STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

In re:	)	
	)	DECISION OF DISAPPROVAL
STATE ATHLETIC COMMISSION	)	OF REGULATORY ACTION
	)	
REGULATORY ACTION:	)	(Gov. Code, sec. 11349.3)
	)	
Title 4, California Code of Regulations	)	OAL File No. 00-1103-01 S
ADOPT SECTIONS: 518, 518.1, 518.2, 518.3, 518.4, 518.5, 518.6, 518.7, 518.8, 518.9, 518.10, 518.11, 518.12, 518.13, 518.14, 518.15, 518.16	)	

DECISION SUMMARY

The regulatory action deals with mixed martial arts ("MMA"). On December 20, 2000 the Office of Administrative Law ("OAL") notified the State Athletic Commission ("Commission") that the regulatory action was disapproved because it did not comply with the "clarity" and "necessity" standards contained in Government Code section 11349.1 and for incorrect procedure.

BACKGROUND

The Initial Statement of Reasons explains that

> "A new form of martial arts has surfaced known as Mixed-Martial Arts or 'Submission Fighting'. These bouts employ such techniques as choke holds and joint manipulation to force an opponent to submit or 'tap-out'. This is basically a 'grappling' sport which is full-contact. Because these events are full-contact mixed martial arts, they should be regulated by the commission pursuant to the Business and Professions Code Section 18640."

All references to "sections" in this decision refer to proposed sections for Title 4 of the California Code of Regulations ("CCR") unless otherwise noted.

A. CLARITY

Government Code section 11349.1, subdivision (a)(3) requires that OAL review all regulations for compliance with the "clarity" standard. Government Code section 11349, subdivision (c) defines "clarity" to mean "...written or displayed so that the meaning of the regulations will be understood by those persons directly affected by them."

Section 16 of Title 1 of the CCR declares in relevant part as follows:

> "In examining a regulation for compliance with the 'clarity' requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:
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> (a) A regulation shall be presumed not to comply with the 'clarity' standard if any of the following conditions exist:
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> (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
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> (2) the language of the regulation conflicts with the agency's description of the effect of the regulation; or
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> (3) the regulation uses terms which do not have meanings generally familiar to those "directly affected" by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or . . .
>
> (b) Persons shall be presumed to be 'directly affected' if they:
>
> (1) are legally required to comply with the regulation; or
>
> (2) are legally required to enforce the regulation; or
>
> (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
>
> (4) incur from the enforcement of the regulation a detriment that is not common to the public in general."

1. Section 518 states that the proposed rules shall be cited and referred to as the "Professional Full-Contact Mixed Martial Arts Rules." Section 518.2 states that these rules "shall apply to professional full-contact mixed martial arts." It is not clear what criteria are used to determine the qualifying status of "professional". Is it based upon an MMA fighter receiving payment of any kind or of a specified amount or is it based upon admission being charged for the event? Do the fighters have to qualify at a certain skill or experience level? What is the dividing line between professional and amateur?

2. Section 518.3 declares that

"All of the following professional boxing rules apply to full-contact mixed martial arts contests or matches except the following [existing] rules: Sections 242, 298, 306, 309, through 313, 319 through 323, 337, 339, 349, 350, 351, 357 and 400 through 416." (Emphasis added.)

The word "following" in the introductory phrase "All of the following" does not have any listing of applicable sections and should be deleted. Clarification is also needed from the Commission if existing section 338 "Intentional Fouls" should be added as an exception because section 518.10 contains provisions dealing with intentional fouling specific to MMA.

3. Mr. Meyrowitz submitted the following written comment: "With regard to Article 2, section 518.4, are fights between men and women allowed under these regulations? It would be helpful to clarify this."

The Final Statement of Reasons ("FSR") response to Mr. Meyrowitz's comment was "Noted". The Commission does not allow fighting between both sexes due to their physiological differences." The absence in these regulations of a prohibition of male versus female bouts conflicts with the agency's description of the effect of the regulations. If the Commission intends to prohibit male versus female bouts that must be added by having a 15-day public availability of the changed text. (See Cal. Code Regs., tit. 1, sec. 44.) If this is not the Commission's intent then the response needs to be revised.

4. Section 518.8 requires that:

"(a) Contestants in all weights up to and including heavyweight class shall wear no less than eight-ounce gloves. In heavier classes, contestants shall wear no less than ten-ounce gloves. When two contestants differ in weight classes, the contestants shall wear the gloves required for the higher weight classification.

