

(a)

NEW JERSEY RACING COMMISSION**Horse Racing**

Exemption from Claim; Voidable Claims; Delivery of Corticosteroid Records; Claiming Races on the Flat; Restrictions; Claiming Privileges; Claimed Horse; Intimidation; Affidavits; Form of Claims; No Money in Claim Box; Irrevocability; Title in Claimed Horse; Void Claims; Cooling the Horse; Eliminated Stables; Right to Claim; Sale of Claimed Horse; Circumvention of Rules; Testing; Open Claiming

Proposed New Rules: N.J.A.C. 13:70-12.1A, 12.20A, and 12.38

Proposed Amendments: N.J.A.C. 13:70-12.1, 12.4, 12.12, 12.13, 12.14, 12.15, 12.17, 12.19, 12.20, 12.23, 12.31, 12.36, and 12.37

Proposed Repeals: N.J.A.C. 13:70-12.2, 12.28, 12.29, and 12.33

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-134.

Submit written comments by October 14, 2016, to:

Frank Zanzuccki, Executive Director
 Department of Law and Public Safety
 New Jersey Racing Commission
 PO Box 088
 Trenton, NJ 08625-0088
 E-mail: NJRCWebinfo@lps.state.nj.us

The agency proposal follows:

Summary

Subchapter 12, Claiming, sets forth the rules of the New Jersey Racing Commission (the Commission) concerning claiming races and specifies from whom a claim can derive, the process for making such claim, and the actions of the racetrack stewards and veterinarians in overseeing the claiming process and properly responding to every claim. The Commission proposes changes to the subchapter to codify the current claiming system as a means of reflecting current industry practice, lessening the risk of death or serious injury to horses running in claiming races, providing greater protection for the claimant upon his or her entering of a claim, protecting the health of the horses, and maintaining the integrity of the sport.

New N.J.A.C. 13:70-12.1A, Exemption from claim, is proposed to directly follow N.J.A.C. 13:70-12.1, Claiming races on the flat. The proposed rule provides a direct exception to the principle espoused in N.J.A.C. 13:70-12.1. Namely, N.J.A.C. 13:70-12.1 declares that any horse entered into a claiming race is subject to claim for its entered price. Proposed N.J.A.C. 13:70-12.1A provides an exception to that fundamental rule.

Concern for the welfare of race horses is the primary catalyst that has prompted this change. Proposed N.J.A.C. 13:70-12.1A, in correlation with several other changes to this subchapter, seeks to offer some level of protection to an owner whose horse last ran in a claiming race. N.J.A.C. 13:70-12.1A also seeks to promote the health and welfare of horses who race in claiming races by incentivizing the owner to nurture a horse to full health before subjecting the horse to another race. The benefits of this rule may be enjoyed by any owner regardless of whose ownership the qualified horse was under when entered into the claiming race. The horse need not have been claimed in order to qualify for this exception.

The proposed rule allows for a horse to be exempt from claim if three conditions are met. First, the horse not run in any race for a period of 180

days from the date of the last claiming race it started. This condition is essential to the claiming exemption and requires the horse to have last raced in a claiming race prior to the horse's 180-day layoff. The purpose of this condition is to incentivize owners to care for and allow the full recovery of the horse. The expense to an owner who boards and provides treatment to a race horse is significant and were an owner to board the horse and allow it to fully recover, that expense would be difficult to recoup were the horse to be immediately claimed in its first race back. The proposed rule allows an owner to exempt a horse from claim in order to provide a better opportunity for the horse to earn a purse for the owner who underwent the expense of treating the injury. The goal of this proposed rule is to give a greater number of race horses the time to recover from their racing injuries, so that fewer thoroughbreds break down on the track.

Second, the horse must be entered for a claiming price equal to or greater than the claiming price at which it last started. This will be verified by the stewards or their appointed deputy. Due to the other requirements of this rule, the most recent race the horse started must have been a claiming race that occurred at least 180 days prior to the race date for which it is being entered. The horse must, therefore, be entered for a claiming price equal to or greater than the claiming price at which it last started.

Finally, an owner entering a qualified horse into a claiming race is required to make known to the stewards, upon entry, that the owner wishes to exercise the right to exempt the horse from claim. This requirement places the onus upon the owner to inform the stewards of the horse's layoff and the entitlement of exemption pursuant to this proposed rule. The stewards or their appointed deputy will then verify that the horse has not run in any race for a minimum of 180 days and that the horse's last race was a claiming race. The purpose of this condition is to make the exemption dependent upon an affirmative action of the owner. The exemption is, therefore, not an automatic right but rather one which must be exercised.

Should these three conditions be met, the horse will be exempted from claim. If any horse is exempted from claim, a conspicuous notification shall be indicated in the race program. This requirement is necessary to properly inform any potential claimants of the nature of the horse's exempt status. Should any claims be entered into the claiming box despite the notification in the race program, those claims shall be considered void ab initio, as they are invalid.

While improbable, it is possible that every horse entered into a claiming race be exempt from claim. In this rare circumstance, the race will be run as normal for purse money but no claims will be allowed.

This rule will affect owners entering horses into claiming races, trainers of horses entered into claiming races, and any person who may be a potential claimant pursuant to N.J.A.C. 13:70-12.

The goal of this rule is to improve upon the current claiming practices and to add additional safeguards for the safety of horses entered into a claiming race in the State of New Jersey. The rule is designed to protect the horse by incentivizing an owner to treat the animal with care and allow for the full recovery of any injury.

If an owner attempts to falsely claim exemption for a horse, or fabricates the horse's racing history to appear as though the horse qualifies for exemption under this rule, that owner will be subject to penalties in accordance with N.J.A.C. 13:70-16.

