



**MEETING AGENDA
DECEMBER 21, 2015**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES, MEETING OF NOVEMBER 23, 2015
3. RULEMAKING
 - A. ADOPTION: SGC-44-15-00019-P GELDING REPORTING REQUIREMENTS
 - B. EMERGENCY AND PROPOSED RULEMAKING: JOCKEY INJURY COMPENSATION FUND ANNUAL ASSESSMENT
4. ADJUDICATIONS
 - A. IN THE MATTER OF KEVIN CLARKE
 - B. IN THE MATTER OF VICTOR VALDERRAMA
 - C. IN THE MATTER OF DELIGHT DISTRIBUTION
5. CONSIDERATION OF GAMING FACILITIES LICENSING
 - A. CAPITAL REGION GAMING, LLC DOING BUSINESS AS RIVERS CASINO & RESORT AT MOHAWK HARBOR
 - B. LAGO RESORT & CASINO, LLC DOING BUSINESS AS LAGO RESORT & CASINO
 - C. MONTREIGN OPERATING COMPANY, LLC DOING BUSINESS AS OF MONTREIGN RESORT CASINO

6. OLD BUSINESS/NEW BUSINESS

A. OLD BUSINESS

1. STAFF REPORT IN REGARD TO ALLEGATIONS ADVANCED BY THE PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS IN REGARD TO THE PRACTICES OF KDE EQUINE, LLC ET AL.

2. USE OF WHIP RESEARCH

B. NEW BUSINESS

7. SCHEDULING OF NEXT MEETING

8. ADJOURNMENT

###

**NEW YORK STATE
GAMING COMMISSION MEETING**

MINUTES

MEETING of NOVEMBER 23, 2015

NEW YORK, NEW YORK

A meeting of the N.Y.S. Gaming Commission was conducted in New York, New York.

1. Call to Order

The meeting was called to order at 1:14 p.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In attendance were Commissioners John Crotty, Peter Moschetti, John Poklemba, Barry Sample and Todd Snyder. Commissioner Snyder was unanimously elected as presiding officer for the meeting.

2. Consideration of the Minutes from October 26, 2015

The Commission considered previously circulated draft minutes of the meeting conducted on October 26, 2015. Commissioner Snyder noted a typographical error, which was corrected. The minutes were then accepted as amended.

3. Report of Executive Director

Executive Director Robert Williams discussed the casino licensing timeline and process, daily fantasy sports, an EKG initiative by the Office of the Equine Medical Director and proceedings at recent meetings of the Harry M. Zweig Memorial Fund for Equine Research, MWB/E outreach events and the Responsible Play Partnership.

4. Rulemaking

a. Adoption: SGC-40-15-00003-P, Preference in Harness Racing (9 NYCRR § 4108.8)

The Commission considered adoption of a proposed regulation that conforms existing regulations regarding New York-bred horses preference date requirements to legislation enacted.

ON A MOTION BY: Commissioner Crotty
APPROVED: 5-0

5. Adjudications

- a. **In the Matter of Jose Lezcano.** The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 5-0 vote, to accept the Hearing Officer's recommendation that the finding of violation be rescinded and that the fine imposed be exonerated.
- b. **In the Matter of John Velasquez.** The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had agreed, on a 5-0 vote, to accept the Hearing Officer's recommendation that the finding of a violation be sustained and that the fine imposed remain in effect.

6. Old Business/New Business

- a. **Old Business.** Commissioner Crotty inquired as to the status of Lasix information previously sought. Mr. Williams advised that research remains pending.
- b. **New Business.**
 - (1) **Use of Whip Research.** Commissioner Snyder requested that staff prepare a memorandum on differing regulatory approaches to the use of a whip in thoroughbred racing and recommend changes, if warranted.
 - (2) **Staff Report.** Mr. Williams presented the Staff Report in Regard to Allegations Advanced by the People for the Ethical Treatment of Animals in Regard to the Practices of KDE Equine, LLC *et al.* The Commission accepted the report for consideration, authorizing staff to release the included regulatory proposals for pre-proposal rule review and industry comment.

7. Scheduling of Next Meeting

No date for the next regular meeting was announced.

