the Commonwealth of Pennsylvania, since Chapter 29 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. The popularity of MMA has continued to surge in recent years, both nationwide and in Pennsylvania. The progression from amateur to professional competition is one made by dozens of contestants each year.

Current § 29.29 (relating to acts constituting fouls) sets forth the acts which constitute fouls in amateur competition and how a contestant using foul tactics in a contest or exhibition will be disqualified or have points deducted from his score. Striking to the opponent's head while on the ground (commonly known as "ground and pound") is an act which constitutes a foul for amateur contestants under current § 29.29(b)(3)(i). Striking to the head while on the ground is not a foul under the professional rules at § 29.12 (relating to acts constituting fouls). In addition, amateur contestants are required to wear shin/instep pads under current § 29.27(c) (relating to equipment), while professional contestants are not. See § 29.7 (relating to proper attire of contestants).

In order to provide a transition for amateur fighter to professional competition, § 29.30 (relating to waiver of rule for contestants with three or more amateur bouts) would permit the Commission to waive the "striking to the head while on the ground" rule and the shin/instep pad rule for certain amateur contestants. This change has been requested by many of the more experienced amateur contestants as a bridge to their professional debuts, where the conduct is not prohibited.

The waiver is at the discretion of the Commission and must be requested by both amateur contestants to a particular contest who agree to conduct the contest with a waiver of the two enumerated rules. 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. Because only experienced amateurs, with three or more sanctioned bouts, will be permitted to request a waiver, chances for injury in practicing the techniques are lessened.

In 2011, there were 592 licensed amateur MMA contestants and 241 licensed professional MMA contestants in Pennsylvania. There were 52 sanctioned MMA events which included amateur fights. The Commission anticipates that up to 20% of amateur licensees will apply for a waiver annually.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

This rulemaking is not based upon any scientific data, studies or reports.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

The Commission has not identified any particular groups that will be adversely affected by the regulation. Those amateur fighters who do not request or qualify for the waiver will be subject to the current amateur rules.

(13) 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 amateur MMA contestants who request a waiver to the "striking to the head while on the ground" rule and shin/instep pad rule would have to comply with the regulation. In 2011, there were 592 licensed amateur MMA contestants in Pennsylvania. The Commission anticipates that up to 20% of those licensees may apply for a waiver.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed amendment will present no costs or savings to the regulated community. Any additional paperwork requirements upon amateur licensees will be limited to amateur contestants applying for the waiver, but there is no fee to request the waiver. No legal, accounting or consulting procedures will be implicated in complying with the regulations and therefore, no other additional costs are estimated.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(16) 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 which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to state government associated with the implementation of the rulemaking. The State Athletic Commission is self-supporting and uses no General Fund monies. The Commission's 5% tax on gross gate receipts on sanctioned events is deposited into the Athletic Commission Augmentation Account. The Commission will incur minimal additional costs in enforcing the regulation, which will include the Executive Director's time in reviewing each waiver request.

(17) 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:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	n/a	n/a	n/a	n/a	n/a	n/a
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	n/a	n/a	n/a	n/a	n/a	n/a
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	n/a	n/a	n/a	n/a	n/a	n/a

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 (2009-2010)	FY -2 (2010-2011)	FY -1 (2011-2012)	Current FY (2012-2013)
State Athletic Commission	\$444,478.98	\$429,501.13	\$451,841.82	\$509,000.00

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefit of the regulation will be to amateur contestants who will be able to transition safely and effectively to professional competition. There are no costs or adverse affects to be outweighed.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

This change has been requested by many of the more experienced amateur contestants and their trainers as a bridge to their professional debuts, where the conduct is not prohibited. The Commission discussed this rulemaking at its meetings on December 20, 2010, April 26, 2011, December 19, 2011, March 6, 2012 and October 29, 2012.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered and rejected, other than to leave the regulations as they are currently, which does not accomplish the objective. The least burdensome acceptable alternative has been selected.