Proposed new N.J.A.C. 13:70-12.20A, Voidable claims, is proposed for two primary purposes. The first purpose is to create a comprehensive list of all circumstances under which a claim will either be deemed void by the stewards or become voidable at the discretion of the claimant. The proposed amendments to N.J.A.C. 13:70-12.20 and proposed new N.J.A.C. 13:70-12.20A reference all the eventualities throughout the subchapter that may lead to a claim being deemed void or voidable, respectively. Both changes also contain circumstances that may make a claim void or voidable unreferenced anywhere else in the subchapter. Creation of a comprehensive list of all the circumstances that lead to a void or voidable claim will simplify matters for the claimants, owners, and all others involved in the claiming process.

The second purpose of the proposed rule is to further protect claimants. The proposed rule lists two instances whereby a claimant has

the option of voiding his or her claim despite its being entered and the horse becoming a starter.

First, proposed N.J.A.C. 13:70-12.20A(a)1 involves post-race testing, the procedures for which are set forth in N.J.A.C. 13:70-14A. Should a horse be tested pursuant to N.J.A.C. 13:70-12.36 and Subchapter 14A and that test comes back positive for any drug and/or substance foreign to the natural horse, the claimant has the option of declaring his or her claim void, returning the horse to the previous owner and receiving a refund of the price paid for the horse. The particular procedures the claimant must undergo to declare his or her claim void are discussed below regarding the proposed amendments to N.J.A.C. 13:70-12.36. In the interest of fairness and to maintain the integrity of the sport, any claimant who attains ownership of a horse illegally drugged in contravention of the Commission's rules should be given the option of returning the horse to its previous owner.

The second instance, proposed as N.J.A.C. 13:70-12.20A(a)2, involves a claimed horse being "vanned off" the track at the direction of the State Veterinarian. "Vanned off" refers to a horse that is placed on the equine ambulance and driven to the detention barn or a hospital facility for further examination. While not a frequent practice, horses are "vanned off" a track for several reasons, ranging from life threatening injuries to a twisted horse shoe. The proposed rule allows for a level of protection for a claimant if the claimed horse is "vanned off" the track for any reason at the direction of the State Veterinarian. The concern that led to this paragraph is that a claimed horse that comes up lame for any reason during or immediately after a race and cannot leave the track under its own power may have a severe injury and it would be unjust to force the claimant to shoulder the cost of boarding and rehabilitation. This paragraph allows the claimant a large measure of discretion should the horse be "vanned off."

There are limits on a claimant's ability to void a claim pursuant to N.J.A.C. 13:70-12.20A(a)2. Most importantly, the horse must be "vanned off" directly from the track itself at a time after it becomes a starter. The moment the horse walks off the track under its own power, this provision cannot be utilized. This includes the circumstance in which the horse must be "vanned" from the short area between the racetrack and the detention barn. The moment that a claimed horse walks off the racetrack, the claimant no longer has the option to void the claim regardless of the horse's condition after the race. If the horse becomes lame after exiting the track or while awaiting the ownership exchange in the detention barn, the claimant can still utilize the protections proposed in N.J.A.C. 13:70-12.1A in order to exempt the horse from claim in a subsequent race but does not have the option to void his or her claim.

The other limitation involves the timing and manner of voiding the claim. A claimant has until one hour from the post time of the race to void his or her claim should the claimed horse be "vanned off" the track. In order to void the claim, the claimant must make the stewards aware of his or her desire to void the claim. This may be accomplished by notifying the State Veterinarian located in the detention barn. The State Veterinarian who receives this request must log the exact time the request was made and immediately contact the stewards to inform them of the claimant's desire to void the claim. Logistically, the State Veterinarian in the detention barn is the Commission official in the best position to handle the claimant's request. The claimant may observe the horse from outside the detention barn but will not be allowed to bring in his or her own veterinarian to perform tests on the animal. Doing so would require far more time than can be reasonably afforded a claimant. The claimant must make a decision quickly.

Should the claimant fail to notify the stewards directly or the State Veterinarian at the detention barn prior to the expiration of one hour from the post time of the race in which the claim was made, the claimant's right to void the claim shall be extinguished and the claim will be processed. Further, if at any point the claimant or his or her trainer takes possession of the horse in the detention barn, the claimant's right to void the claim is extinguished.

This voidable option allows claims for minor injuries to go through. While the Commission understands this section may result in claims being voided for minor injuries not normally intended to lead to a voided claim under the spirit of this proposed rule, the Commission has also

determined that the risk of a claimant abusing the rule and voiding the claim of a horse with a minor malady is remote.

This new rule will affect the current claiming practice by expanding the situations in which a claim will not be executed. As the rules are presently written, there are only limited circumstances in which a claim may be considered void. This section is a natural and required alteration due to the significant changes that have occurred in the horse racing industry practices over the past 20 years.

Proposed new N.J.A.C. 13:70-12.38, Delivery of corticosteroid records, further safeguards the health of claimed horses. The rule requires the previous trainer of a claimed horse provide, to the new trainer, accurate treatment records of all corticosteroid joint injections that were administered to the claimed horse within the 30 days prior to the race in which the horse was claimed. The trainer also has to provide a copy of the records to the State Veterinarian. Delivery of these records must occur within 48 hours from the time the race becomes official. Should the trainer fail to provide the new trainer or State Veterinarian with the corticosteroid injection records within 48 hours, the trainer will be held strictly liable and subject to penalty. Disclosure of the corticosteroid injection records is important to the health of the animal.

This rule will primarily affect the previous trainer of a claimed horse, the State veterinarians, the new trainer, and the claimant of a claimed horse. Upon receipt of the corticosteroid injection records, the State Veterinarian's office is responsible for the review, recordkeeping, and disbursement of said records.

