

measures identified for trout would not be practical or enforceable. Water temperatures can fluctuate substantially on a daily basis from spring through fall, and values above and below 70F can occur on the same day. Additionally, prohibiting removal of fish from the water in January and February is not necessary to facilitate survival; but guidelines should continue to encourage anglers to minimize the time fish are out of the water for hook removal.

Comment: If the definition of Catch and Release means that you are supposed to immediately release Black Bass during the C&R season, then I strongly oppose.

Response: The definition of Catch and Release does allow for the measuring, weighing and photographing of the fish as long as the fish is not removed for an extended period of time, and the fish is caught "in season." This applies to all species with a "catch and release only" season, including black bass.

## New York State Gaming Commission

### EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Plan of Operation for the Jockey Injury Compensation Fund

**I.D. No.** SGC-01-16-00006-EP

**Filing No.** 1109

**Filing Date:** 2015-12-22

**Effective Date:** 2015-12-22

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Proposed Action:** Addition of Part 4046 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19) and 221(8)(b)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The New York State Gaming Commission (the "Commission") has determined that immediate adoption of these rules is necessary for the preservation of the public health, safety or general welfare. Racing, Pari-Mutuel Wagering and Breeding Law section 221(6) requires the New York Jockey Injury Compensation Fund, Inc. ("JICF") to secure workers' compensation coverage on a blanket basis for the benefit of all jockeys, apprentice jockeys and exercise persons licensed pursuant to the Thoroughbred racing licensing provisions contained in Article II of the Racing, Pari-Mutuel Wagering and Breeding Law. In order to pay the costs of such insurance, JICF is directed, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(7), to ascertain the total funding necessary and establish the sums that are to be paid by all owners and trainers licensed or required to be licensed. JICF is required, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a), to submit, not later than November 15 of each year, an amendment to the JICF plan of operation relating to the assessment of the costs of insurance for the subsequent year. If JICF fails to submit a suitable amendments to the plan of operation, the Commission is directed, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(b), to adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the procurement and funding of the required workers' compensation insurance.

The immediate adoption of these rules is necessary to ensure continuity of workers' compensation insurance for jockeys, apprentice jockeys and exercise persons upon expiration of the current workers' compensation insurance policy on December 31, 2015. The rules provide for the Commission to direct the acceptance of a proposed workers' compensation insurance policy and plan for the collection of money to pay for the costs of such insurance, thereby protecting the insured persons' health and safety in the event a suitable JICF plan, which was due to have been submitted on or before November 15, 2015, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a), is not submitted.

**Subject:** Plan of operation for the Jockey Injury Compensation Fund.

**Purpose:** To effectuate the provisions of the Jockey Injury Compensation Fund in the absence of a plan of operation for 2016.

**Text of emergency/proposed rule:** A new Part 4046 is added to 9 NYCRR, to read as follows:

#### PART 4046

#### Jockey Injury Compensation Fund

##### § 4046.1. Definitions.

The following definitions apply to this Part:

- (a) Finger Lakes means Finger Lakes Racing Association, Inc.
- (b) Injury incident means an incident that results in the filing of a claim against the policy held by the JICF.
- (c) JICF means The Jockey Injury Compensation Fund, Inc.
- (d) NYRA means The New York Racing Association, Inc.
- (e) Submission deadline means the deadline set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a) for JICF to submit an amendment to a plan of operation relating to the assessment of costs of insurance for the subsequent year.
- (f) Subsequent-year plan means an amendment to a plan of operation relating to the assessment of costs of insurance for the subsequent year.

##### § 4046.2. Civil penalty for failure to submit plan for subsequent year.

In the event that JICF has failed to submit, by the submission deadline, a subsequent-year plan, the commission may assess to JICF, as compensation for the administrative burden of performing the JICF's statutory work, a civil penalty equal to actual commission costs incurred, which amount shall not exceed the maximum set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 116.