(21) 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 regulations.

There are no federal standards for mixed martial arts contests, therefore no provisions of this rulemaking are more stringent than federal standards.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Presently, 45 states and tribal organizations permit or regulate professional mixed martial arts. Forty-four states and tribal organizations permit or regulate amateur mixed martial arts. Amateur MMA is legal but unregulated in 13 of those states, and directly regulated by the Athletic Commissions of 21 states.

Of the six states surrounding the Commonwealth, the boxing commissions of two states (Ohio and New Jersey) affirmatively regulate amateur mixed martial arts. Ohio rules permit amateurs striking to the head while on the ground, while New Jersey rules do not. The commissions of two states (New York and West Virginia) do not permit professional or amateur mixed martial arts. Amateur mixed martial arts are permitted in Maryland, but regulated through an amateur sanctioning group, which permits amateurs to strike to the head while on the ground. Delaware has no boxing commission.

Of the states surveyed that regulate amateur MMA competitions, four allow strikes to the head while on the ground (CO, GA, KY, and OH), and three do not (MD, NJ, and NC). The state of Georgia has

provisions similar to those proposed that permit contestants seeking to turn professional to compete under "advanced amateur" rules (including strike to the head) after at least three verifiable bouts.

With regard to the proposed waiver for shin pads, the following states do not require that they be worn by amateur contestants: KY, LA, MN, NE, OH, SC, UT, and WI. Four states require shin pads be worn by amateurs (GA, MD, NJ, and NM). North Carolina allows competitors the option to wear shin pads, but they are not required.

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states.

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

This regulation will not affect any other regulations of the State Athletic Commission or other state agencies.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No specific form is required to request the waiver. However, the Commission will make a form available to assist requesters. Waiver requests will be evaluated on a case-by-case basis as they are submitted.

(25) 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.

This regulation has been developed to meet the particular needs of amateur mixed martial arts contestants who are seeking to develop professional mixed martial arts skills, in order to safely compete as a professional contestant. There is no other affected group or persons.

(26) Include a schedule for review of the regulation including:

- | | |
|---|--------------------------------------|
| A. The date by which the agency must receive public comments: | <u>30 days after publication</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>n/a</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>within 2 years of publication</u> |

- | | |
|--|---|
| D. The expected effective date of the final-form regulation: | <u>upon publication
of final rulemaking</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>effective date</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>effective date</u> |

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

The Commission continually reviews the efficacy of its regulations annually. 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 and www.dos.state.pa.us/sac.

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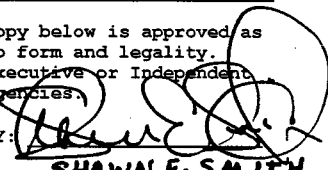
Copy below is hereby approved as to form and legality. Attorney General

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

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BY: _____
(DEPUTY ATTORNEY GENERAL)

State Athletic Commission
(AGENCY)

BY: 
SHAWN E. SMITH

DOCUMENT/FISCAL NOTE NO. 16-53

DATE OF APPROVAL

DATE OF ADOPTION: _____

2/11/13
DATE OF APPROVAL

BY: 
Charles P. Bednarik

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

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

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

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE ATHLETIC COMMISSION
58 Pa. Code Chapter 29
AMATEUR MMA WAIVER

The State Athletic Commission (Commission) hereby amends Chapter 29, Subchapter B (relating to amateur mixed martial arts), to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The amendments are 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 all matters pertaining thereto. The amendments are further authorized by 5 Pa.C.S. §302 (relating to definitions), which defines “boxing” as “[t]he 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 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 current § 29.29(b)(3)(i) (relating to acts constituting fouls), but not under the professional rules at § 29.12 (relating to acts constituting fouls). In addition, amateur contestants are required to wear shin/instep pads under current § 29.27(c) (relating to equipment), while professional contestants are not. See § 29.7 (relating to proper attire of contestants). The amendment is based on requests by many of the more experienced amateur contestants to permit these techniques as a bridge to their professional debuts, where striking to the head while on the ground is permitted and shin and instep pads are not required.

New § 29.30 (relating to waiver of rule for contestants with three or more amateur bouts) 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 both 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 on July 28, 2012 (at 42 Pa.B. 4720) followed by 30 days of public comment. The Commission received two public comments. The Commission did not receive any comments on the proposed regulation from the House or Senate State Government Committees. However, the Commission did receive comment from Representative Daryl Metcalfe, the Chairman of the House State Government Committee, who expressed his support for the proposed regulation. 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 stated in the regulation: 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 has 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. Mr. Morrow also suggested that the regulation contain a 1-week period for the Commission to act on waiver requests, “in order 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 has no 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 all 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 the change. The PPA writes 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 points out, CTE is no longer confined to boxers. The PPA does not point to any 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, et al., *Incidence of Injury in Professional Mixed Martial Arts Competitions*, Journal of Sports Science and Medicine (July 1, 2006).

Finally, the Independent Regulatory Review Commission (IRRC) reviewed the proposed regulation and notified the Commission that it had concerns about the regulation 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 has cited to one such study above, which is specific to mixed martial arts 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 (MRI) can detect physical changes in the brain in MMA fighters, following a knock-out or concussion.

Following are citations to medical studies which address the potential dangers associated with head injuries:

- National Institute of Neurological Disorders and Stroke. *Traumatic brain injury: hope through research*. National Institutes of Health; 2002 Feb. NIH Publication No.: 02-158.
- Tommasone, et al., *Contact Sport Concussion Incidence*. Journal of Athletic Training (Oct-Dec. 2006) 41(4): 470-472.
- McKee, et al., *Chronic Traumatic Encephalopathy in Athletes: Progressive Tauopathy following Repetitive Head Injury*, Journal of Neuropathology and Experimental Neurology (July 2009); 68(7):709-735.

The NIH publication discusses traumatic brain injury 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 fully half involve alcohol use.

The Tommasone article is a review of other studies and addresses the question of the incidence of concussion in 8 different contact sports: football, boxing, ice hockey, judo, karate, taekwondo, 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 traumatic brain injury (TBI). The review found that, among team sports for high school males,

Mixed Martial Arts amateur waiver 16-53
Preamble to Final Rulemaking
November 30, 2012

ice hockey athletes demonstrated the highest incidence of concussion (3.6 per 1000 athlete-exposures [AEs]) and soccer athletes the lowest incidence of concussion (0.18 per 1000 AEs). At the professional level, similar concussion incidence rates were found in both ice hockey (6.5 per 1000 player-games) and rugby (9.05 per 1000 player-games) players. 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 (0.8 per 10 rounds) and amateur (7.9 per 1000 man-minutes) athletes.

The McKee study reviewed 51 neuropathologically confirmed cases of chronic traumatic encephalopathy (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 only a small number of individuals develop long-lasting or progressive symptoms, when there is repetitive concussion or mild traumatic brain injury – the precise incidence of CTE after repetitive head injury is unknown.

The Commission believes the rulemaking adequately protects the health and safety of the contestants, because it preserves the protections of the amateur rules while providing Pennsylvania amateur MMA contestants the opportunity to gain the necessary experience to advance in their chosen sport, where 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 Pennsylvania Commission, like all other state/tribal commissions that regulate MMA events, fully understands the hazards of the sport. This 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 Commonwealth's MMA amateur fighters may not be prepared to turn professional, and when they do, they may be at greater risk in the ring.