All gloves must be approved by the commission.

(b) No gloves shall be required for those mixed martial arts disciplines that prohibit striking or punching." (Emphasis added.)

Mr. Bryan submitted a written comment pertaining to section 518.8. "Is there a provision that the gloves have the fingers free for grappling?"

At the February 18, 2000 public hearing Mr. Blatnick stated that the Ultimate Fighting Championships had been using finger less gloves because it believed that ". . . it was a fair compromise between boxing gloves and bare knuckles and that it allowed the use of hands for grappling techniques." The FSR's response to the recommendations that fingerless gloves be used was "Noted. The Commission agrees as fingerless gloves are what are currently used in mixed martial arts events."

Because the regulation does not specify the fingerless criteria it conflicts with the Commission's description of the effect of the regulation. If this is the Commission's intent it should be added to the regulation text by having a 15-day public availability period. (See Cal. Code Regs., tit. 1, sec 44.) If it is not the Commission's intent then the response needs to be revised.

Additionally, the "All gloves must be approved by the Commission" language raises other "clarity" concerns. It is on a case by case basis? Does it require "prior written approval"? Are there any regulatory criteria that must be met before approval is given? What is the process? Are there time deadlines?

5. The following sections contain variations of the phrase "approval of the Commission" or "determination by the Commission" which raise similar "clarity" issues.

(a) Section 518.4 specifies weigh limits and classes for MMA fighters. The male weight limits and classes provision states that:

> "A weight spread of not more than 10 pounds is permissible for matchmaking within each weight division, except for Super Heavyweight, which has no weight spread limit. Any greater weight spread requires the approval of the commission." (Emphasis added.)

The female weight limit and classes provision contains the following language:

> "A weight spread of not more than 5 pounds is permissible for matchmaking within each weight division, except for the following weight classifications. Any greater weight spread requires approval of the commission." (Emphasis added.)

It is not clear if the approval is on a case by case basis. If not, what are the criteria that will be applied? Does it require prior written approval? What is the process? Are there time deadlines that must be met?

(b) Section 518.7 subsection (a) requires that:

> "(a) the ring costume for each contestant on a program shall be approved by the commission, and shall include a custom-made individually fitted mouthpiece. Commission staff shall not approve ring costumes that are so similar as to possibly cause confusion as to the identify of the contenders." (Emphasis added.)

Is the approval on a case by case basis? Does it require prior written approval? What is the process for approval? Are there time deadlines that must be met? Please note that section 518.7, subsection (a) has a criteria specified for the approval.

Additionally, it is not clear if it is the Commission or the Commission's staff that is authorized to approve ring costumes. The first sentence appears to conflict with the second sentence.

Subsection (b) declares that:

> "A contestant may at his or her option, use padded footgear and/or shin protectors. If shoes are worn, they shall be approved by the commission and shoe laces shall be covered with cloth surgical tape." (Emphasis added.)

Is approval on a case by case basis? If not, what are the criteria that must be met? Does it require prior written approval? What is the process? Are there time deadlines that must be met?

(c) Section 518.3 requires that:

> "The ring or fighting area shall be no smaller than 18' by 18', and no larger than 32' by 32'. The ring floor shall be padded in a manner as approved by the commission, with at least a ½" layer of foam padding. Padding shall extend beyond the ring and over the edge of the platform. The ring shall have a canvas covering. Vinyl or other plastic rubberized covering will not be permitted." (Emphasis added.)

Is the approval on a case by case basis? Must the approval be prior and in writing? What is the process for approval? Are there any time deadlines that must be met? Please note that there are criteria in the regulation that will be used in the approval process.

(d) Section 518.14 states that:

> "The ring platform shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the fighters. Ringside tables shall be no higher than ring platform level. Ring posts shall be of metal, not more than 6" in diameter, extending from the floor of the building to a minimum height of 58" above the ring floor, and shall be properly padded in a manner approved by the commission." (Emphasis added.)

Is the approval on a case by case basis? If not, what are the criteria for the padding? Does it require prior written approval? What is the process? Are there time deadlines that must be met?