N.J.A.C. 13:70-12.1, Claiming races on the flat, is being proposed for amendment to conform to current industry practices. The need for amendment arose from the advent of open claiming and the elimination of the stabling requirement due to lack of available stabling. The proposed amendments eliminate the language requiring an owner to start a horse at the current meeting before making a claim. The proposed amendments also eliminate the language requiring all claimants to have permanent stabling at the racetrack or a State approved farm. Both of these proposed amendments are in line with current industry practice. In fact, most of the State's racetracks no longer have available stabling onsite. The language being proposed in lieu of the starting and stabling requirement is simply that any person who possesses a current New Jersey owner's license or who has utilized the open claiming provisions in N.J.A.C. 13:70-12.37 may claim any horse entered into a claiming race at any meet at a New Jersey racetrack. The only exception to this rule being the proposed exemption from claim rule at N.J.A.C. 13:70-12.1A.

The Commission is proposing the repeal of N.J.A.C. 13:70-12.2, Restrictions, claiming privileges, as the rule no longer serves any purpose should the proposed amendments to N.J.A.C. 13:70-12.1 be adopted. The existing rule grants racetrack stewards the right to permit an owner from out-of-State who has entered a horse at the current race meeting to claim a horse for the purpose of replacing his or her horse should it have been claimed. However, any person can now claim a horse via open claiming and should the proposed amendment to N.J.A.C. 13:70-12.1 be adopted, there will no longer be any stabling requirements. This rule has become outdated and should be eliminated.

The Commission is proposing a substantive amendment to N.J.A.C. 13:70-12.4, Claimed horse. The current rule requires that a horse, upon being claimed, race for a claiming price of 25 percent greater than the price it was claimed for a period of 20 days. Therefore, should a horse be claimed for \$20,000 on April 1st, if it runs again prior to April 21st, the horse must race for a claiming price of at least \$25,000. The proposed amendment would eliminate the 25 percent greater requirement, as the rule no longer has any practical purpose. The change would instead require that a claimed horse not race for less than the amount for which it was claimed for at least 20 days from the date it was claimed.

The proposed amendment would allow this rule to conform to current industry practice. Since 2010, all horses claimed have been required to run for no less than the amount for which they were claimed, as opposed to 25 percent greater than the amount for which they were claimed, for at least 20 days from the date of the claim. This amendment would bring the rules in step with current practices. The change would not affect anyone negatively as the change is in line with the current practices of the industry. The enforcement of such a change would be conducted in the

same manner as it is currently being conducted. Approving this measure will have no effect on the horse racing industry or its practices.

N.J.A.C. 13:70-12.12, Intimidation, is proposed for substantive amendment to protect a greater spectrum of situations. The rule currently forbids any person from making an attempt by intimidation or threat of bodily harm to prevent anyone from racing a horse in any claiming race for which it is entered.

The proposed amendment leaves the original language intact and makes several additions to the rule. The changes would add language to prohibit intimidation or threat of bodily harm used to coerce any person to enter a horse into a claiming race, to prevent any person from entering a horse into a claiming race, and to interfere with any claiming race or its entrants in any way. The proposed language is intended to act as a deterrent for individuals considering interference with a claiming race in any way.

Minor grammatical changes and one substantive change are being proposed to N.J.A.C. 13:70-12.13, Affidavits. The first proposed change will alter the paragraph from a two-part compound sentence to two separate sentences for clarity. Two other proposed changes are grammatical and are proposed to make the rules throughout the subchapter uniform. First, the uppercase "S" in the word "Stewards" in the first line is changed to a lowercase "s." Such a change allows this section to be consistent with the rest of the subchapter in which the word "steward" or "stewards" is generally written in lowercase.

The second proposed change alters the words "the rules" in the last line to "this subchapter." This change is being made for clarity and to specify which specific subchapter is effectuated by this section.

The substantive change will alter the second sentence to read: "Failure to make an affidavit in writing or the filing of a claim which is not made in keeping with this subchapter shall result in the claim being deemed void." This change is being made to represent the result of a claimant's refusal to make an affidavit as required by the stewards.

The Commission is proposing a substantive amendment of N.J.A.C. 13:70-12.14, Form of claims, to allow for greater steward discretion regarding the completion of the claim form. Currently, the rule states that all claim forms and envelopes must be accurate in every detail, otherwise the claim will be void. The purpose is to ensure the racetrack officials can ascertain precisely which horse is being claimed and whether the claimant has sufficient funds and qualifies to make the claim. The rule was not intended to void a claim for failure to "dot an 'i' or cross a 't.'"

The proposed amendment alters the language of the rule to allow for greater discretion on behalf of the stewards when determining if a form is filled out properly as to effectuate the claim. The language will now read that forms and envelopes must be filled out completely and be substantially accurate, in the judgment of the stewards, otherwise, the claim may be voided at the discretion of the stewards. This change improves the rule and is more in line with its true intent and purpose.

This will have a minor impact on the industry as stewards will be given greater discretion than they currently have in regards to claiming forms and envelopes. In practice, not much will change. The stewards must review all claim forms and envelopes to ensure accuracy as it is. This will ensure that the stewards are the final arbiters when determining if a claim form and envelope are sufficiently completed to effectuate the claim.

The Commission is proposing amendments to N.J.A.C. 13:70-12.15, No money in claim box, to create uniformity in the chapter and subchapter, and to include language regarding the proposed testing costs associated with the proposed amendments to N.J.A.C. 13:70-12.36, discussed below, and to codify a timeframe when the depletion language can become effective.

The alteration to create uniformity concerns the title of the association employee who keeps track of a claimant's account. The proposed amendments correct the current reference to "association's horsemen's accountant," and instead correctly identify the racetrack employee as the "horsemen's bookkeeper."