##### § 4046.3. Workers' compensation insurance carrier.

In the event that JICF has failed to submit, by the submission deadline, a subsequent-year plan, the commission shall order JICF to accept the offer of an insurance carrier to provide workers' compensation insurance, as required by section 221 of the Racing, Pari-Mutuel Wagering and Breeding Law and the Workers' Compensation Law, to JICF for the subsequent year, as selected by the commission in the commission's sole and absolute discretion, and JICF shall bind such coverage. Such policy shall remain in effect unless superseded by a plan submitted by the JICF and approved by the commission.

##### § 4046.4. Premium assessment.

In the event that JICF has failed to submit, by the submission deadline, a subsequent-year plan, each thoroughbred owner and trainer shall pay as follows, unless such assessment is modified by the commission or superseded by a plan submitted by JICF and approved by the commission:

- (a) Assessments.
  - (1) Owners. For purposes of this part, an owner is the person whose account would be debited or credited when a horse runs. In the case of multiple ownership, the owner for purposes of this part is the managing partner. Each thoroughbred owner licensed or required to be licensed pursuant to section 220 of the Racing, Pari-Mutuel Wagering and Breeding Law in such subsequent year shall pay to JICF, through the horsemen's bookkeeper at the applicable track, a percentage of purses earned, the maximum of which is set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 221(7).

(2) Trainers. Each thoroughbred trainer licensed or required to be licensed pursuant to section 220 of the Racing, Pari-Mutuel Wagering and Breeding Law in such subsequent year shall pay to JICF, through the horsemen's bookkeeper at the applicable track:

- (i) an amount the commission determines per-stall, per-day for each stall allotted and accepted, which amount may vary for stalls used at Finger Lakes and NYRA. A per-stall charge is not rent for a stall; and
- (ii) an amount the commission determines per injury incident for a worker performing services for such trainer or the owner of the horse being trained by such trainer.

(3) Owners/Trainers. A person licensed as both an owner and trainer shall pay both the owner charge as set forth in paragraph (1) of this subdivision and the trainer charge as set forth in paragraph (2) of this subdivision.

(4) Private Trainers. A private trainer, from whose payroll exercise riders are compensated, shall be responsible for the owner assessment set forth in paragraph (1) of this subdivision as well as the stall charge set forth in paragraph (2) of this subdivision.

(5) Shippers. Those horsemen stabling horses off the grounds of the track who have daily access to and use of the track facilities shall pay the stall assessments set forth in paragraph (2) of this subdivision as if the equivalent number of stalls at the track had been used.

##### (b) Premium charges due.

- (1) Stall charges shall be due on the last day of each month.
- (2) JICF shall provide horsemen with track addresses to which horsemen shall be required to send their payments required by this part.

*§ 4046.5. Plan of operation remains in effect.*

In the event that a subsequent-year plan is put into effect by this Part, all other elements other than assessment of the most recently approved JICF plan of operation, including those described in Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(c), remain in effect.

*§ 4046.6. Risk Management.*

JICF shall engage, on or before March 1, 2016, a risk management consultant acceptable to the commission, at the sole cost and expense of JICF. Such consultant shall review past and current claims and losses and make recommendations to JICF and the commission, on or before September 30, 2016, for JICF risk management practices and controls.

*§ 4046.7. Notice.*

JICF shall publish this Part in one or more trade publications likely to be obtained by owners and trainers, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 221(8)(a), at the sole cost and expense of JICF, as soon as practicable.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 20, 2016.

**Text of rule and any required statements and analyses may be obtained from:** Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: gamingrules@gaming.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement**

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 221(8)(b) grants rule making authority to the Commission to adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of Article II of the Racing, Pari-Mutuel Wagering and Breeding Law concerning a plan of operation for the New York jockey Injury Compensation Fund, Inc. ("JICF").

2. **LEGISLATIVE OBJECTIVES:** This emergency rule making carries out the legislative objectives and implements the requirements of Racing, Pari-Mutuel Wagering and Breeding Law section 221(8).

3. **NEEDS AND BENEFITS:** This rule making is necessary to establish a default plan in the event that JICF fails to submit a suitable amendment to its plan of operation to accept an offer of workers' compensation insurance coverage and provide for the collection of money to pay for the costs of such insurance, thereby enabling workers' compensation insurance coverage for jockeys, apprentice jockeys and exercise persons to continue uninterrupted.

