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**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**

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

**Adopted 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**

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

Proposed: August 15, 2016, at 48 N.J.R. 1590(a).

Adopted: November 16, 2016, by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: November 17, 2016, as R.2016 d.178, without change.

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

Effective Date: December 19, 2016.

Expiration Date: December 7, 2017.

**Summary of Public Comments and Agency Responses:**

The following is a summary of the comments received and the Commission's responses. The Commission received several comments from John Forbes, President, New Jersey Thoroughbred Horsemen's Association, Inc., Monmouth Park, 175 Oceanport Ave., Oceanport, NJ 07757.

1. COMMENT: The commenter agrees with the proposed amendment to N.J.A.C. 13:70-12.20(a)2 that will automatically void a claim when the horse claimed is euthanized on the track or immediately thereafter as a result of an injury that occurred during the running of the race from which it was claimed.

RESPONSE: The Commission thanks the commenter for this expression of support and agreement.

2. COMMENT: The commenter disagrees with the voidable provisions of proposed N.J.A.C. 13:70-12.20A(a)2. The commenter expresses the opinion that the new proposal will lead to unintended consequences and specifically mentions potential "rider/trainer/owner collu[sion] to have a horse 'vanned off' post-race for fear that the horse may have been claimed," and that such behavior could "lead to an abuse of the new system leading to the unintended consequence of a dramatic rise in 'vanned off' horses solely for pecuniary gain and not for the benefit of the animal."

RESPONSE: The Commission rejects this comment. Pursuant to N.J.A.C. 13:70-12.20A(a)2, the sole party authorized to direct that a claimed horse be "vanned off" from the track is the State Veterinarian.

As a result, should the jockey, trainer, or owner direct that a horse be "vanned off," the claim will not be voidable.

3. COMMENT: The commenter appears to believe that the claimant will be afforded the opportunity to procure his or her own drug testing of the claimed horse.

RESPONSE: The Commission wishes to clarify that the claimant will have the option of having the horse drug tested at his or her own expense, but the collection of the samples will be carried out by Commission employees and sent to the laboratory under contract with the Commission, as is the current practice and procedure.

4. COMMENT: The commenter wishes for the cost of testing, as referenced in the rule, be afforded a sum certain. The commenter believes that without a sum certain, the rule is too vague and fails to afford the claimant the ability to know the proper amount to have on deposit with the bookkeeper.

RESPONSE: The Commission rejects this comment. The cost of drug testing is dependent upon the contract between the Commission and the equine testing laboratory, which may change over time. The Commission will notify claimants of the cost of testing on the claim forms to be provided at the beginning of each race meet.

5. COMMENT: The commenter expresses concerns over the timeframe between the claimant taking ownership of the horse and receiving the results of the post-race drug test, which is approximately 10 days. The commenter is particularly concerned that "[t]here are far too many scenarios, including a career ending injury, that may occur during this time frame," and believes that the proposed rule is "too vague in that it fails to address all scenarios."

RESPONSE: The Commission rejects this comment. The Commission has not proposed a change to this practice as the alternative would be to allow the current owner and trainer to maintain possession of the horse even though ownership of the horse lies with the claimant. The Commission believes this alternative presents far more problematic scenarios.

6. COMMENT: The commenter believes it imperative that should a claimant decide to "race-back" a horse prior to receiving the results of the post-race drug test, the claimant's right to void the claim upon a positive finding should be extinguished.

RESPONSE: This comment is beyond the scope of the rulemaking as it does not address a claimant deciding to "race-back" the horse. The Commission will address this comment in a future rulemaking.

7. COMMENT: The commenter recommends that the counting of time for the "one hour from the race should read 'off-time' and not 'post-time,'" as the use of the latter is too ambiguous and the term "off-time" would eliminate ambiguity.

RESPONSE: The Commission rejects this comment. Post-time is a set, established time printed in the program that provides for no ambiguity for the State Veterinarian who must determine whether a claim was voided within a certain timeframe. The "off-time" is the actual start time of the race and may not be readily available to the State Veterinarian and thus may potentially create a great deal of subjectivity and ambiguity, if relied upon.

8. COMMENT: The commenter opposes the proposed amendment to N.J.A.C. 13:70-12.14, which allows the stewards to determine if the claim form is substantially accurate. The commenter states the belief that anyone who cannot properly execute a claim form should not obtain possession of the animal. The commenter states that the stewards should not be granted the discretion to determine the intent of a claimant. The commenter recommends that the rule remain as written.

RESPONSE: The Commission rejects this comment. The rule as previously written required the rejection of a claim for the misspelling of a horse's name or for something as simple as failure to dot an "i" on the claim form. The proposed amendment gives the stewards discretion to allow the claim, so long as the horse is properly named and identified on the claim form, even should grammatical errors be present.

**Federal Standards Statement**

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

Full text of the adoption follows:

#### SUBCHAPTER 12. CLAIMING

##### 13:70-12.1 Claiming races on the flat

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 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 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 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. 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 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 the judgment of the stewards, otherwise, the claim may be 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 horsemen's 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, 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. A claimed horse is excused by the stewards before it is a starter;

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 anyone within 30 days after the day the horse was claimed except via a successful claim in a subsequent claiming race.

##### 13:70-12.33 (Reserved)

##### 13:70-12.36 Testing

A claimant may request, via indication on the claim form, a post-race blood and urine test be taken in full compliance with 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 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 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.