The second proposed change to this section is to require the presence of additional funds in the claimant's account should he or she wish to have the horse tested. Currently, a valid claim requires the claimant have sufficient funds in his or her account to pay the claiming fee and applicable New Jersey sales tax. However, due to a major amendment

concerning the testing costs and procedure proposed in conjunction with this proposed amendment, the claimant must also have sufficient funds to pay the cost of post-race testing pursuant to N.J.A.C. 13:70-12.36 should the claimant choose to have the horse tested. The proposed change to this rule is necessary only if the proposed amendment to N.J.A.C. 13:70-12.36 is adopted.

The final proposed amendment to N.J.A.C. 13:70-12.15 is the addition of language specifying at which time a claim is deemed entered. The rule currently states that a claimant cannot deplete his or her account after entering a claim for two hours from the time the claim is entered. However, the rule fails to specify at what point the claim is considered entered. This change provides that claims will be considered entered at the time the stewards or their appointed deputy open the claim envelopes pursuant to N.J.A.C. 13:70-12.18.

The Commission is proposing an amendment to N.J.A.C. 13:70-12.17, Irrevocability, for the purposes of specificity and clarification. The current rule simply states that claims are irrevocable. The proposed amendment adds "and at the risk of the claimant" be entered after "claims are irrevocable." This language clarifies that not only will the claim be irrevocable should it not be voided for any valid reason pursuant to the subchapter, but the risk of loss will lie with the claimant.

The Commission is proposing an amendment to N.J.A.C. 13:70-12.19, Title in claimed horse, to update the rule. The existing rule makes clear that title would transfer upon the horse becoming a starter "whether it be alive or dead, sound or unsound, or injured during the race or after it."

The proposed changes will eliminate the disqualifying language "whether it be alive or dead, sound or unsound, or injured during the race or after it," and add in its place the language "unless title in the claimed horse is void pursuant to this subchapter."

Further, while not directly stating such, this change, along with the proposed changes to the void and voidable claim sections, effectively determine that the transfer of title will not occur until the claimed horse walks off the track after the race under its own power. This circumstance, as discussed above, is based upon current industry standards.

The Commission is proposing a major substantive amendment for N.J.A.C. 13:70-12.20, Void claims. The current rule only exists to void a claim if a horse is excused by the stewards prior to the claimed horse becoming a starter.

The proposed amendment has two major purposes. First, to present several new circumstances whereby a claim shall be deemed void. This change is necessary because industry practices and standards have changed since the Commission adopted the original void claim rule. Second, to establish a single listing of all the circumstances that lead to voided claims and allow such a listing to be readily conspicuous within the rules. There are several sections in the subchapter that declare a claim to be void; however, those sections do not exist in a single, comprehensive list.

The Commission is proposing a list of 10 different circumstances that will lead to voided claims. The rule will be restructured into a list format with a denotation of particular triggers for voiding a claim. The qualifier "or" at the end of paragraph (a)9 makes it apparent that should any one of the circumstances listed in the subsections occur the claim shall be deemed void.

The existing rule, codified as paragraph (a)1, remains from the existing rule and declares a claim void in the instance whereby the stewards excuse a horse before it becomes a starter.

Paragraph (a)2 relates directly to the scenario being proposed for elimination in N.J.A.C. 13:70-12.19, discussed above. The proposed paragraph creates a new rule that requires a claim be voided should the claimed horse die during the race, or, at the direction of the State Veterinarian, has to be euthanized. This is a fundamental change to the original claiming rules, which specifically determined that the death of a horse during the race in which it was claimed is at the risk of the claimant. This change is proposed for two reasons. First, industry standards have predominantly changed to such. Second, the horse is running the race for the benefit of the previous owner; thus, it is consistent that the responsibility for the loss be placed on the previous owner as opposed to the claimant.

Paragraph (a)3 is a reference to the circumstance codified at N.J.A.C. 13:70-12.7, which states that an owner entering a horse into a claiming

race cannot claim his or her own horse. This rule is necessary as allowing an owner to claim his or her own horse would be contrary to the entire purpose of claiming races. The risk of having a horse claimed is inherent upon any owner's decision to enter their horse into such races. Including this reference from N.J.A.C. 13:70-12.7 furthers the creation of a comprehensive listing of all the circumstances under which a claim is void.

Paragraph (a)4 is a reference to the circumstance codified at N.J.A.C. 13:70-12.9, which states that no individual person shall make more than one claim on the same race. Importantly, the proposed amendment uses the term "[c]laims are" to begin the sentence. This term is used to indicate that all claims made by the same person on a single race are void and not simply all claims made after the first claim. If a person abuses the claiming procedures in such a manner, their first claim on the race shall be void and the potential claimant will not be able to acquire title to any horses that race.

Paragraph (a)5 is a reference to the circumstances of N.J.A.C. 13:70-12.10, which prohibits more than one claim be made by a single stable on any particular race. This problem typically arises when more than one owner owns horses pursuant to a licensed stable name. If any owner makes a claim on behalf of that stable name in a race, no other owner is able to make a claim on behalf of the stable name without all such claims being deemed void.

Paragraph (a)6 references the requirement codified in N.J.A.C. 13:70-12.13 that any person who has filed a claim may be required to make an affidavit in writing at the behest of the stewards. This proposed amendment makes certain that any such refusal to make an affidavit in writing at the request of the stewards will result in a voided claim.

Paragraph (a)7 references the proposed amendment to N.J.A.C. 13:70-12.14, relating to the claim forms and envelopes being filled out substantially accurately in the opinion of the stewards. This is the only subsection under the "void claims" rule that isn't triggered automatically. Pursuant to the rule this paragraph references, the stewards may void the claim at their own discretion. However, this paragraph still allows for the potential of a voided claim, thus, it belongs in this section as a means of organization and simplification.

Paragraph (a)8 generally references N.J.A.C. 13:70-12.15, No money in claim box, but also stands alone, as the proposed paragraph includes the phrase "at the time the horse becomes a starter." N.J.A.C. 13:70-12.15 refers to the improper action of entering physical money into the claim box and the necessity of having sufficient funds in the claimant's account with the horsemen's bookkeeper. N.J.A.C. 13:70-12.15 also prescribes a specific time at which sufficient funds must be in the claimant's account and invalidates a claim ab initio should it be violated. In contrast, this proposed paragraph sets forth a specific moment in time whereby a valid claim shall become voided. There are minor differences in the language of the referenced rule and the proposed paragraph; however, they are important differences as it allows the same offense to result in the same result while closing a potential loophole.

Paragraph (a)9 references N.J.A.C. 13:70-12.36, Testing. Technically, the referenced rule grants the claimant the opportunity to void a claim, or make a claim "voidable" as discussed above. However, if a claimant decides to exercise his or her option and void the claim, this proposed paragraph is required to codify the result of that decision. The new paragraph would read "[a] claim shall be void if the claimant has elected to void the claim pursuant to N.J.A.C. 13:70-12.36." Thus, should a claimant exercise his or her right to void the claim pursuant to N.J.A.C. 13:70-12.36 and 12.20A, this proposed paragraph indicates the result.

Paragraph (a)10 is proposed without reference to any other rule in the subchapter. Paragraph (a)10 is necessary to prevent loopholes that may allow circumvention of the provisions of the subchapter. This proposed paragraph allows for any additional amendments to the rules or any unseen or unanticipated violations of the rules to have an actionable result.

The amendments proposed to N.J.A.C. 13:70-12.20 provide a comprehensive compilation of the circumstances that may lead to a void or voidable claim. This rule will simplify the navigation of this chapter and should provide the owners, trainers, and potential claimants a valuable reference point.

The Commission is proposing an amendment to N.J.A.C. 13:70-12.23, Cooling the horse, to include language that correlates with the proposed amendments to the post-race testing rule. The existing rule requires the trainer of a horse who has been claimed to be responsible for cooling that horse out “until after the collection of any blood and/or urine specimen, and he or she shall sign for the witnessing thereof.” Currently, a post-race blood and urine test is required for all claimed horses. Such a test cannot be conducted until the horse is cooled off from the race it just ran. Therefore, someone must be responsible for and in control of the cooling down process. The natural party upon whom this responsibility should fall is the former trainer as he or she is familiar with the horse.

The Commission is proposing the addition of the language “should the horse be tested” to amend this rule along with the proposed post-race testing amendments. The need for this change arises because all claimed horses are no longer required to be tested. Should a claimant opt to have a post-race test administered or if the horse is selected by the Commission for a post-race test, the function of the previous trainer shall remain the same as it is currently. Should the claimant choose to forego a post-race test and the horse is not otherwise selected for post-race testing, the trainer need only accompany the horse to the detention barn post-race for the transfer of the claimed horse from the previous owner to the claimant.

This change will affect the current practices of trainers and claimants. In cases in which the horse is being tested nothing will change. However, in cases in which the horse is not tested, the claimant or the claimant’s trainer will be responsible for the horse, including cooling out the horse if necessary, at a much earlier time.

The Commission is proposing the repeal of N.J.A.C. 13:70-12.28, Eliminated stables, as the rule is no longer valid or necessary. The rule currently provides that any stable eliminated via sale or removal from the grounds forfeits its right to claim at the meeting at which it was registered prior to its elimination. However, registration as a stable is no longer required at a meeting with the advent of the open claiming rule, as well as the proposed amendments to N.J.A.C. 13:70-12.1. Even were the proposed amendments rejected, the existence of the open claiming rule and current industry practices have rendered this particular section obsolete.

The Commission is also proposing the repeal of N.J.A.C. 13:70-12.29, Right to claim, as the rule is no longer necessary. This rule is also one that has been entirely circumscribed by the open claiming rule, the proposed amendments to N.J.A.C. 13:70-12.1, and current industry practices. This rule, as written, is intended to provide for certain exceptions that would allow a person to hold a limited right to claim if his or her stable was eliminated by certain means. Everyone has the right to claim under open claiming and there are no longer any stabling requirements.

The Commission proposes an amendment to N.J.A.C. 13:70-12.31, Sale of claimed horse, for grammatical reasons. There are three changes proposed, none of which are substantive and only improve the grammar in the rule. The proposed amendment clarifies that a claimed horse may not be sold or transferred within 30 days of being claimed, but may be claimed via a successful claim in a subsequent claiming race. This language is more clear and references the exact time and nature of the circumstance excepted by the rule.

The Commission is also proposing the repeal of N.J.A.C. 13:70-12.33, Circumvention of rules, for largely the same reasons as other rules proposed for repeal. The rule, as written, describes an action of an owner that would be taken for that owner to keep a horse stabled at the racetrack to preserve that owner’s claiming rights at that particular meeting. No stabling is necessary to preserve a claiming right as all persons have the ability to claim. This rule can be repealed.

The Commission is proposing a major amendment to N.J.A.C. 13:70-12.36, Testing, in order to defray some of the post-race testing costs and to alleviate the burden placed upon those who administer testing and observe the horse in the detention barn after a race. The Commission is also correcting an error in the existing text of the rule and making a minor grammatical change.

The error that needs to be corrected occurs in the first sentence of the rule. The existing rule states that a post-race “test shall be taken in full compliance with Subchapter 14 of this chapter.” However, the subchapter pertaining to post-race testing is Subchapter 14A and this correction is

proposed. As written, the rule states “[t]he claimant shall have the right to void said claim should the forensic analysis ...” The change would eliminate the word “said” and replace it with “his or her.” This change will strengthen the grammar of the sentence.

The fundamental change being proposed by the Commission would make post-race testing optional and at the expense of the claimant. Currently, all claimed horses are administered a post-race blood and urine test. The primary goals of the proposed amendments are to alleviate the demands on staff and reduce costs associated with testing, while retaining effective care for the horses. The Commission is proposing the following amendments to the current rule.

First, the addition of the language “[a] claimant may request, via indication on the claim form, a post-race blood and urine test,” at the beginning of the rule allows claimants to require that claimed horses be tested similar to the current practice.

Second, the addition of the language “and/or substance foreign to the natural horse,” at the end of the final sentence of the rule will bring the claiming rule into conformity with the Commission’s rules in Subchapter 14A, which prohibit the presence of drugs and/or substances foreign to the natural horse.

The major amendments to the rule relate to the cost of testing, the timeframe in which a claimant must exercise his or her option should a test result in a positive finding, the party responsible for a positive finding, the transfer of ownership of the horse, and the shifting of fees should the claimed horse be selected for testing by the Commission. The amendments are further summarized as follows: If the claimant elects to have the claimed horse tested after the race, the cost of such test shall be paid by the claimant. The Commission will set the cost of testing at a level similar to current cost of such testing.

The opportunity to void a claim should a test result in a positive finding must be elected within 24 hours of the claimant being notified of a positive finding. To exercise the option to void, the claimant must contact the stewards in person or via the means designated at the time the stewards notified him or her of the positive test result.

Additionally, the language clarifies that responsibility for the positive test result shall be placed upon the former trainer, consistent with current law. This is a self-explanatory statement and relates only to the person upon whom the penalties imposed in this chapter are levied. The amendments further discuss the effect an election of post-race testing will have on transfer of ownership title and transfer of possession. The transfer of ownership title shall not be affected. The language of N.J.A.C. 13:70-12.19 is still valid. However, as discussed above, the actual transfer of the horse shall take place far sooner than is the current practice should the claimant elect not to have the horse tested and the horse is not selected by the Commission for testing. If this is the case, the former trainer will walk the claimed horse to the detention barn. The claimant will meet the trainer there and the exchange of halters and possession will take place as soon as practicable. This will transfer not only possession, but responsibility for the horse, to the new owner and trainer. Finally, the new language describes how testing costs will be paid if the claimant elects to have the horse tested and the horse is also selected for testing by the stewards. Should this occur, even though the claimant elected to have the horse tested, the cost of testing will be paid by the Commission as the current practice and rule direct.

The Commission has determined that switching to optional post-race testing in the manner described is the best means of fulfilling the goals of relieving demands on detention barn staff and stemming the expense of post-race testing, while still providing an environment suited for the health, safety, and welfare of the horses.

The Commission is proposing an amendment to the open claiming rule, N.J.A.C. 13:70-12.37, to add language referring to the cost of the post-race testing should the claimant elect such. At paragraph (c)2, an amendment is proposed to change the word “application” to “applicable,” which is the true intent of the rule. Further, paragraph (c)2 must be changed to include the language “plus the applicable post-race testing fee pursuant to N.J.A.C. 13:70-12.36, if elected.” An open claimant must now establish an account with the horsemen’s bookkeeper that will be sufficient to cover the cost of the claim fee, New Jersey sales tax, and the cost of post-race testing should the open claimant request a post-race test be conducted. It is a minor but necessary change to the rule.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Amending the thoroughbred claiming rules will result in several benefits to the racing industry and to society at large. The primary benefits of these proposed new rules, repeals, and amendments are the protection of the integrity of the sport of thoroughbred racing in New Jersey and the protection of the animals participating in the sport of thoroughbred racing in New Jersey. These amendments, repeals, and new rules aim to establish standards to control the administration and procedure of claiming races, as well as the framework within which owners and trainers must abide. Standardization of certain aspects of the claiming rules allows for more oversight of industry members and participants and more humane treatment of horses competing in claiming races. It is hoped that the changes will result in a larger number of horses being given sufficient time to recover from races.

Existing and prospective members of the industry will likely benefit as well. Through the administration of these proposed rules, current owners, trainers and future claimants will be given clear and concise rules to follow.

While many of the proposed amendments change the rules to be consistent with current practice, other changes may result in reaction from the industry. Specifically, current owners and trainers may react negatively to the protections provided to the claimant in the situation where a horse is "vanned off" the racetrack. While this change benefits the claimants, it is a necessary change and in line with current industry standards and trends. The proposed amendment only allows for voiding a claim under an uncommon circumstance. If a horse is injured during the race or is so injured after the race that the horse is unable to walk off the track under its own power, the claimant has the option to void his or her claim and save the cost of the claiming fee. Conversely, the rule negatively impacts the owners because there is the possibility that they will not obtain the claiming fee and will also have to retain possession of the injured horse. Despite this minor shift in protection from the owner to the claimant, the instances of a horse being "vanned off" are uncommon. Further, many horses that are "vanned off" do not sustain injuries severe enough to damage their future as race horses or their ability to generate future earnings for their owners.

The proposed testing amendments are likely to be opposed by prospective claimants. The primary consequence to prospective claimants is the cost of testing. It can be assumed that, when the Commission pays the cost of testing, which is then passed on to racetrack permit holders, a majority of claimants want their claimed horse to be tested. Since the testing of claimed horses has been mandatory, claimants have never had to pay the cost of that testing. The proposed amendment will reduce testing costs currently borne by the racetracks and the demands on staff in the detention barn.

Finally, it is hoped that the amended rules will encourage new persons to enter the industry of horse racing via purchase of a horse through claiming. The proposed amendments create far greater protections for a claimant and provide an opportunity to enter the world of thoroughbred ownership at far less risk. In the past, a claimant had to accept a great deal of risk when placing a claim. Such a system could deter would-be claimants. The proposed amendments are more favorable towards claimants and alleviate risk by creating circumstances under which a claim may become void and others where a claimed horse may be exempted from re-claim.

These changes are likely to strengthen the public's belief in the fairness and integrity of horse racing in New Jersey.

Economic Impact

It is expected that the proposed amendments to N.J.A.C. 13:70-12.36 will result in the shifting of the cost of certain post-race testing from the racetrack permit holders to the claimants who choose to have the horse tested. The racetracks will still be responsible for paying the cost of post-race testing for the horses selected for testing by the Commission. The cost of post-race testing is, at this time, anticipated to be approximately \$250.00 per test. It is impossible to determine the exact impact this change will have on the industry as the impact is entirely reliant on the

number of horses claimed and the percentage of claimants who choose to have the horse tested post-race.

As noted in the Summary and Social Impact statements above, there may be an impact on current owners when a claim is voided. The other proposed changes are not economic in nature and do not provide for additional funds to be collected or allocated throughout the industry. Therefore, the economic impact will be minimal. The majority of these proposed rules relate to the health and safety of the horse, as well as the process in which a claim may become validated.

Federal Standards Statement

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the proposed amendments, repeals, and new rules. The Racing Commission proposes these amendments, repeals, and new rules pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-30.

Jobs Impact

These proposed amendments, repeals, and new rules are not expected to create or eliminate any jobs in the racing industry. It is likely that additional job responsibilities will be required for certain employees of the Commission, but the responsibilities should be marginal and can be attended to by existing staff.

Agriculture Industry Impact Statement

The proposed amendments, repeals, and new rules will not have an impact on the agricultural industry in the State.

Regulatory Flexibility Analysis

The proposed amendments, repeals, and new rules impose reporting, recordkeeping, and compliance requirements on race horse veterinarians, owners and trainers, some of whom operate as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as discussed in the Summary above. The recordkeeping and reporting requirements must be applied uniformly to all parties because the goal is to ensure compliance by all individuals responsible for the health and welfare of the race horse. For this reason, the proposed amendments, repeals, and new rules do not provide a differing or lesser compliance standard based upon business size. No additional professional services are required for compliance.

The initial compliance costs are negligible and should provide no change to the current costs of operating a small business in this industry.

Housing Affordability Impact Analysis

The proposed amendments, repeals, and new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the claiming of horses.

Smart Growth Development Impact Analysis

The proposed amendments, repeals, and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to the claiming of horses.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:70-12.2, 12.28, 12.29, and 12.33.

Full text of the proposed new rules and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 12. CLAIMING

13:70-12.1 Claiming races on the flat

[In claiming races on the flat, other than open claiming pursuant to N.J.A.C. 13:71-14.36,] **Except as exempted pursuant to N.J.A.C. 13:70-12.1A**, any horse **entered into a claiming race on the flat** is subject to claim for its entered price by any [owner who has started a horse on the flat at the meeting at which the claim is made and who also

has been assigned stalls on a permanent basis on the premises of a licensed New Jersey racetrack, or who has been assigned stabling at an approved farm in the State of New Jersey.] **person who possesses a current New Jersey owner's license or who has utilized the open claiming provisions pursuant to N.J.A.C. 13:70-12.37.**

13:70-12.1A Exemption from claim

(a) A horse entered into any claiming race governed by this subchapter shall be exempted from any claim of title, if:

1. Said horse has not started in any race for a period of 180 days from the date of its last claiming race;

2. The horse is entered for a claiming price equal to or greater than the claiming price at which it last started; and

3. The owner entering a qualified horse pursuant to (a)1 and 2 above into a qualifying claims race governed by this section makes known to the stewards or their appointed deputy, at the time of entry, that the horse being entered is qualified for exemption from being claimed and that the owner wishes to exercise his or her right to exempt the qualified horse from claiming.

(b) If a horse has been exempted from claim pursuant to this section, a conspicuous notification shall be indicated in the race program.

13:70-12.2 (Reserved)

13:70-12.4 Claimed horse

For a period of 20 days after the claim, any claimed horse shall not race for a claiming price of less than [25 percent more than] the price for which it was claimed.

13:70-12.12 Intimidation

No person shall attempt by intimidation or threat of bodily harm to **coerce any person to enter a horse into a claiming race, to prevent any person from entering a horse into a claiming race, to prevent anyone from racing a horse in any claiming race for which it is entered, or to interfere with any claiming race or its entrants in any way.**

13:70-12.13 Affidavits

The [Stewards] stewards may, at any time, at their discretion, require any person who has filed a claim to make an affidavit in writing that he or she is claiming in accordance with the rules[; and claims]. **Failure to make an affidavit in writing or the filing of a claim, which [are] is not made in keeping with [the rules] this subchapter shall [be] result in the claiming being deemed void.**

13:70-12.14 Form of claims

All claims must be made in writing, on forms and in envelopes furnished by the association. Both forms and envelopes must be filled out completely, and must be **substantially** accurate in [every detail] **the judgment of the stewards**, otherwise, the claim [shall] **may be [void] voided at the discretion of the stewards.** For purpose of compliance with this rule, the name of the horse as appearing in the program and/or Daily Racing Form shall govern.

