

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMBATIVE SPORTS COMMISSION

In the Matter of the Proposed Rules of the
Combative Sports Commission Relating to
Mixed Martial Arts
Minnesota Rules, Chapter 2202

**ORDER ON REVIEW OF
RULES UNDER MINNESOTA
STATUTES, SECTION 14.26**

The Minnesota Combative Sports Commission ("Commission") is seeking review and approval of the above-entitled rules, which were adopted by the Commission without a hearing. Review and approval is governed by Minn. Stat. § 14.26. On June 2, 2009, the Office of Administrative Hearings received the documents that must be filed by the Commission under Minn. Stat. § 14.26 and Minn. R. 1400.2310. In response to questions from the Administrative Law Judge, the Commission supplemented the record on June 16, 2009. Based upon a review of the written submissions and filings, and for the reasons set out in the Memorandum which follows,

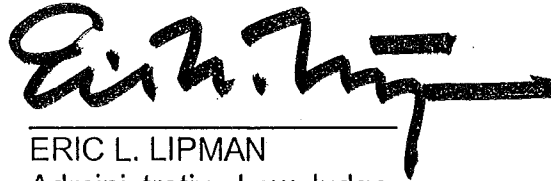
IT IS HEREBY ORDERED:

1. The Commission has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with all procedural requirements of Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400.
3. The rules are needed and reasonable, with the exception of the following rule parts:
 - (a) Part 2202.0300, items A, B and C;
 - (b) Part 2202.0350, items A and B;
 - (c) Part 2202.0400, items D and E;
 - (d) Part 2202.0520, items A and C;
 - (e) Part 2202.0540, items A and B;
 - (f) Part 2202.0900, item B; and,
 - (g) Part 2202.1000, item G

Accordingly, these rule parts are **DISAPPROVED** as not meeting the requirements of Minn. Stat. § 14.06 (a) and Minnesota Rules part 1400.2100, items B, D or F.

4. Pursuant to Minnesota Statutes, section 14.26, subdivision 3(b), and Minnesota Rules, part 1400.2300, subpart 6, the rules will be submitted to the Chief Administrative Law Judge for review.

Dated: June 16, 2009


ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

Pursuant to Minnesota Statutes, Section 14.26, the agency has submitted these rules to the Administrative Law Judge for a review as to legality. The rules adopted by the Office of Administrative Hearings¹ identify several types of circumstances under which a rule must be disapproved by the Administrative Law Judge or the Chief Administrative Law Judge. These circumstances include situations in which a rule was not adopted in compliance with procedural requirements, unless the judge finds that the error was harmless in nature and should be disregarded; the rule is not rationally related to the agency's objectives or the agency has not demonstrated the need for and reasonableness of the rule; the rule is substantially different than the rule as originally proposed and the agency did not comply with required procedures; the rule grants undue discretion to the agency; the rule is unconstitutional² or illegal; the rule improperly delegates the agency's powers to another entity; or the proposal does not fall within the statutory definition of a "rule."

I. Defect in Parts 2202.0300, items A, B and C; 2202.0350, items A and B; 2202.0520, items A and C; and 2202.0540, item B

Parts 2202.0300, items A, B and C; 2202.0350, items A and B; 2202.0520, items A and C; and 2202.0540, item B all contain language which apparently grant the Commission, or its designees, plenary discretion to approve facilities or equipment used in martial arts contests. In these provisions of the proposed rules there are few, if any, requirements or criteria which constrain the decision-making of the Commission prior to a particular contest. For example, Part 2202.0300, item A states:

The fighting area canvas shall be padded in a manner *as approved by the commission*, with at least one-inch layer of foam padding.

¹ Minn. R. 1400.2100 (2007).

² In order to be constitutional, a rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies. See, *Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N. W.2d 763, 768 (Minn. 1980).

(Emphasis added.) Such broad, standard-less grants of discretion to itself are in excess of the Commission's statutory authority and constitute defects in the proposed rules.³

These same shortcomings are likewise evident in the rules governing the floor of the fighting arena (Part 2202.0300, Item B); posts for the fighting arena (Part 2202.0300, Item C); the type of ring stools or chairs for combatants and their seconds (Part 2202.0350, Items A and B); groin protectors for male combatants and chest protectors for female combatants (Part 2202.0520, Items A and C); and gloves (Part 2202.0540, Item B).

While it is true that amongst the various participants in a martial arts contest, the Commission is granted the authority by statute to have "direction, supervision, regulation, control and jurisdiction over all combative sports contests that are held within this state;"⁴ the Commission also has a parallel obligation to provide fair notice to regulated parties and the public as to how its regulatory powers will be exercised.⁵ These defects can be cured by adding a new rule provision which sets forth the criteria that the Commission, or its designee, will employ when undertaking a review of facilities or equipment for particular contests.