4. **COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Thoroughbred owners and trainers will bear the costs of maintaining statutorily-required workers' compensation insurance of jockeys, apprentice jockeys and exercise riders, as they would if JICF submits a suitable amendment to its plan of operation to secure such insurance coverage and provide for the payment of money to cover the costs of such insurance.

(b) Costs to the regulating agency, the State, and local government: The rule provides for a civil penalty to JICF to compensate the Commission for the costs of developing a workers' compensation insurance plan, should the Commission need to do so in the absence of a JICF-submitted suitable plan. The rules will not impose any additional costs on local government.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. **PAPERWORK:** The rules are not expected to impose any significant paperwork requirements for regulated parties beyond those already present when JICF submits a suitable amendment to its plan of operation to provide for workers' compensation insurance.

6. **LOCAL GOVERNMENT:** The rules do not impose any mandatory program, service, duty, or responsibility upon local government because ensuring the provision of worker's compensation insurance to jockeys, apprentice jockeys and exercise persons is strictly a matter of State law.

7. **DUPLICATION:** The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission is required to create these rules pursuant to Racing Law section 221(8)(b). Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable

to the provision of workers' compensation insurance to jockeys, apprentice jockeys and exercise persons, because the provision of such insurance is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with the rules on January 1, 2016, which is when the next worker's compensation insurance policy covering jockeys, apprentice jockeys and exercise persons will take effect.

**Regulatory Flexibility Analysis**

1. **EFFECT OF THE RULE:** The rules will provide for continuity of workers' compensation insurance for thoroughbred racing jockeys, apprentice jockeys and exercise persons. Such insurance is required by law. Many trainers or thoroughbred racing stables are small businesses.

2. **COMPLIANCE REQUIREMENTS:** All Thoroughbred racing owners and trainers are required to pay the costs of workers' compensation insurance for jockeys, apprentice jockeys and exercise persons required by law, either through a Commission-imposed plan pursuant to these rules or through an approved plan submitted by JICF.

3. **PROFESSIONAL SERVICES:** The rules will not require small businesses or local governments to obtain professional services.

4. **COMPLIANCE COSTS:** The rules will require not impose any compliance costs on small businesses dissimilar from those that would be imposed through an approved plan submitted by JICF. The rules will not impose any compliance costs on local governments.

5. **ECONOMIC AND TECHNOLOGICAL FEASIBILITY:** The rules will not impose any technological requirements on small businesses or local governments.

6. **MINIMIZING ADVERSE IMPACT:** The rules will not have an adverse economic impact on small businesses or local governments. Workers' compensation insurance for thoroughbred jockeys, apprentice jockeys and exercise persons must be provided, whether through a plan imposed by these rules or through an approved plan submitted by JICF.

7. **SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:** The rules went into effect upon filing. Small businesses will have the opportunity to participate in the rule making process during the public comment period that will open upon publication of these rules as proposed rules.

**Rural Area Flexibility Analysis**

The rules apply to Finger Lakes racetrack, which is located in Ontario County, a "rural area" as that term is defined in Executive Law section 481(7). A rural flexibility analysis is not attached because the rules do not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement**

The Commission has no reason to believe that these rules will have any adverse impact on any jobs or employment opportunities. The rules ensure the continuity of statutorily-required workers' compensation insurance for jockeys, apprentice jockeys and exercise persons. Therefore, the rules will not impact jobs and employment and a full Job Impact Statement is not necessary.

**NOTICE OF ADOPTION**

**Reporting Requirements for a Race Horse That Has Been Castrated and Is Classified As a Gelding**

**I.D. No.** SGC-44-15-00019-A

**Filing No.** 1108

**Filing Date:** 2015-12-22

**Effective Date:** 2016-01-06

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of sections 4007.7 and 4106.10; and amendment of sections 4105.13 and 4106.1 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 301

**Subject:** Reporting requirements for a race horse that has been castrated and is classified as a gelding.

**Purpose:** To ensure that the betting public is properly informed that a race horse that was previously an intact male has been castrated.

**Text or summary was published in** the November 4, 2015 issue of the Register, I.D. No. SGC-44-15-00019-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov