

Report on Horse Racing

Excerpt from the WCIRB Classification and Rating Committee Minutes
June 10, 2015

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Report on Horse Racing

8631, *Racing Stables – operation – all employees*

Executive Summary

Objective

At the request of a self-insurance program administrator that is in the process of forming an insurance company,¹ the WCIRB reviewed Classification 8631, *Racing Stables – operation*, to determine if the current basis of exposure for the thoroughbred and quarter horse racing industry could be replaced with an exposure base that varies reasonably with exposure to losses and for which complete and accurate records are kept that are readily accessible and verifiable by a third party. Secondly, Classification 8631 was reviewed to determine if its constituents represent a homogenous group of employers.

Findings

Based on its review, the WCIRB has determined that:

1. Due to the manner in which the thoroughbred and quarter horse racing industry² pays its employees, payroll records are not consistently available in a manner required for a reliable audit for workers' compensation insurance purposes. As such, the use of payroll as the exposure base for either an audit or for the basis of the advisory pure premium rate for Classification 8631 does not capture exposure commensurate with either the employer's or the industry's risk.
2. Although the thoroughbred and quarter horse racing industry does not consistently maintain the payroll records as required, there is a suitable proxy that can be used as an accurate measure of relative exposure: the industry maintains thorough and accurate records of the number of *occupied stalls each day at race tracks and certified training facilities* for all horse trainers (employers). These records are readily available, can be accessed and audited by insurer auditors and can be independently aggregated on a statewide basis to allow the WCIRB to validate the completeness of incoming exposure data for the classification.
3. Distinct from the thoroughbred and quarter horse racing industry, employers engaged in harness racing (also assigned to Classification 8631) maintain adequate payroll records to conduct an accurate audit. In addition, harness racing operations differ substantially from thoroughbred/quarter horse racing operations. As such, while the harness racing industry is not of sufficient size to develop a statistically credible pure premium rate, consideration should be given to establishing a new classification procedure for the industry.

Recommendation

In view of the above, the WCIRB recommends the following:

1. Amend Classification 8631, *Racing Stables – operation*, to provide that the basis of exposure shall be the number of stalls occupied each day at race tracks and certified training facilities during the policy period, clarify its intended application, and provide direction as to how related operations shall be classified.
2. Establish a new classification for harness racing as an alternate wording to Classifications 7207(1), *Stables*, 7207(2), *Clubs – riding*, 7207(3), *Horse Shows – stable employees*, and 7207(4), *Pack Trains*.
3. Amend Classification 8278, *Racing Stables – jockeys employed on a per race basis*, for clarity.

¹ The administrator is Finish Line Self Insurance Group (FLSIG). Attached as Exhibit 1 is the referenced request.

² The vast majority of the thoroughbred/quarter horse racing industry has been self-insured since 2011.

Introduction

For the past several years, the vast majority of California's thoroughbred and quarter horse racing industry has been self-insured. The self-insured program administrator/race horse industry is in the process of forming an insurance company to insure operators of thoroughbred and quarter horse racing stables beginning in 2016. Coinciding with this action, the horse racing industry, in recognition of the challenges in using payroll as the basis of exposure, recently submitted a request that the WCIRB review Classification 8631, *Racing Stables – operation*, to determine if it would be feasible to replace payroll as the basis of exposure with a more reliable and auditable unit of exposure. As part of this study, WCIRB staff reviewed the scope of Classification 8631 to determine if its constituents represent a homogenous group of employers.

Classification History

Below is a timeline of significant changes to the scope and application of Classification 8631. Of particular note is the WCIRB's 1977 recommendation to establish a new basis of exposure for the industry.

- 1934 Classification 8631, *Racing Stables – operation*, was established and included a \$1,500 per year minimum payroll provision for jockeys and trainers. The minimum payroll was increased in 1965 to \$2,000, and in 1975 to \$3,000 per year.
- 1975 Classification 8631 was amended to provide that the remuneration for jockeys and trainers shall exclude shares of winning purses.
- 1977 The Classification and Rating Committee recommended eliminating Classification 8631 due to complaints from employers and insurers concerning the difficulty of administering the minimum payroll requirement. A new classification was proposed that would have based exposure on the number of days a horse was kept at a racetrack. However, the Insurance Commissioner rejected this recommendation due to perceived inequities for small horse owner/trainer firms that did not retain employees and were already covered by minimum premium policies.
- 1984 Classification 8631 was amended to specify that the remuneration for all employees shall exclude shares of winning purses.
- 1993 The Classification and Rating Committee reviewed and confirmed the assignment of harness racing to Classification 8631, *Racing Stables – operation*.
- 2011 Classification 8631 was amended to eliminate the minimum payroll requirement and the phraseology was amended to replace the phrase "including jockeys and trainers" with "all employees."