(e) Section 518.15 requires that:

> "The ring shall be enclosed by a fence made of such material, as will not allow a fighter to fall out or break through it on to the floor or spectators, including but not limited to vinyl-coated chain link. A rope boxing type ring is not permitted. All metal parts shall be covered and padded in a manner approved by the commission and shall not be abrasive to the fighters." (Emphasis added.)

Is the approval on a case by case basis? If not, are there any criteria for the covering and padding of all metal parts beyond what is currently in the regulation? Does it require "prior written approval"? What is the process? Are there time deadlines that must be met?

6. Section 518.16 declares that

> The promoter of the event is responsible for ensuring acceptable sanitary standards are met, with respect to dressing rooms, water bottles, towels or other equipment. Physicians and commission representative shall make a specific examination at every event for violations of these rules. The ring shall be swept, dry-mopped, or otherwise adequately cleaned before the event and prior to the fights." (Emphasis added.)

It is not clear what are "acceptable sanitary standards." Are they in statute or existing regulations? As currently written it is not clear how a promoter could meet unspecified standards.

Section 518.16 deals with sanitation. The phrase "violation of these rules" could be read to mean the MMA rules except they do not contain any sanitation standards. If there are existing regulations or statutes that govern, then a cross reference to them would resolve this issue.

B. NECESSITY

Government Code section 11349.1, subdivision (a)(1) requires that OAL review all regulations for compliance with the "necessity" standard. Government Code section 11349, subdivision (a) defines "necessity" to mean that "...the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation. . . ." In order to demonstrate by "substantial evidence" the need for a regulatory provision, two elements must be present in the rulemaking record. The public problem, administrative requirement, or other condition or circumstance which each provision is intended to address must be identified. In addition, information must be present which explains why each regulatory provision is needed to carry out the described purpose of the regulatory provision. When the explanation is based on policies, conclusions, speculation, or conjecture, the rulemaking record must include supporting facts, studies, expert opinion, or other information. (Cal. Code Regs., tit. 1, sec. 10.)

1. The rulemaking record does not contain necessity for section 518.7's requirement that "If shoes are worn. . . shoe laces shall be covered with cloth surgical tape."

2. Section 518.10 deals with intentional fouls. Subsection (b) declares that:

> "If the injured fighter is unable to continue, the offending fighter shall be disqualified, his or her purse may be withheld, and he or she may be subject to suspension. Disposition of the purse and the penalty to be imposed upon the fighter shall be determined by action of the commission or the commission's representative."

There is no necessity in the rulemaking record for both the Commission or the Commission's representative to determine the disposition of the purse and the penalty.

C. INCORRECT PROCEDURE

OAL must review rulemaking records submitted to it in order to determine whether all of the procedural requirements of the APA have been satisfied. (Gov. Code, sec. 11349.1, subd. (a).)

1. Government Code section 11346.5, subdivision (a)(6) requires the Notice of Proposed Action to contain an estimate ". . . prepared in accordance with instructions adopted by the Department of Finance" of costs or savings to any state agency, costs to any local agency or school district that is required to be reimbursed, other nondiscretionary costs in savings imposed on local agencies and the costs or savings in federal funding to the state.

Government Code Section 11357 authorizes the Department of Finance ("DOF") to adopt instructions in the State Administrative Manual ("SAM") governing the criteria and procedure for summarizing and reporting an agency's ". . . estimate of costs or savings to state and local agencies, school district, and in federal funding of state programs that will result from the regulation." These fiscal estimates are to be entered on the DOF Standard Form 399 which Government Code section 11347.3, subdivision (a)(5) requires to be part of the rulemaking record.

SAM section 6660 requires DOF concurrence if the DOF Standard Form 399 indicates there are reimbursable or non-reimbursable local costs, local savings, state costs or state savings. The Form 399 in the rulemaking record identifies $563,240 in estimated revenues and a $119,291 initial administrative cost and $49,649 ongoing administrative costs to implement the regulations which "will be absorbed by the existing authorized positions." Additionally there is a projection of $197,820 for ongoing event related costs. The Form 399 in the rulemaking record is defective because it does not have the required concurrence from DOF.

2. The Commission made several substantive text changes during a 15-day public availability period which changed the effect of the regulations. The Updated Informative Digest does not identify the resultant changes in effect as required by Government Code section 11346.9, subdivision (b).

3. Government Code section 11347.3 (b)(6) requires that the rulemaking record contain "all data and other factual information, any studies or reports and written comments submitted to the agency in connection with . . ." the rulemaking.