IRRC recommends that language be added to the 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 Pennsylvania, which included amateur bouts on the card (Pennsylvania rules do not permit all amateur shows). The Pro-Am events average eight amateur fights per event. All 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 all waivers rests with the Commission and not, as discussed earlier, 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, no waiver will 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 Pennsylvania MMA contestant who transitions to professional competition does so after the completion of 4-6 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 pro. Furthermore, the waiver is in no way 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 each contestant requesting a waiver to complete. Like all Commission applications, the completed form may be personally delivered to, mailed, faxed or emailed to the Commission. IRRC next 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* 58 Pa. Code §21.7 (relating to matchmakers). The matchmakers must take into account the weights, win-loss records, abilities and physical condition of the contestants before submitting to the Commission a list of proposed bouts for the upcoming event. This list must 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.

Finally, 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 noted above, the 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 all 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 regulation will have no adverse fiscal impact on the Department of State (Department) or the Commission, because the Commission is self-supporting and uses no General Fund monies. The

Commission will incur no additional costs in enforcing this regulation. The regulation will also have no adverse fiscal impact on the Commonwealth or its political subdivisions. Any additional paperwork requirement upon the Commonwealth or the private sector is limited to the amateur contestant applying for the waiver. There is no fee to request the waiver. The regulation will have no adverse fiscal impact on the mixed martial artists, boxers, promoters, referees, judges and timekeepers which the Commission currently regulates.

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 Department submitted copies of the notice of proposed rulemaking, published at 42 Pa.B. 4720 (July 28, 2012) to IRRC, the Senate State Government Committee and the House State Government Committee for review and comment.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was deemed approved by the Senate State Government Committee on (month date), (year), and deemed approved by the House State Government Committee on (month date), (year). Under section 5.1(e) of the Regulatory Review Act, (71 P.S. § 745.5a(e)), the final-form regulation was approved by IRRC on (month date), (year).

H. Additional Information

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

I. Findings

The Commission finds that:

(1) Public notice of intention to adopt these regulations 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 all comments were considered.

(3) No amendments were made to the final-form rulemaking that would enlarge the original purpose of the proposed rulemaking as published at 42 Pa.B. 4720 (July 28, 2012).

(4) These regulations are 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 at 58 Pa. Code Chapter 29, Subchapter B are amended to read as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commission shall certify this order and Annex A 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
Chairman, State Athletic Commission

ANNEX

TITLE 58. RECREATION

PART I. STATE ATHLETIC COMMISSION

Subpart B. BOXING

CHAPTER 29. MIXED MARTIAL ARTS

* * *

Subchapter B. AMATEUR MIXED MARTIAL ARTS

* * *

§ 29.30. Waiver of rule for contestants with three or more amateur bouts.

(a) An amateur contestant who has completed at least three amateur bouts may petition the Commission to waive the “striking to the head while on the ground” provision in § 29.29(b)(3)(i) (relating to acts constituting fouls) and the shin/instep pad requirement in § 29.27(c) (relating to equipment).

(b) The waiver will include only bouts in which both contestants have the required three-bout experience and both have agreed to conduct the contest with a waiver of the “striking to the head while on the ground” and the shin/instep pad rules.

(c) Grant of the waiver will be at the discretion of the Commission. In reviewing waiver requests, the Commission will consider factors including the win-loss record, conditioning, training, experience and skill level of each individual contestant.

STATE ATHLETIC COMMISSION

[58 PA. CODE CH. 29]

Amateur Mixed Martial Arts Waiver

The State Athletic Commission (Commission) proposes to add § 29.30 (regarding waiver of rule for contestants with three or more amateur bouts) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

This proposed 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 proposed rulemaking is further authorized by 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 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.

D. Description of Proposed Amendments

Section 29.29 (relating to acts constituting fouls) sets forth the acts which constitute fouls in amateur competition and how a contestant using foul tactics in a contest or exhibition will be disqualified or have points deducted from his score. Fouls include acts prohibited by § 29.12 (relating to acts constituting fouls), as well as additional specified techniques while standing and while on the ground. Striking to the opponent's head while on the ground (commonly referred to as "pound and ground") is an act which constitutes a foul for amateur contestants under current § 29.29(b)(3)(i). Striking to the head while on the ground is not a foul under the professional rules in § 29.12. 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).