Description of Operations

Classification 8631 applies to the operation of racing stables maintained in connection with all types of horse racing, including thoroughbred, quarter horse and harness racing. Racing stable operators provide race horse training at race tracks or certified training facilities. (Race tracks and certified training facilities are owned and operated by separate entities – and not by the owners of race horses.) The operator of the race track generates revenue solely through bets placed (on or off site) and therefore seeks to produce races that will generate maximum betting action. To facilitate this, the operator of the facility provides stalls without charge to racing stable operators, also referred to as trainers, and encourages them to bring in horses to train and race. The facility operator is free to increase, reduce or eliminate the number of stalls provided to a trainer at any time. Likewise, the trainer may elect to transfer horses to other venues, without notice. The trainer is responsible for all care and maintenance of the horses, including feeding, watering, bathing, exercising and ensuring that horses are ready to race. By law, trainers must secure workers' compensation insurance to provide compensation to employees for any injury suffered.³

³ California Horse Racing Board, Rules and Regulations, Section 1501, *Workers Compensation Insurance Required*, states in pertinent part that "[n]o person may be licensed as a trainer, owner, trainer-driver, or in any other capacity in which such person acts as the employer of any other licensee at any authorized race meeting, unless his liability for worker's compensation has been secured in accordance with the Labor Code of the State of California and until evidence of such security for liability is provided the Board. Should any such required security for liability for worker's compensation be cancelled or terminated, any license held by such person shall be automatically suspended and shall be grounds for revocation of the license..."

While all training stables operate in the manner previously described, the employment status and specific complement of employees varies between thoroughbred/quarter horse racing and harness racing, as discussed in this report.

Thoroughbred and Quarter Horse Racing

The number of employees retained by trainers of thoroughbred and quarter horses correlates with the number of horses in the trainer's care. Employees retained by trainers consist of exercise riders, grooms and hot walkers. Grooms and hot walkers typically work for a single trainer and are compensated as employees, i.e., through regular payroll, etc., whereas exercise riders commonly work for several trainers and are paid in cash.

Classification 8631 does not apply to jockeys as they are assigned to Classification 8278, *Racing Stables – jockeys employed on a per race basis*. Jockeys are also considered employees pursuant to the law referenced above.

Harness Racing

Stables for harness racing are primarily operated by the horse owners who also function as trainers. Owners/trainers of several harness race horses typically also retain grooms and exercise riders. In all cases, payroll records are kept and pay is reported to the appropriate state and federal agencies in accordance with accepted accounting practices.⁴ Accordingly, the audit of payroll records for the harness racing industry does not pose the same challenges as those presented by the thoroughbred and quarter horse racing industry.

As is the case with thoroughbred and quarter horse racing, harness race drivers are classified as 8278.

Basis of Exposure – Thoroughbred and Quarter Horse Stables

Since 2011, virtually all thoroughbred and quarter horse trainers have been self-insured through Finish Line Self Insurance Group (FLSIG). (See Exhibit 2, 8631 Classification Relativity). The self-insured program administrator determined that the most accurate and complete basis of exposure is a set fee per day (currently \$2.95) for each stall occupied by the trainers' horses.

With respect to determining the appropriate basis of exposure for workers' compensation insurance audit and advisory pure premium purposes, FLSIG's program administrator affirms that all race track and facility operators maintain complete, accurate and auditable records detailing the horses present (in total and by name) on a daily basis. The race track and facility operators provide both FLSIG and the trainers with monthly reports of the occupied stall counts. FLSIG uses these reports to bill the trainer.⁵ Further, trainers typically retain their own records on horse stall occupancy at race tracks and certified training facilities.

In addition to these records being available to FLSIG and to trainers on a per track and per trainer basis, as a provision for certification within California, all track or facility operators must also provide this data to the "The Jockey Club," which collects data from every track or training facility nationwide. The Jockey Club prepares daily "InCompass" reports on all aspects of the thoroughbred and quarter horse racing industry, including the horses present or racing at any given facility, the win/loss record of each horse and jockey, betting data and other issues related to thoroughbred and quarter horse racing. InCompass reports are available to all trainers nationwide and detail the number of horses at each track or certified training facility in total and by trainer, including the name of each horse that enters or leaves the premises. In the event of a dispute between the trainer's personal records and the race track or facility records, the InCompass report is accepted as the final authority on the count of occupied stalls per day.