(a) The record contains a print out of an e-mail from Mr. Larsen which has an icon labeled "-attl.htm" which was not printed out. It is not clear if this attachment contains public comments that must be summarized and responded to in the FSR and reviewed by OAL for compliance with Government Code sections 11346.9, subdivision (a)(3).

(b) The rulemaking record has a letter from Mr. Santiago Dahl that states "the tape that we have sent is only to give you a few examples of what we have suggested to be changed". Mr. Santiago Dahl also submitted a chart of suggestions regarding illegal techniques. The phrase "see video" is written next to 10 topics. The tape is not in the rulemaking record and we cannot

at this time determine if the FSR has an adequate summary and response to comments that may be in the tape.

(c) Mr. Meyrowitz submitted a written comment regarding section 518.8. He requested that "our proposed gloves for use in the sport of mixed martial arts be presented before the Commission at the hearing . . ." He was requesting

> "that the regulations to be modified to allow these types of gloves to be used . . . It is our opinion, that if a heavier glove, other than the sample we provided, is used, the potential results for greater injury to the increased punching surface for the additional padding."

The gloves were not in the rulemaking record even though they were submitted as an exhibit directed as a specific regulation provision dealing with the allowable type and weight for gloves.

4. Government Code section11347.3, subdivision (b)(7) requires that the rulemaking record contain:

> "All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation . . ."

Section 518.9 lists tactics that are fouls. Subsection (a)(7) forbids "attacking or obstructing the trachea." The Commission also considered at the March 31, 2000 hearing whether or not carotid chokeholds should be prohibited. They decided to refer the carotid chokehold issue to the Medical Advisory Committee.

At the April 28, 2000 Commission meeting, the Executive Officer, Mr. Lynch summarized the Medical Advisory Committee's recommendation.

> "Mr. Lynch stated that at the April 1, 2000 Medical Advisory Committee meeting Drs. Lemons and Wallace, who were familiar with the sport, supported the use of carotid artery chokes while Dr. Ketchum, who was not familiar with the sport, opposed the chokes. Mr. Lynch noted <u>that he sent a tape to each Commissioner of the meeting regarding the carotid artery chokeholds</u>.
>
> Mr. Lynch informed the Commission that based upon the <u>input of the Medical Advisory Committee</u>, the Commission had to approve the regulation at this meeting, as is which prohibits the use of carotid artery chokeholds or the Commission could approve the regulations and permit the use of carotid artery chokeholds.
>
> <u>Based upon the input of the Medical Advisory Committee,</u> Mr. Lynch recommended that the regulations be approved and that carotid artery chokes be permitted in mixed martial arts." (Emphasis added.)

A vote was then taken which unanimously passed permitting carotid artery chokeholds in MMA. The Medical Advisory Committee tape appears to be information that was relied upon in the adoption of the MMA regulations. It is not in the rulemaking record. In order to add it to the record please follow Section 45 of Title 1 of the CCR. (Please Note: On January 1, 2001 Government Code section 11347.1 becomes effective. It codifies the existing procedure contained in Section 45.)

5. Clarification is needed from the Commission. The FSR on page 2 states that:

> "Section 518.4 All organization in the State of California that were interested in mixed martial arts submitted comments to the Mixed Martial Arts Committee for weights and classes for both males and females. The organizations had a wide range of opinions. The committee made a decision based upon their knowledge and expertise in mixed martial arts and chose the most viable, logical, and reasonable determination. In addition, they chose an outcome that would meet the industry standards and that would not jeopardized the health and safety of the fighters."

Clarification is needed from the Commission. Are these public comments the ones contained in Tab 8 in the rulemaking record? If not, they must be added to the rulemaking record and summarized and responded to in the FSR as required by Government Code sections 11347.3 and 11346.9.

6. Government Code section 11346.9, subdivision (a)(3) requires that the FSR includes:

> "A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action."

The FSR had a very impressive system for identifying and organizing a large number of detailed public comments and responses.

(a) Mr. Bryan submitted the following comment dealing with section 518.7, subsection (b):

> "We feel that padded footgear and shin protectors should not be worn by the fighters. They encourage kicks by protecting the foot and shin, not that body part that receives the kick. When no padding is used, there are less fighter injuries. No padding equals fewer kicks and less powerful kicks. If shoes are permitted, we specify only soft wrestling shoes. Please be aware that the use of any footgear aids the grappler when he is going for an ankle lock. It gives him something solid to grab. We feel it is safest to avoid shoes and footgear altogether." (Emphasis added.)

