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July 12, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia State Athletic Commission

RULE: Amendments, 177CSR1, Administrative Rules of the West Virginia State Athletic Commission

DATE FILED AS AN EMERGENCY RULE: June 11, 2001

DECISION NO. 4-01

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

  
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JOE MANCHIN, III  
Secretary of State

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EMERGENCY RULE DECISION  
(ERD 4-01)

AGENCY: West Virginia State Athletic Commission  
RULE: Amendments, 177CSR1, Administrative Rules of the West Virginia State Athletic Commission

FILED AS AN EMERGENCY RULE: June 11, 2001

- par. 1 The West Virginia State Athletic Commission (Commission) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State June 11, 2001 and with the LRMRC June 11, 2001.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §29-5A-24 reads in part:

*(a) The commission shall promulgate its rules in compliance with the provisions of §29A of this code.*

*(b) The commission shall promulgate such rules as it determines to be necessary to regulate professional and semiprofessional boxers, and professional and semiprofessional boxing matches and exhibitions. For full contact boxing and other boxing events that follow nontraditional rules, rules guaranteeing the safety of the participants and the fair and honest conducting of the matches or exhibitions are authorized.*

par. 9 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commission are as follows:

In 2000 the Legislature amended W. Va. Code §29-5A-1 et seq. in part to provide the West Virginia State Athletic Commission with authority to regulate boxing events that also use elements of other fighting disciplines. Concurrently the Legislature approved amendments to the administrative rules of the commission which in part prohibit "ultimate fight" events. The current administrative rules of the commission have proven ineffective in enforcing the prohibition. The amendments to this rule are required to enable the commission to effectively enforce the prohibition against "ultimate fight" events. Promulgation of this emergency rule is necessary for the immediate preservation of the public peace, health, safety and welfare.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "public peace, health, safety and welfare."

par. 14

This decision shall be cited as Emergency Rule Decision 4-01 or ERD 4-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia State Athletic Commission, the Attorney General and the Legislative Rule Making Review Committee.

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JOE MANCHIN, III  
Secretary of State

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