⁴ Because harness racing utilizes a sulky (a light, two-wheeled vehicle pulled by the horse) instead of saddling/riding the horse directly, the size and weight of the driver (jockey) is insignificant when training the horse. This eliminates the need to hire specialized exercise riders as is the case with thoroughbred and quarter horse training.

⁵ For small operators (trainers), FLSIG provides a minimum premium annual policy that is based on three stalls occupied for 365 days.

Annual Audit of Records

Based on an analysis of the required recordkeeping, WCIRB staff has determined that the necessary records – including the trainer’s records reconciled against either the counts provided by the racetracks’ and training facilities’ records or the InCompass reports – should be available to an insurer’s auditor to determine and verify the number of occupied stalls/per day.

In view of the above, the WCIRB recommends that payroll, the current basis of exposure for Classification 8631, be replaced with a per unit of exposure consisting of the number of stalls occupied each day during the policy period at race tracks and certified training facilities.

The use of a basis of exposure other than payroll for the thoroughbred and quarter horse racing industry would not be unique. Classifications 7707, *Fire Fighters – volunteers, serving with or without remuneration*, and 7722, *Police, Sheriffs, Constables, Marshals, Animal Control Officers, Game and Fish Wardens, and Jailers – including deputies – volunteers, serving with or without remuneration*, use a per capita basis of exposure since employees assignable to these classifications earn little to no compensation. Classification 8278, *Racing Stables – jockeys employed on a per race basis*, uses a per unit basis of exposure (number of races) as complete and accurate payrolls records are not typically available.

Development of the Per Unit Basis of Exposure

The FLSIG has provided the WCIRB with loss reports and records of the number of occupied stall days, certified by FLSIG’s actuary consultant firm (Perr & Knight), for the period of 2008 through 2012. The WCIRB’s actuarial staff is in the process of developing an advisory pure premium rate per unit of exposure (as described above) to be effective January 1, 2016. This information will be provided to the Committee for its review prior to the submission of the WCIRB’s January 1, 2016 Pure Premium Rate Filing in August.

Classification Analysis – Harness Racing vs. Thoroughbred and Quarter Horse Racing

As noted in this report, Classification 8631 applies to the operation of stables in connection with all types of horse racing, including thoroughbred, quarter horse and harness. In the course of staff’s review of the constituents of this classification, it was noted that many characteristics of the harness racing industry differ from those of the thoroughbred and quarter horse racing industry. With harness racing, the exercise rider is seated on a sulky and pulled behind the horse at a relatively slow rate of speed, whereas thoroughbred or quarter horse exercise riders are seated directly on the horse and move at high rates of speed, exposing the rider to much greater hazard. Essentially all persons retained by trainers in the harness racing industry are direct employees of a single trainer and complete and accurate payroll records are kept in most cases.

The harness racing industry generates very little payroll and losses (approximately \$300,000 in payroll and \$1,800 in losses in 2012).

In view of the difference in operational characteristics described above and the small size of the industry, staff considered removing the harness racing industry from Classification 8631 and assigning the operations to a more comparable classification.

Classification 7207(1), *Stables*, applies to the board and care of horses on a fee basis, horse rental to the general public, and to firms that provide riding lessons. It also applies to employers (not racing stables) that operate stables to train or rehabilitate race horses. Classification 7207(1) includes all operations involved in the care of horses, such as feeding, grooming, exercising, training and treatment of injuries, as well as the cleaning of stalls and stable areas and maintenance of tack. Classification 7207 also applies to horse riding clubs (7207(2)), operators of horse shows (7207(3)), and pack trains (7207(4)).

In view of the similarities in the operations of horse stables assignable to Classification 7207 and harness racing stables, e.g., feeding, grooming, exercising, training and care of horses, staff recommends that harness racing stable operations be removed from Classification 8631 and reassigned to Classification 7207 with an alternate phraseology that describes the industry.

The harness racing industry is currently comprised of approximately 35 trainers generating very little payroll and losses, as noted above. Based on the amount of payroll and losses generated under Classification 7207, the reassignment of harness racing stables from Classification 8631 to Classification 7207 would have a negligible impact on the pure premium rates for Classifications 8631 (see Exhibit 2) and 7207 (see Exhibit 3). The reassignment of harness racing stable operators to Classification 7207 would result in a significant decrease in the applicable advisory pure premium rate for such operations, as shown below.