The comment that padded footgear and shin protectors not be worn was not summarized and responded to in the FSR. The suggestion that "if shoes are permitted we specify only soft wrestling shoes" was correctly summarized but the response which follows is not adequate.

> "Rejected. Section 518.7(b) which stipulates that if shoes are worn they will be approved by the Commission." This response does not address why the comment was rejected." (See related clarity issue A.5(b).)

(b) Mr. Bryan also submitted the following written comment dealing with section 518.7. "What is the provision for contestants who wish to wear their traditional martial arts uniforms? What about contestants who wear fighting briefs?"

> The FSR correctly summarized this comment but the following response is not adequate. "Rejected. <u>It remains optimal as long as the commission approves it</u> pursuant to Section 518.7, subsection (a) which states "The ring costume . . . shall be approved by the commission . . ."

The criteria in section 518.7 subsection (a) is limited solely to the similarity of costumes causing confusion, it does not address the type of permissible costumes. Because the "approved by the commission" language is unclear (see related clarity Issue A.5(b)) the response is also vague. The regulation should specify whether these types of costumes are prohibited or allowed or clarify that approval is on a case by case basis.

(c) There were several comments that were correctly summarized but the response erroneously disqualified the comment because it was phrased "as a question and not an objection or recommendation" or as "an opinion or statement not directed at the proposed regulations." The following public comments require an adequate response.

(1) Dr. Lemons' comment that events with chokeholds should have experienced referees.

(2) Mr. Fossum: Organizations should be able to appoint their own referees and judges.

(3) Mr. Nolte and Mr. Dahl:

> "Judging and refereeing procedures are a very important part of safety and fairness to a fighter. Because of the diverse mixture of styles a set of non-bias rules and regulations need to be developed. If the state needs help with training referees or judges for Mixed Martial Arts, we would be happy to put together a clinic and instructional tape for the State."

(4) Mr. Meyrowitz:

> "In the State Athletic Commission Initial Statement of Reasons' where the 'Factual Basis' is given, mixed marital arts are described as a 'full contact blood sport.' We would ask that the words 'blood sport' be defined. Does 'blood sport'

> mean that bleeding may occur? Our concern is that a dictionary defines 'blood sport' as a 'fight to the death.' This is certainly one misconception that the field of mixed martial arts needs to overcome and educate the public on."

(5) Mr. Matt Larsen's e-mail comment "I wish to express my belief that with pancrase type rules (no head butting, elbow strikes, knee to the head, open hand only to the head, no kicking on the ground) mixed martial arts competition is a safe and enjoyable sport."

7. Mr. Nolte and Mr. Dahl submitted the following written comment which was correctly summarized.

> "After a period of time on the ground, if the fighters are not moving to better their positions or to finish their opponent, they should be stood up. This is very important for creating an exciting match, however it is crucial for the time limit not to be too long or too short. A fighter needs sometime to secure his or her position. If one fighter is working and his or her opponent is not, they should not be forced to stand. But, if both fighters were not working their game, this would be enforced. I would suggest a three to five minute period before re-start."

The FSR contains the following response: "Noted. The public was supposed to provide proposed provisions for ground re-starts no later than 4-10-00 to the Commission. None were received."

This is non-responsive because Mr. Nolte and Mr. Dahl did provide a specific proposal. The fact that "the public" did not provide specific language does not address the issue of why the Commission rejected the proposal.

8. The regulations are currently numbered 518 through 518.6 and are part of Chapter 2.5 of Title 4 of the California Code of Regulations. They need to be renumbered with sections numbers of the Commission's preference within the range of 546 through 599 in order to have Chapter 2.5 follow existing Chapter 2 and to precede existing Chapter 3. As currently numbered Chapter 2.5 would be sandwiched in the middle of Chapter 2.

CONCLUSION

For the reasons set forth above, OAL has disapproved the proposed adoption of sections 518 through 518.16 of Title 4 of the California Code of Regulations. If you have any questions, please contact me at (916) 323-6809.

December 27, 2000

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BARBARA ECKARD
Senior Staff Counsel

For:

DAVID B. JUDSON
Deputy Director/Chief Counsel

Original: Rob Lynch, Executive Officer