Proposed § 29.30 would permit the Commission to waive the "striking to the head while on the ground" and shin/instep pad rules for amateur contestants. This regulation has been requested by many of the more experienced amateur contestants 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. The waiver is at the discretion of the Commission

and shall be requested by both 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" and the shin/instep pad rules. 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. Because only experienced amateurs with three or more sanctioned bouts will be permitted to request a waiver, chances for injury are lessened in practicing the technique of striking to the head while on the ground and kicking while not wearing shin/instep pads.

E. Fiscal Impact and Paperwork Requirements

The proposed 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 proposed rulemaking. The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. Additional paperwork requirements upon the Commonwealth or the private sector will be limited to amateur contestants applying for the waiver. There is not a fee to request the waiver. The proposed rulemaking will not have adverse fiscal impact on the mixed martial artists, boxers, promoters, referees, judges and timekeepers the Commission regulates.

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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate State Government Committee and the House State Government Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Gregory P. Sirb, Executive Director, State Athletic Commission, 2601 North 3rd Street, Harrisburg, PA 17110 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16-53 (amateur mixed martial arts waiver) when submitting comments.

CHARLES BEDNARIK,
Chairperson

Fiscal Note: 16-53. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART I. STATE ATHLETIC COMMISSION

Subpart B. BOXING

CHAPTER 29. MIXED MARTIAL ARTS

Subchapter B. AMATEUR MIXED MARTIAL ARTS

§ 29.30. Waiver of rule for contestants with three or more amateur bouts.

(a) An amateur contestant who has completed at least three amateur bouts may petition the Commission to waive the "striking to the head while on the ground" provision in § 29.29(b)(3)(i) (relating to acts constituting fouls) and the shin/instep pad requirement in § 29.27(c) (relating to equipment).

(b) The waiver will include only bouts in which both contestants have the required three-bout experience and both have agreed to conduct the contest with a waiver of the "striking to the head while on the ground" and the shin/instep pad rules.

(c) Grant of the waiver will be at the discretion of the Commission. In reviewing waiver requests, the Commission will consider factors including the win-loss record, conditioning, training, experience and skill level of each individual contestant.

[Pa.B. Doc. No. 12-1412. Filed for public inspection July 27, 2012, 9:00 a.m.]

Comments of the Independent Regulatory Review Commission



State Athletic Commission Regulation #16-53 (IRRC #2958)

Amateur Mixed Martial Arts Waiver

September 26, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the July 28, 2012 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Athletic Commission (Athletic Commission) to respond to all comments received from us or any other source.

1. Protection of the public health, safety and welfare.

This proposal would allow an amateur mixed martial arts (MMA) contestant who has completed three or more amateur bouts to petition the Athletic Commission to waive the “striking to the head while on the ground” provision and the shin/instep pad requirement of the existing regulations. A commentator has suggested that the decision to implement this proposal should be “informed by the recent medical literature on the very severe and sometimes permanent damage that could occur as a result of a single severe blow or numerous blows the head.” We agree that this rulemaking should be based on the most recent medical literature available. As the Athletic Commission moves forward with this proposal, we ask it to consider and provide citations to the most recent medical studies on the potential dangers associated with head injuries, such as chronic traumatic encephalopathy. Additionally, we seek explanation from the Athletic Commission on why it believes the rulemaking adequately protects the health and safety of the contestants.

Another concern is that promoters of amateur MMA events may not provide contests to amateur contestants unless they agree to waive the protections noted above. We recommend that language be added to the rulemaking to prevent promoters from requiring potential contestants from requesting these waivers. It may also be beneficial to require contestants seeking the waiver to affirm that they are doing so because they plan to transition from amateur MMA status to professional MMA status.