Additionally, the Administrative Law Judge further recommends that the Commission add a requirement that determinations as to the propriety of particular facilities or equipment will be reduced to writing whenever these determinations are challenged. Such a provision would be fully consistent with the Legislature's direction that written reports regarding each contest be compiled by the Commission,⁶ and would contribute to both the reasonableness and the uniform application of the proposed safety rules.

The Administrative Law Judge urges the Commission to consider the following addition to the proposed rules:

In all instances in which these rules authorize the Commission, or its designee, to approve facilities or equipment, requests for approval shall be assessed upon the following criteria:

- (1) the ability of the item or facility to protect the safety of combatants;

³ See, Minn. R. 1400.2100 (D) (2007).

⁴ Minn. Stat. § 341.29 (2008).

⁵ See, Minn. Stat. § 14.06 (a) (2008) ("Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public").

⁶ Minn. Stat. § 341.28 (1)(2) (2008).

- (2) the ability of the item or facility to protect the safety of officials, inspectors, physicians and seconds;
- (3) the ability of the item or facility to protect the safety of spectators;
- (4) generally accepted industry standards or practices in the mixed martial arts field;
- (5) the physical constraints of a specific venue in which the contest is to be held; and,
- (6) the availability of particular items at the venue in which the contest is to be held.

In the event that a determination as to a particular item of equipment or facility is challenged before the end of the contest, the Commission, or its designee, will document the basis for the disapproval in accordance with Minn. Stat. § 341.28, subd. 1(2).

This change is needed and reasonable and is not a substantial change from the rules as proposed.

II. Defect in Part 2202.0400, Items D and E

Part 2202.0400 describes in detail how a combatant's hands are to be bandaged prior to a contest, before gloves are placed on the combatant's hands. Items D and E each require an "inspector" to participate in the process of observing and approving the wrapping of a combatant's hands before gloves are positioned. Specifically, Item D requires that the "[b]andages and surgeon's adhesive tape . . . be placed . . . in the presence of the inspector" Item E prohibits the gloves from being placed on the combatant's hands "until the approval of the inspector is received." The SONAR explains that the purposes of Part 2202.0400 are to provide for the safety of the combatants while insuring fairness "by making sure that there is proper wrapping of the hands . . . [which] requires inspection to ensure compliance."

Despite the important role of the inspector and the weighty purpose of the rule, the term "inspector" is not defined in Chapter 2202. With this omission, the proposed rule falls short of the standard in Minn. Stat. § 14.06 (a) – which assures that the regulated public will have fair notice of the methods of administration of the agency's duties – as well as the specific direction in Minn. Stat. § 341.29 that Commission officials exercise supervisory controls at the contest site. The Administrative Law Judge urges the Commission to consider the obvious mischief that might follow if anyone, including a promoter or a second, was able to claim the powers of a contest's "inspector." The threats to the SONAR's stated goals of contestant safety and fairness are likewise evident.

The Administrative Law Judge recommends that the Commission address this shortcoming by adding a new subpart in the Definitions section of the rule, as follows:

Inspector. "Inspector" means an individual appointed by the Commission, or a member of the Commission, with specific duties and authority as set forth in these rules. If an inspector is not a member of the Commission, the inspector must be a referee licensed pursuant to Minn. Stat. § 341.30.

This change is needed and reasonable and is not a substantial change from the rules as proposed.

III. Defect in Part 2202.0540, Item A

This rule part establishes minimum requirements for protective gloves, which are a critical piece of equipment for mixed martial arts contests. The promoter supplies the gloves, which must be "new and in good condition for all competitions or they must be replaced." As salutary as this provision is, it fails to describe who is authorized to determine whether a particular pair of gloves is in a sufficient condition to be used or must be replaced.

With this omission, the proposed rule falls short of the standard in Minn. Stat. § 14.06 (a), and the direction, in Minn. Stat. § 341.29, that Commission officials exercise supervisory controls at the contest site.

The Administrative Law Judge recommends that the following language be added to part 2202.0540, item A to cure the defect:

The gloves shall be new and in good condition for all competitions or they must be replaced. The inspector shall determine whether gloves must be replaced.

Conferring this authority to the inspector – who is already granted the responsibility under the rule to review the combatant's hands and wrappings before any gloves are placed on – would be a logical choice of designee to conduct the review of protective gloves.