8. Adjournment

The meeting was adjourned at 1:36 p.m.

#



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

John A. Crotty, Commissioner
Peter J. Moschetti, Jr.,
Commissioner
John J. Poklemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: December 17, 2015

Re: Adoption of Rulemaking on Gelding Reporting Requirements
(9 NYCRR §§ 4007.7, 4105.13, 4106.1 and 4106.10)

For Commission consideration is the adoption of amendments to require expressly that the gelding of a racehorse be reported properly. The Commission authorized the proposal of these amendments at its March 12, 2014 meeting. The proposed rulemaking was published in the *State Register* on November 4, 2015.

A copy of the excerpt from the *State Register* that includes the text of the proposed amendment is attached. The public comment period expires on December 21, 2015. To date, one comment has been received, from Batavia Downs racetrack, which stated that it was strongly in favor of the proposal.

[REDACTED]

attachment

cc: Robert Williams, Executive Director
Ronald Ochrym, Director, Division of Horse Racing and Pari-Mutuel Wagering

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. SGC-44-15-00019-P

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

Proposed Action: 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 of proposed rule: New section 4007.7 would be added to 9 NYCRR as follows:

§ 4007.7. [(Reserved)] *Geldings*

The gelding of a horse shall be reported to the racing secretary at any race meeting at which the horse might race.

(a) *If a racehorse is gelded on the premises of a licensed racetrack, then the trainer shall report the alteration within 72 hours of such procedure.*

(b) *If a racehorse is gelded off-track, then the owner or trainer shall report the alteration at or before the time the horse is entered to race.*

(c) *A trainer who enters a gelding, or who causes a gelding to be entered on his or her behalf, is responsible for ensuring that the horse's status as a gelding is listed accurately on the horse's certificate of registration on file in the racing office.*

(d) *Such reports shall include the name of the veterinarian who performed the alteration and the date of the alteration. The alteration shall be recorded on the official registration certificate and horse identification record of the horse.*

Section 4105.13 of 9 NYCRR would be amended as follows:

§ 4105.13. Duties of the racing secretary.

It shall be the duty of the racing secretary to:

(a) [Receive and to keep safe the eligibility certificates of all horses competing at the race track or stabled on grounds owned or cared for by any licensed harness race association and to return same to the owner of a horse or his representative upon their departure from the grounds] *Provide electronic access to the eligibility certificates and other horse ownership and registration records of the United States Trotting Association and Standardbred Canada.*

Section 4106.1 of 9 NYCRR would be amended as follows:

§ 4106.1. Records.

No horse will be permitted to race unless an eligibility certificate or other certificate of registration, in current form, is on file with the *United States Trotting Association or Standardbred Canada* [the track conducting the race].

New section 4106.10 would be added to 9 NYCRR as follows:

§ 4106.10. *Geldings.*

The gelding of a horse shall be reported to the racing secretary at any race meeting at which the racehorse might race and, as applicable, to either the United States Trotting Association or Standardbred Canada.

(a) *If a racehorse is gelded on the premises of a licensed racetrack, then the trainer shall report the alteration within 72 hours of such procedure.*

(b) *If a racehorse is gelded off-track, then the owner or trainer shall report the alteration at or before the time the horse is entered to race.*

(c) *A trainer who enters a gelding, or who causes a gelding to be entered on his or her behalf, is responsible for ensuring that the horse's status as a gelding is accurately listed on its eligibility certificate or other certificate of registration on file with such organizations.*

(d) *Such reports shall include the name of the veterinarian who performed the alteration and the date of the alteration. The alteration shall be recorded on the certificate of registration and horse identification record of the horse.*

Text of proposed 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

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: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19) and 301.

Racing Law Section 103(2) provides that the Commission is responsible for the supervision, regulation and administration of all horse racing and pari-mutuel wagering activities. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities. Racing Law Section 301 provides the Commission with the power to supervise generally all harness race meetings in this state at which pari-mutuel betting is conducted and to adopt rules and regulations related to those activities.

2. Legislative objectives: To maintain the public confidence and trust in the credibility and integrity of legalized gaming activities and ensure that gaming is to be conducted in the most efficient, transparent and effective manner possible. To ensure all gaming activity conducted in this state will be of the highest integrity, credibility and quality and that the best interests of the public, both gaming and non-gaming, will be served.