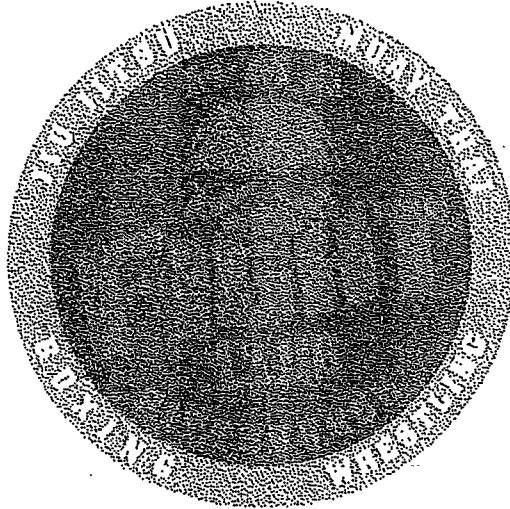
Finally, why has the Athletic Commission determined that the waiver provision should be authorized after three amateur bouts? Would the health and safety of the contestants be better protected if they had more experience?

2. Section 29.30. Waiver of rule for contestants with three or more amateur bouts. – Implementation procedures; Clarity.

We have several concerns and questions related to clarity and how this rulemaking will be implemented. First, how would a contestant petition the Athletic Commission to apply for a waiver? Would the contestant have to complete a form? Second, if one contestant applies for a waiver, how would the second contestant become aware of the request? Would both contestants have to apply for the waiver at the same time? Third, how soon before a contest would a contestant have to apply for a waiver and how long would the Athletic Commission take to review and decide on the request? Finally, would the contestants be notified in writing of the decision of the Athletic Commission?

In order to improve the clarity of the waiver rule, we suggest that the rulemaking be amended to address these concerns and answer these questions.

AUG 15 2012



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Mr. Gregory Sirb
Executive Director
Commonwealth of Pennsylvania
Department of State
State Athletic Commission
2601 North 3rd Street
Harrisburg, PA 17110

August 14, 2012

Mick Morrow
Fight Club Pittsburgh MMA
4573 Campbells Run Road
Pittsburgh, PA 15205
412-787-1162

Dear Mr. Sirb:

I wanted to thank you for your assistance in advancing the amateur rules changes to make MMA significantly more successful in Pennsylvania.

I just had a discussion with a very capable young man that writes frequently on all of the tri state fighters on his MMA website (www.standthemup.org). His name is Matt Leyschock and he will be applying for a promoter's license in the near future to coincide with the forthcoming changes. The name of his new company will be Pinnacle Fighting Championships. I have high hopes for his success and I am confident he will do a great job. You will enjoy working with him.

In regards to the public comments on the proposed rules changes, you might remember that we submitted the proposed recommendation at the meeting we attended in Harrisburg. I respectfully ask that you consider the following wording again for the waiver process. However, if you are not comfortable with the wording it would be greatly appreciated if you could agree to rule on the waivers within (7) business days to allow promoters sufficient time to organize and promote their events. If they have delays in determining who will be approved for the advanced amateur rules, it could cause them a great deal of difficulty in matchmaking and severely jeopardize the chances of a successful event.

I have only submitted these suggestions to you personally and will leave them at your discretion. I see no need to copy all the politicians that have been assisting us in this transition. I trust your judgment.

The wording changes for the waiver process that we proposed are as follows:

“Fighters will be able to fight under the MMA Advanced Amateur Division Rules automatically after (3) verifiable bouts, as long as they have a letter of recommendation from any reputable Mixed Martial Arts Training Facility. A Mixed Martial Arts Training Facility will be considered reputable if they have trained at least (3) different fighters that have competed successfully in previous Mixed Martial Arts Events. In the event a fighter does not train at such a facility and is unable to provide such a letter of recommendation, they will have the ability to petition the State Athletic Commission to fight in the Advance Amateur Division on a case by case basis by filling out the appropriate waiver form from the State Athletic Commission website. The State Athletic Commission will rule on any such waiver requests in writing within (1) week of a fighters request for such waiver in order to facilitate the orderly planning process of all Mixed Martial Arts Promotions.”