Such a change would be needed and reasonable and would not be a substantial change from the rules as proposed.

IV. Defect in Part 2202.0900, Item B

Item A of this rule part sets forth the circumstances in which warnings will be issued during a martial arts contest and the consequences for receiving warnings. Item B addresses the consequence when more than one warning is issued against a combatant. While item A specifies that the referee issues the warning, it does not state

who issues the penalty, who determines the severity of the penalty or the basis for making such determinations.⁷

Likewise problematic, the first sentence of item B requires that a penalty will be issued “if the prohibited conduct persists” and yet this directive is followed by the rejoinder that “[t]he penalty may result in a deduction of points” (Emphasis added.) The clash between mandatory and permissive language, within the same provision, renders the text ambiguous.

For these reasons, the proposed rule governing warnings falls short of the standard in Minn. Stat. § 14.06 (a) – which assures that the regulated public will have fair notice of the methods of administration of the agency’s duties. The Administrative Law Judge recommends amending the language of Part 2202.0900, item B as follows, to cure the defect:

After the initial warning, if the prohibited conduct persists, a penalty will be issued by the referee. The penalty may will result in a deduction of points or disqualification, with a **** point deduction for *****. ***** will result in a disqualification.

Specifying the referee as the person who issues a penalty in this item is consistent with the intent of the Commission.⁸ Although, as the Commission points out in its supplementary materials, referees are licensed and independent, it remains necessary to provide referees with guidance and the combatants with notice as to the behavior that will result in point deduction or disqualification. To cure this defect, the Commission shall add specific standards to the recommended rule language.

These revisions are needed and reasonable and would not be substantial changes from the rules as proposed.

V. Defect in Part 2202.1000, Item G, subitem (3)

This rule part governs fouls that occur during a mixed martial arts contest. Item G addresses the situation when a bottom combatant commits a foul. The proposed rule states:

If a bottom combatant commits a foul, unless the top combatant is injured, the fight shall continue, so as not to jeopardize the top combatant’s superior positioning at the time.

- (1) The referee shall verbally notify the bottom combatant of the foul.

⁷ In contrast, the rule governing fouls, (part 2202.1000) is specific about who determines fouls and how point deductions or disqualifications are determined. See, e.g., Part 2202.1000, items B, C and D.

⁸ E-mail from Patricia Munkel-Olson on behalf of Commission (June 16, 2009).

- (2) When the round is over, the referee shall assess the foul and notify both corners' seconds, the judges, and the official scorekeeper.
- (3) The referee may terminate a contest based on the severity of a foul. For such a flagrant foul, a combatant shall lose by disqualification.

The proposed language of subitem 3 fails to establish criterion for the exercise of the referee discretion to terminate a contest. Nothing in the proposed language indicates whether "a flagrant foul" is a foul that results from disrespectful behavior toward an opponent, a minor injury or a disabling injury. Similarly, it is unclear from the text of subitem 3 whether it applies only in circumstances in which the bottom combatant commits the foul or whether it applies at any time that a foul of sufficient seriousness occurs.

As a result of these ambiguities, subitem 3 falls short of the standard in Minn. Stat. § 14.06 (a) because it fails to establish standards for a penalty which will directly affect combatants. To cure these defects, the Administrative Law Judge recommends that Item G, subitem (3) be revised as follows:

The referee may terminate a contest based on the severity of if a foul results in ****. For such a flagrant foul, a if a contest is terminated based upon a foul committed under this subitem, the combatant who committed the foul shall lose by disqualification.

The Commission shall likewise insert language detailing which fouls result in disqualifications. In addition, if it is the intent of the Commission to have this provision apply in situations beyond those governed by Item G, the Commission shall instruct the Revisor's office to make the current subitem (3) into a new, separate item. Should the Commission convert the subitem to a separate item, the reference in the second sentence to "this subitem" should be changed to "this item."

These revisions are needed and reasonable and would not be substantial changes from the rules as proposed.

VI. Recommended Technical Corrections

The Administrative Law Judge recommends several technical corrections to the rules. The technical corrections are not defects in the rules, but are recommendations for corrections to the rules that the agency may adopt if it chooses to do so to aid in the administration of the rule. Each of the changes recommended below is needed and reasonable and would not be a substantial change from the rules as proposed.

1. Part 2202.0200

Change Item H as follows:

~~204~~ 205 pounds to 264.9 pounds;

This clarifies that the weight class begins at 205 pounds, because the prior weight class ends at 204.9 pounds.

Change Item I as follows:

super heavyweight ~~over~~ 265 pounds and over.