3. Needs and benefits. This rulemaking is necessary to ensure that the betting public and persons who claim race horses are provided with timely information regarding the classification of a male race horse. The classification of a horse is included in a certificate of registration, which is made available to the racing secretary prior to entering a horse in a race.

There are three classifications for male horses: colt, ridgling and gelding. A colt is a male horse that has intact and unaltered genitalia. A ridgling is a male horse that has genitalia that have not naturally descended and are obscured. A gelding is a colt or ridgling that has had its genitalia removed surgically. A colt that is too high-strung and difficult to control may be gelded in order to improve its racing performance.

For that reason, the status of a colt is important to betting public in order to know if the horse was gelded after its last race because its performance may improve or slow down as a result of the surgery. This rule will ensure that the public is properly informed that the horse has undergone surgical alteration.

The status of a horse is also important to a person who claims a horse. When a horse is claimed, a person who has "claimed" the horse takes ownership of the horse after the conclusion of a race. The new owner may claim a horse whose status as a colt changed since the last race and he or she unexpectedly owns a gelding, which affects the value and future of the horse as a breeding stallion.

The Commission's current rules do not explicitly require that a horse's official documentation be updated to reflect any such alteration. The suggested rule proposal would require a trainer to report such alterations done on the grounds of the racetrack within 72 hours, and if the surgery were performed elsewhere, at the time of the next entry of the horse to race. The proposal sets forth the required contents of such reports, which would be recorded on the official registration certificate and horse identification record of the horse. Such reports would be made to a thoroughbred racing secretary and horse identifier, or to the official compilers of standardbred ownership information, the United States Trotting Association or Standardbred Canada.

The proposal also updates standardbred rules to recognize that racing secretaries now rely on electronic (internet) records on file with such organizations, rather than paper documentation.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the regulated parties. Owners and trainers are already required to make reports to racing secretaries. This rule will actually reduce reporting costs by allowing for electronic access to eligibility certificates.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated.

c. Sources of cost evaluations: The Commission evaluated the impact of the new rule.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no additional paperwork requirements. Certificates of registration were previously required. This rule establishes deadlines for filing.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: No other alternatives were considered.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance schedule: Because this is a notification rule and doesn't require any substantive changes to the registration process, this rule can be implemented immediately upon adoption.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas or jobs.

This proposal concerns the timely notification to the public of the surgical alteration to a racehorse by submitting a certificate of registration to the racing secretary of a licensed racetrack or respective racing association prior to the entry of a horse in a race or 72 hours after the gelding procedure if the horse is located on the premises of a licensed racetrack. Owners and trainers are already required to submit such certification, but this will require that they submit a revised certificate to reflect that the horse has been altered from a colt or ridgling to a gelding. This rule will not have an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities.

Department of Health

NOTICE OF ADOPTION

Hospital Observation Services

I.D. No. HLT-43-14-00001-A

Filing No. 904

Filing Date: 2015-10-16

Effective Date: 2015-11-04

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

Action taken: Amendment of section 405.19; and addition of section 405.32 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803, 2805-v and 2805-w
Subject: Hospital Observation Services.

Purpose: To amend current observation services provisions to be in compliance with changes in Public Health Law, section 2805-v.

Text of final rule: Paragraph (2) of subdivision (e) of section 405.19 is amended to read as follows:

(2) Every person arriving at the emergency service for care shall be promptly examined, diagnosed and appropriately treated in accordance with triage and transfer policies and protocols adopted by the emergency service and approved by the hospital. Such protocols must include written agreements with local emergency medical services (EMS) in accordance with subparagraph (b)(1)(i) of this section. All patient care services shall be provided under the direction and control of the emergency services director or attending physician. In no event shall a patient be discharged or transferred to another facility, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, physician assistant, or nurse practitioner. No later than eight hours after presenting in the emergency service, every person shall be admitted to the hospital, or assigned to [an] observation [unit] services in accordance with [subdivision (g) of this] section 405.32 of this part, or transferred to another hospital in accordance with paragraph (6) of this subdivision, or discharged to self-care or the care of a physician or other appropriate follow-up service. [Hospitals which elect to use physician assistants or nurse practitioners shall develop and implement written policies and treatment protocols subject to approval by the governing body that specify patient conditions that may be treated by a registered physician assistant or nurse practitioner without direct visual supervision of the emergency services attending physician.]

