

Subchapter B of Title 12 NYCRR is amended to add a new section 320, as follows:

**Part 320. New York Jockey Injury Compensation Fund, Inc.**

**Section 320.1. Definitions**

- (a) "Fund" means the New York Jockey Injury Compensation Fund, Inc.
- (b) "Board" means the New York State Workers' Compensation Board.
- (c) "Chair" means the chairperson of the New York State Workers' Compensation Board.
- (d) "Self-insure" and "self-insurance" shall have the same meaning as set forth under section 50 of the workers' compensation law.
- (e) "Employees of licensed trainers or owners" shall have the same meaning as subdivision twenty-four of section 2 of the workers' compensation law.

**Section 320.2. Application to Self-Insure**

- (a) In order for the Fund to self-insure pursuant to subdivision three of section 50 of the workers' compensation law and paragraph b of subdivision six of section 221 of the racing, pari-mutuel wagering and breeding law, the Fund shall furnish satisfactory proof to the chair of its financial ability to pay workers' compensation. Such proof shall consist of a notice of intent to self-insure and satisfactory proof of the financial ability to self-insure.
- (b) Satisfactory proof of the financial ability to self-insure shall consist of the following:
  - (1) the posting of a security deposit with the Board, as determined and calculated by the Board using full annual payroll by class code; and
  - (2) proof of excess insurance coverage in an amount determined by the Board.
- (c) The proof provided to the chair shall also contain audited financial statements as prescribed by the Board.
- (d) The chair may determine that the proof of financial ability to pay workers compensation is insufficient for good cause shown, in that the Fund has failed to tender satisfactory proof of its financial ability to self-insure.
- (e) Upon the chair's approval to self-insure, the Fund shall also obtain approval to self-insure from the gaming commission, pursuant to paragraph b of subdivision six of section 221 of the racing, pari-mutuel wagering and breeding law.
- (f) The Fund will be deemed to be self-insured pursuant to subdivision three of section 50 of the workers' compensation law as of the date the gaming commission grants approval to self-insure.

**Section 320.3. Annual Coverage and Assessments**

- (a) Upon approval to self-insure by both the chair of the Board and the gaming commission, on the date established pursuant to paragraph f of Part 320.2 of this Subchapter, the Fund shall remit to the Board the assessment established by the

- chair pursuant to section 151 of the workers' compensation law, in the manner consistent with subdivision five of section 151 of the workers' compensation law, and the assessment established by the chair and the department of audit and control pursuant to paragraph (c) of subdivision five of section 50 of the workers' compensation law, in the manner set forth in paragraph (e) of subdivision five of section 50 of the workers' compensation law.
- (b) Annually, no later than April first of each fiscal year, and for the duration that the Fund elects to self-insure, the Fund shall submit to the board all financial statements, payroll information, and workers' compensation claims to continue its status as a self-insurer pursuant to subdivision 3 of section 50 of the workers' compensation law.
  - (c) Annually, based upon the financial information submitted, the Chair shall reassess the Fund's proof of the financial ability to self-insure. Upon completion of such review, the Chair may adjust the required security. If additional security is required to be posted, the Fund shall submit such amounts within 90 days of notification. In the event that such additional security is not posted, the chair may determine that the proof of financial ability to pay workers compensation is insufficient for good cause shown, and the Fund 's self-insurance status may be terminated.
  - (d) Any owner or trainer that is licensed under article two or four of the racing, pari-mutuel wagering and breeding law and that is a member of the Fund shall not charge any jockey, apprentice jockey, or exercise person for any portion of the cost of joining and/or being a member of the Fund. In the event the Fund elects, with the approval of the gaming commission, to secure workers' compensation insurance for employees of licensed trainers or owners, owners and licensed trainers that are members of the Fund shall not charge said employees for any portion of the cost of joining and/or being a member of the Fund.

#### **Section 320.4. Reserve**

- (a) Following approval to self-insure by the chair and the gaming commission, the Fund shall establish a self-insurance reserve to provide coverage in the event that the Fund is deficient. The board of directors of the Fund shall establish an annual fee to be paid by owners and licensed trainers that are members of the Fund for the purposes of contributing to the reserve. The reserve shall be established no later than 60 days following the approval to self-insure by both the chair and the gaming commission, on that date set forth pursuant to paragraph f of Part 320.2 of this Subchapter. At the time of establishment and annually thereafter, the Fund shall provide the Board with detailed information concerning the reserve. Such information shall include the financial institution holding the reserve as well as account information, the account balance, and any deposits to and debits from such reserve in the preceding year.

- (b) The Fund may at any time in its discretion expend moneys in such reserve to pay any liability of the plan.
- (c) In the event the Fund no longer self-insures, all moneys remaining in such reserve in excess of an amount sufficient to satisfy all accrued and contingent liabilities, shall be refunded to the owners and licensed trainers that are members of the Fund in such manner as may be established by the board of directors of the Fund.