13:70-12.15 No money in claim box

No money or its equivalent shall be put in the claim box. For a claim to be valid the claimant must have a credit balance in his **or her** account with the [association's] horsemen's [accountant] **bookkeeper** of not less than the amount of the claim, plus **the applicable post-race testing fee pursuant to N.J.A.C. 13:70-12.36, if elected, and** New Jersey sales tax. No claimant shall deplete his **or her** account after entering a claim for any horse for a period of two hours from the time the said claim was entered. **For purposes of this section, a claim shall be deemed entered at the time the stewards, or their appointed deputy, open the claim envelopes pursuant to N.J.A.C. 13:70-12.18.**

13:70-12.17 Irrevocability

Claims are irrevocable **and at the risk of the claimant.**

13:70-12.19 Title in claimed horse

Title in a claimed horse shall be vested in a successful claimant from the time said horse is a starter, and said claimant shall then become the owner of the horse, [whether it be alive or dead, sound or unsound, or

injured during the race or after it] **unless title in the claimed horse is void pursuant to this subchapter.**

13:70-12.20 Void claims

(a) A claim shall be void if:

1. [If a] A claimed horse is excused by the stewards before it is a starter[, any claim or claims for such horse shall be void.];

2. The claimed horse dies during the race or, at the direction of the State Veterinarian, has to be euthanized;

3. The claim is made by an owner in violation of N.J.A.C. 13:70-12.7;

4. Claims are made by any person in violation of N.J.A.C. 13:70-12.9;

5. Claims are made on behalf of a stable in violation of N.J.A.C. 13:70-12.10;

6. Any person making a claim, when required to do so by the stewards, refuses to make an affidavit in writing pursuant to N.J.A.C. 13:70-12.13;

7. The claim is voided at the discretion of the stewards pursuant to N.J.A.C. 13:70-12.14;

8. The claimant's account with the horsemen's bookkeeper is insufficient to cover the cost of the claim, the cost of testing, if applicable, and the applicable New Jersey sales tax at the time the claimed horse becomes a starter;

9. The claimant has elected to void the claim pursuant to N.J.A.C. 13:70-12.36; or

10. A claim is not otherwise made in accordance with this subchapter.

13:70-12.20A Voidable claims

(a) A claim is voidable at the discretion of the successful claimant if:

1. A post-race test of the claimed horse pursuant to N.J.A.C. 13:70-12.36 returns a positive finding for any drug and/or substance foreign to the natural horse; or

2. A claimed horse, after starting in the race from which it was claimed, and at the direction of the State Veterinarian, is ordered transported or "vanned off" via racetrack equine ambulance from the track. In such an instance, the claimant or his or her trainer shall have one hour from post time of the race in which the horse was claimed, to inform the stewards of his or her decision to void the claim. Should the claimant take possession of the horse and remove it from the detention barn or should the claimant or his or her trainer fail to communicate to the stewards his or her decision to void the claim within one hour from post time, the claim shall be considered valid and the right to void the claim shall expire. Communication of the claimant's decision to void the claim may be made to the State Veterinarian who shall then log the time the decision was communicated and immediately contact the stewards.

13:70-12.23 Cooling the horse

A trainer whose horse has been claimed is responsible for cooling his **or her** horse out until after the collection of any blood and/or urine specimen, **should the horse be tested**, and he **or she** shall sign for the witnessing thereof. Failure to comply shall be subject to penalty.

13:70-12.28 and 13:70-12.29 (Reserved)

13:70-12.31 Sale of claimed horse

No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to [any one] **anyone** within 30 days after the day [he] **the horse** was claimed except **via a successful claim** in [another] a subsequent claiming race.

13:70-12.33 (Reserved)

13:70-12.36 Testing

A [post race] **claimant may request, via indication on the claim form, a post-race blood and urine test [shall] be taken in full compliance with [subchapter 14 of this chapter] N.J.A.C. 13:70-14A** from any horse claimed in a race. **The cost of testing pursuant to this section shall be set by the New Jersey Racing Commission and shall be paid by the claimant along with the claiming fee and applicable**

New Jersey sales tax. Should the test result in a positive finding, the claimant has the right to void the claim within 24 hours from the time notification of the positive finding was communicated to the claimant. The trainer at the time of entry into the claiming race shall be responsible for a positive finding of any drug and/or substance foreign to the natural horse. A claimant's election to conduct post-race testing shall not affect the transfer of ownership title pursuant to N.J.A.C. 13:70-12.19. Should the claimant not elect to conduct post-race testing, the former trainer shall conduct the horse to the detention barn after the race and the transfer of possession will occur as soon as is practicable. Should the claimed horse be selected for testing by the Commission, the cost of testing will remain the responsibility of the Commission regardless of the claimant's indication that he or she wished to have the horse tested. The claimant shall have the right to void [said] his or her claim should the forensic analysis of the sample so taken be positive for any drug and/or substance foreign to the natural horse.

13:70-12.37 Open claiming

(a)-(b) (No change.)

(c) An applicant may obtain an open claiming license by complying with the following procedures:

1. (No change.)

2. The applicant shall deposit, with the horsemen's bookkeeper, an amount no less than the minimum claiming price, plus the applicable post-race testing fee pursuant to N.J.A.C. 13:70-12.36, if elected, New Jersey sales tax, and any other [application] applicable charges required at that race meet. Such amount shall remain on account until a claim is made. In the event the funds are withdrawn or withdrawn prior to completion of a claim, any license issued will be automatically revoked and terminated.

3. (No change.)

(d)-(e) (No change.)

13:70-12.38 Delivery of corticosteroid records

The previous trainer of a claimed horse shall, within 48 hours after the race from which the horse was claimed is made official, provide accurate treatment records of all corticosteroid joint injections that were administered to the horse within 30 days before the race took place to the new trainer. The previous trainer shall also deliver a copy of the records to the State Veterinarian within the same 48 hour timeframe.