Subdivision (g) of section 405.19 is repealed.

A new section 405.32 is added to read as follows:

405.32 *Observation services.*

(a) *General.*

(1) *Observation services are post-stabilization services appropriate*

for short-term treatments, assessment, and re-assessment of those patients for whom diagnosis and a determination concerning inpatient admission, discharge, or transfer can reasonably be expected within forty-eight hours.

(2) *If observation services are provided, the services shall be provided in a manner which protects the health and safety of the patients in accordance with generally accepted standards of medical practice.*

(3) *Direct referral is defined as a patient referred to the hospital for observation services by a nursing home, hospital outpatient clinic, diagnostic and treatment center, private practice physician or appropriately licensed practitioner, without receiving emergency room or critical care services on the day observation care begins. The referring practitioner must be a licensed physician or appropriately licensed practitioner and must have conducted a physical assessment of the patient within the previous eight hours from the referral.*

(4) *Patients may be assigned to observation services only by order of a physician or appropriately licensed practitioner.*

(5) *Patients may be assigned to observation services only through the emergency department or by direct referral in accordance with hospital policies, procedures and bylaws, in conformance with applicable statutes and regulations.*

(b) *Organization and Notice.*

(1) *The medical staff shall develop and implement written policies and procedures, approved by the governing body, that are based on the clinical needs of the patient, that shall specify:*

(i) *the organizational structure for providing observation services, including the specification of authority and accountability of the services,*

(ii) *the proper clinical location for the care of a patient requiring observation services,*

(iii) *the appropriate medical and administrative oversight of observation services,*

(iv) *clinical criteria for observation assignment and discharge,*

(v) *assignment of a physician, nurse practitioner, or physician assistant who will be responsible for the care of the patient and timely discharge from observation services, and*

(vi) *integration with related services and quality assurance activities of the hospital.*

(2) *The hospital, in conjunction with the discharge planning program of the hospital, shall establish and implement written criteria and guidelines specifying the circumstances, the actions to be taken, and the appropriate contact agencies and individuals to accomplish adequate discharge planning for persons in need of post observation treatment or services but not in need of inpatient hospital care.*

(3) *Patients in observation shall be cared for by staff appropriately trained and in sufficient numbers to meet the needs of the patients.*

(4) *Patients being assigned to the observation services, or the patient representative, shall be provided with an oral and written notice within twenty-four hours of such placement that the patient is not admitted to the hospital and is under observation status. The hospital shall make a good faith effort to obtain written acknowledgment of receipt of the notice by the patient or the patient representative, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained. Such written notice shall include, but not be limited to the following information:*

(i) *a statement that observation status may affect the patient's Medicare, Medicaid and/or private insurance coverage for the current hospital services, including medications and other pharmaceutical supplies, as well as coverage for any subsequent discharge to a skilled nursing facility or home and community based care; and*

(ii) *that the patient should contact his or her insurance plan to better understand the implications of being placed in observation status.*

(c) *Locations. Hospitals may provide observation services in the following locations:*

(1) *Inpatient beds;*

(2) *Distinct Observation Units; or*

(3) *In a hospital designated as a critical access hospital pursuant to Subpart F of Part 485 of Title 42 of the Code of Federal Regulations or a sole community hospital pursuant to section 412.92 of Title 42 of the Code of Federal Regulations, or any successor provisions, observation services may be provided in the emergency department.*

(d) *Distinct Observation Units.*

(1) *Physical Standards*

(i) *The observation unit shall comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011, except that the unit need not be adjacent to the emergency department.*

(ii) *Observation unit beds shall not be counted within the state certified bed capacity of the hospital and shall be exempt from the public need provisions of Part 709 of this Title.*

(iii) *The observation unit shall be marked with a clear and conspicuous sign that states: "This is an observation unit for visits of up to 48 hours. Patients in this unit are not admitted for inpatient services."*