I would also like to cordially invite you to visit us at Fight Club Pittsburgh MMA at your convenience. Monday evenings are usually good times to see fighter sparring. Daniel Gracie will be in town sparring for an upcoming fight this Wednesday if you happen to be on this side of the state.

Feel free to contact me on my personal cell phone at 412-780-3763 if I can assist you with anything.

Most Respectfully,



Mick Morrow
Fight Club Pittsburgh MMA
www.fightclubpittsburgh.com

295

AUG 27 2012

PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION

416 Forster Street • Harrisburg, Pennsylvania 17102-1748 • Telephone 717-232-3817 • Fax 717-232-7294
<http://www.papsy.org>

August 24, 2012

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Thomas H. DeWall, CAE

Director of Professional Affairs

& Deputy Executive Director

Samuel J. Knapp, Ed.D.

Government Relations

Consultant

Susan M. Shanaman, J.D.

Web site

www.papsy.org

Gregory P. Sirb
Executive Director
State Athletic Commission
2601 North 3rd Street
Harrisburg, PA 17110

Dear Mr. Sirb:

I am responding on behalf of the Pennsylvania Psychological Association to the proposed regulation published in the July 28th *Pennsylvania Bulletin* which would allow the State Athletic Commission the option to waive, under certain conditions, the prohibition on striking the head while on the ground ("pound and ground") for amateur athlete mixed martial arts competition.

We believe that this decision needs to be informed by the recent medical literature on the very severe and sometimes permanent damage that could occur as a result of a single severe blow or numerous repeated blows to the head. The neurological evidence for head trauma is increasing as evidence comes from studies of soldiers returning from military combat or athletes involved in contact sports.

Specifically permitting blows to the head increases the danger of chronic traumatic encephalopathy (CTE) that may occur in the absence of loss of consciousness or a concussion. According to a recent article published in the *Journal of Neuropathology and Experimental Neurology*, "the symptoms of CTE are insidious," meaning that the initial symptoms may be subtle and hard to identify as related to brain injury. Eventually the symptoms become more severe and include disorientation, confusion, mood changes, depression (including suicidal thoughts) and an increased the risk of early dementia.

Data suggests that CTE is more prevalent than once believed and it is no longer confined to boxers. A recent survey of retired NFL players showed a 19-fold increase in memory-related disorders, such as Alzheimer's, in the 35 to 49 age group and a 5-fold increase in ages 50 or older, when compared to national standards.

Consequently, we do not support the change that would permit a waiver of the "striking to the head while on the ground" provision. We have no position on the other proposed regulation change dealing with the shin/instep pad requirement.

Sincerely,

Thomas H. DeWall, CAE
Executive Director

DARYL METCALFE, MEMBER
HOUSE OF REPRESENTATIVES
ROOM 43, EAST WING
PO BOX 202012
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PHONE: (717) 783-1707
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E-mail: dmetcalf@pahousegop.com
Website: RepMetcalf.com

2958

August 8, 2012

Gregory Sirb, Executive Director
State Athletic Commission
2601 North 3rd Street
Harrisburg, PA 17110

Dear Mr. Sirb,

I am writing to you regarding the proposed rulemaking published in the *Pennsylvania Bulletin* on July 28, 2012 (No. 16-53 Amateur Mixed Martial Arts Waiver) and would like to express my support for this proposed regulatory change.

As you know, current regulations contained in 58 Pa. Code § 29.29(b)(3)(i) (relating to acts constituting fouls) and § 29.27(c) (relating to equipment) prohibit amateur MMA contestants from striking an opponent's head while on the ground and require these amateur contestants to wear shin/instep pads during amateur MMA bouts. Additionally, professional MMA contestants are not subject to the striking to the head prohibition and shin/instep pad requirement. Given the physical nature of MMA, it is understandable that the Commission would provide, through regulation, additional safety standards for amateur MMA contestants as compared to professional MMA contestants. However, some amateur MMA contestants have gained sufficient experience to forego these rules, but current regulations do not permit the Commission to provide an exception for these more experienced amateur MMA contestants.