This clarifies that the weight class includes 265 pounds, because the prior weight class ends at 264.9 pounds.

2. Part 2202.0300

Change Item C as follows:

The fighting area canvas shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, ~~including, but not limited to~~ such as, vinyl coated chain link fencing.

This clarifies that "vinyl coated chain link fencing" is simply an example and avoids the ambiguity that arises from the use of the phrase "including, but not limited to."

3. Part 2202.0500

Change Item C as follows:

If the mouthpiece is involuntarily dislodged during competition, the referee shall call time, clean the mouthpiece and reinsert the mouthpiece as soon as possible, consistent with the safety of the combatants and the referee ~~at the first opportune moment, without interfering with the immediate action.~~

The proposed language is ambiguous. The text does not make clear whether the "first opportune moment, without interfering with the immediate action" applies to calling time, cleaning a mouthpiece, reinserting a mouthpiece, or to all of these actions. It is also unclear whether a determination of "the first opportune moment, without interfering with the immediate action" should depend upon safety considerations alone, or whether the flow of the fight is also a factor to be considered.

Given the statement in the Statement of Need and Reasonableness that a mouthpiece “provides for the safety of the combatant,” the recommended changes presume that safety of the participants is the Commission’s first priority. If the recommended language does not reflect the Commission’s intent, the Administrative Law Judge recommends that the Commission substitute language that will instruct the referee as to what the Commission intends by the phrase “first opportune moment, without interfering with the immediate action.”

4. Part 2202.0560

Change Item B as follows:

~~Gis or shirts are prohibited to be worn by~~ With the exception of shorts and a groin protector, male combatants shall not wear clothing during competition.

These changes eliminate use of the slang term “gis” which refers to several kinds of clothing typically used in martial arts training and improves the syntax of the rule language.

Add a new item to this rule part as follows:

With the exception of shorts and a sports bra under an approved chest protector, female combatants shall not wear clothing during competition.

This change addresses the question of what apparel female combatants are required or permitted to wear in addition to the required chest protector and shorts. Without this language, there is no language addressing this issue, leaving female combatants to decide for themselves what, if any, clothing to wear in addition to the chest protector and shorts. Requiring a sports bra provides additional physical protection for women’s breasts and prevents accidental exposure of the breasts.

5. Part 2202.0580

Change Item A as follows:

All combatants shall be cleanly shaven ~~all facial hair~~ immediately prior to competition, except that a combatant may wear a closely cropped mustache.

This change clarifies that only facial hair is required to be cleanly shaven.

6. Part 2202.0800

Change Item D as follows:

Except as specified in Item K. of this part, Evaluations shall be made in the order in which the techniques appear in item C, giving the most weight in scoring to effective striking, and decreasing weight to effective grappling, control of the fighting area, and effective aggressiveness and defense, in the order listed.

This change acknowledges that Item K of this part creates an exception to the order specified in Item D. It also clarifies that all of the techniques listed in Item D are not to be weighed equally.

Change Item F as follows:

Effective grappling is judged by considering the ~~amount~~ number of successful executions of ~~a-legal take downs~~ and reversals. Examples of factors to consider are take downs from standing position to mount position, passing the guard to mount position, and bottom position fighters using an active, threatening guard.

These changes correct syntax and grammar.

Change Item J, subitem (3) as follows:

a round is to be scored as a 10-8 round when a combatant overwhelmingly dominates by striking or grappling in a round so effectively that the opposing combatant is only able to provide a minimal amount of defense; and

Change item J., subitem (4) as follows:

a round is to be scored as a 10-7 round when a combatant totally dominates by striking or grappling in a round so effectively that the opposing combatant is completely unable to execute successful defensive maneuvers.

These changes clarify the meanings of the terms "overwhelmingly dominates" and "totally dominates" in such a way that they can be consistently and fairly applied.

7. Part 2202.1100

Change Item C as follows:

If an any injury is sustained during competition as a result of an intentional foul and the contest is allowed to continue, the referee shall notify the scorekeeper to automatically deduct two points from the combatant who committed the foul.

This change is needed to clarify that any injury that follows from an intentional foul will result in a two-point deduction – even in those circumstances where the injury is minor or unintended. If the Commission intends that only intentional injuries or more serious ones (e.g., injuries requiring medical attention) draw the two-point penalty, then the Commission should so specify in the rule.

8. Part 2202.1200

Change Item G as follows:

Forfeit is when a combatant fails to begin competition or prematurely ends the contest for reasons other than injury or ~~by indicating a tap out.~~

This change is needed to correct grammar and improve the clarity of the rule.

E. L. L.