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

www.gaming.ny.gov

John A. Crotty, Commissioner

Peter J. Moschetti, Jr.,

Commissioner

John J. Poklemba, Commissioner

Barry Sample, Commissioner

Todd R. Snyder, Commissioner

Robert Williams, Executive Director

Edmund C. Burns, General Counsel

To: Commissioners

From: Edmund C. Burns

Date: December 17, 2015

Re: Emergency Rulemaking and Proposed Rulemaking for Jockey Injury Compensation Fund Assessments and Plan for 2016 (9 NYCRR Part 4046)

The Jockey Injury Compensation Fund (“JICF”) is a statutorily created not-for-profit corporation charged with securing workers’ compensation insurance “for the benefit of all jockeys, apprentice jockeys and exercise persons” licensed to participate in New York Thoroughbred racing. Racing, Pari-Mutuel Wagering and Breeding Law §§ 221(1), 221(6). To pay for the coverage, JICF “shall 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 under [the Thoroughbred racing licensing section], to obtain the total funding amount required annually.” *Id.* at § 221(7). The statute requires JICF to submit to the Commission, no later than November 15 each year, an annual amendment to its plan of operation relating to the assessment of the costs of insurance for the subsequent year. The Commission then reviews and, if appropriate approves the plan. *Id.* at § 221(8)(a). This review and approval is executed under delegated authority.

The law provides that in the absence of an approved JICF plan, the commission “shall adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the [Commission] or superseded by a plan submitted by the fund and approved by the [Commission].” *Id.* at § 221(8)(b).

JICF has not submitted an annual plan of operation amendment relating to the assessment of insurance costs for 2016. JICF wrote to the Commission on November 16, asserting that JICF was “not able to submit a written plan” that is “fair equitable, and in the best interests of racing” by the statutory deadline. A copy of the JICF letter is attached.

The Commission is thus charged with promulgating appropriate rules to ensure that coverage is secured and premiums funded. *Id.* at § 221(8)(b). For Commission consideration are emergency rules and proposed new rules that would set forth general plans for JICF assessments, and other related matters. The current JICF workers’ compensation policy expires on December 31, 2015, which necessitates emergency rulemaking to ensure that workers’ compensation coverage remains in place uninterrupted.

To the knowledge of Commission staff, the only current workers' compensation insurance quotation for JICF for 2016 has been offered by the New York State Insurance Fund ("SIF").

There are two issues for the Commission in establishing a JICF plan for 2016: (1) who will provide workers' compensation insurance to JICF and (2) how will the costs of this insurance be assessed among owners and trainers.

SIF's quotation as the only current proposal limits the Commission to adopting a plan under which JICF accepts such SIF policy.

[REDACTED]

The proposed rule includes an administrative assessment to compensate the Commission for having to perform work intended for JICF to perform. The proposed rule also requires JICF to engage a consultant acceptable to the Commission, at the sole expense of JICF, to review past and current claims and losses and make recommendations to JICF and the Commission by September 30, 2016 for JICF risk management practices and controls.

Proposed rule text is attached. Also attached is a document setting forth the proposed 2016 plan, with proposed assessments.

[REDACTED]

attachments

cc: Robert Williams, Executive Director
Ronald Ochrym, Director, Division of Horse Racing and Pari-Mutuel Wagering

A new Part 4046 would be added to 9 NYCRR, to read as follows:

Part 4046. Jockey Injury Compensation Fund.

§ 4046.1. Definition.

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.

Jockey Injury Compensation Fund, Inc.

Assessment Plan for 2016

For 2016, the assessments prescribed by 9 NYCRR § 4046.4(a) shall be as follows:

1. for owners: two percent of the purse earned by any horse entered in a race, capped by a maximum assessment per race of \$20,000.

2. for trainers:

(a) the amount per day for each stall described in 9 NYCRR § 4046.4(a)(2) shall be \$5.65 for trainers participating at a NYRA track and \$2.12 for trainers participating at Finger Lakes; and

(b) the amount per injury incident described in 9 NYCRR § 4046.4(a)(2)(ii) shall be \$1,000.