Current regulations are problematic for two main reasons. First, experienced amateur MMA contestants are hindered in their ability to transition to professional bouts, which aren't subject to the aforementioned regulations. Second, a significant number of Pennsylvania's amateur MMA contestants choose to compete in MMA competitions in other states. Some states do not prohibit striking an opponent's head while on the ground or require shin pads for amateur contestants, which puts Pennsylvania's amateur MMA contestants at a competitive disadvantage or encourages some of them to compete in other states in order to gain experience necessary to advance within the sport. Subsequently, this discourages some amateur MMA events from being held within the Commonwealth, especially in areas of the Commonwealth near states that do not have these requirements.



House of Representatives
Commonwealth of Pennsylvania
Harrisburg

CRANBERRY TOWNSHIP MUNICIPAL BUILDING
2525 ROCHESTER ROAD, SUITE 201
CRANBERRY TOWNSHIP, PA 16066
PHONE: (724) 772-3110
FAX: (724) 772-2922

STATE GOVERNMENT COMMITTEE
CHAIRMAN

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Page 2

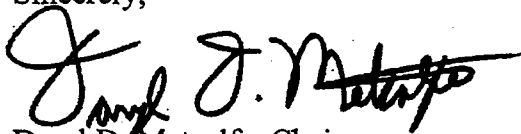
Mr. Gregory Sirb

This proposed regulation is a common sense solution that maintains the safety of amateur MMA contestants competing in Pennsylvania while providing them with the opportunity to gain necessary experience to advance within the sport. Under the proposed regulation, amateur MMA contestants who have completed at least 3 amateur bouts can petition the Commission to waive the prohibition on striking to the head and the requirement to wear shin/instep pads. The Commission will be required to consider several factors that demonstrate the amateur contestant can safely compete when granting this waiver. I believe this proposed regulation could ultimately improve the safety of amateur MMA contestants in Pennsylvania because they would be permitted to experience professional rules prior to competing at a professional level or competing in another state.

Additionally, if experienced amateur MMA contestants could receive a waiver, more of Pennsylvania's amateur MMA contestants would want to compete in their home state, which could result in more amateur MMA events scheduled in Pennsylvania. These sporting events are beneficial to Pennsylvania's economy, and the Commonwealth should not hinder the expansion of this sport with unnecessary regulations.

This proposed regulatory change has my full support, and I look forward to its successful passage as it continues through the regulatory review process.

Sincerely,



Daryl D. Metcalfe, Chairman
House State Government Committee

DDM/cmw

cc: Silvan Lutkewitte, Chairman ✓
Independent Regulatory Review Commission

Charles T. McIlhinney, Chairman
Senate State Government Committee



COMMONWEALTH OF PENNSYLVANIA

February 14, 2013

The Honorable Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Re: Final Rulemaking of the State Athletic Commission
Amateur MMA Waiver (16-53)

Dear Chairman Lutkewitte:

Enclosed is a copy of the final regulation of the State Athletic Commission pertaining to amateur mixed martial arts.

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

Sincerely,

A handwritten signature in black ink that reads "Martha H. Brown".

Martha H. Brown
Counsel, State Athletic Commission

MHB/kmw
Enclosure

cc: Steven V. Turner, 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**

I.D. NUMBER: 16-53
 SUBJECT: AMATEUR MMA WAIVER
 AGENCY: STATE ATHLETIC COMMISSION
 DEPARTMENT OF STATE

TYPE OF REGULATION

- Proposed Regulation
- X 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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/14/13	<i>Kelly Seitz</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
2/14/13	<i>Cody Waddington</i>	MAJORITY CHAIRMAN <u>METCALFE</u>
2/14/13	<i>Jay Merrick</i>	SENATE COMMITTEE ON STATE GOVERNMENT
2/14/13	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>SMUCKER</u>
2/14/13	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)