Comparison of Advisory Pure Premium Rates – July 1, 2015

Classification 8631	Classification 7207	Difference
\$29.37	\$13.16	-\$16.21 (-55.2%)

Conclusion

Based on its review, the WCIRB concludes that:

1. Due to the manner in which the thoroughbred and quarter horse racing industry pays its employees, payrolls records are not consistently available in a manner required for a reliable audit for workers' compensation insurance purposes. As such, the use of payroll as the exposure base for either an audit or for the basis of the advisory pure premium rate for Classification 8631 does not capture exposure commensurate with either the employer's or the industry's risk.
2. Although the thoroughbred and quarter horse racing industry does not consistently maintain the payroll records as required, there is a suitable proxy that can be used as an accurate measure of relative exposure: the industry maintains thorough and accurate records of the number of *occupied stalls each day at race tracks and certified training facilities* for all horse trainers (employers). These records are readily available, can be accessed and audited by insurer auditors and can be independently aggregated on a statewide basis to allow the WCIRB to validate the completeness of incoming exposure data for the classification.
3. Distinct from the thoroughbred and quarter horse racing industry, employers engaged in harness racing (also assigned to Classification 8631) maintain adequate payroll records to conduct an accurate audit. In addition, harness racing operations differ substantially from thoroughbred/quarter horse racing operations. As such, while the harness racing industry is not of sufficient size to develop a statistically credible pure premium rate, consideration should be given to establishing a new classification procedure for the industry.

Recommendations

In view of the above, the WCIRB recommends the following:

1. Amend Classification 8631, *Racing Stables – operation*, to provide that the basis of exposure shall be the number of stalls occupied each day at race tracks and certified training facilities during the policy period, clarify its intended application, and provide direction as to how related operations shall be classified.
2. Establish a new classification for harness racing as an alternate wording to Classifications 7207(1), *Stables*, 7207(2), *Clubs – riding*, 7207(3), *Horse Shows – stable employees*, and 7207(4), *Pack Trains*.
3. Amend Classification 8278, *Racing Stables – jockeys employed on a per race basis*, for clarity.

Recommendation

Amend Classification 8631, *Racing Stables – operation*, to provide that the basis of exposure shall be the number of stalls occupied each day at race tracks and certified training facilities during the policy period, clarify its intended application, and provide direction as to how related operations shall be classified.

PROPOSED

RACING STABLES – ~~operation~~—all other employees – N.O.C.

8631

~~The payroll of all employees must be included at their actual remuneration excluding shares of winning purses. This classification does not apply to jockeys employed on a per race basis; such jockeys shall be assigned to 8278, *Racing Stables*.~~ This classification applies to the operation of stables at race tracks or certified training facilities for horse racing not more specifically described by another classification. This classification includes but is not limited to feeding, grooming, exercising, training and the general care of horses.

The exposure for this classification shall be the number of stalls occupied each day at race tracks and certified training facilities during the policy period.

Harness racing stables shall be classified as 7207(5), *Racing Stables – harness racing*.

Race track operations shall be classified as 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of merry-go-rounds, swings, roller coasters or other amusement devices and ticket collectors connected therewith*.

This classification does not apply to jockeys or harness racing drivers hired on a per race basis. Refer to companion Classification 8278, *Racing Stables – jockeys or harness racing drivers*.

* * * * *

Recommendation

Amend Classification 8278, *Racing Stables – jockeys employed on a per race basis*, to clarify its intended application and provide direction as to how related operations shall be classified.

PROPOSED

RACING STABLES – ~~jockeys employed on a per race basis~~ or harness racing drivers

8278

The exposure for ~~jockeys employed on a per race basis~~ or harness racing drivers shall be the number of races.

Also refer to companion Classifications 8631, *Racing Stables – all other employees*, and 7207(5), *Racing Stables – harness racing*.

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Recommendation

Establish Classification 7207(5), *Racing Stables – harness racing*, as an alternate wording to Classifications 7207(1), *Stables – all employees*, 7207(2), *Clubs – riding*, 7207(3), *Horse Shows – stable employees*, and 7207(4), *Pack Trains*, to apply to employers that operate stables in connection with harness racing.

PROPOSED

RACING STABLES – harness racing – all other employees

7207(5)

This classification applies to the operation of stables at race tracks or certified training facilities for harness racing. This classification includes but is not limited to feeding, grooming, exercising, training and the general care of horses.

Stables operated for other types of horse racing, including but not limited to thoroughbred and quarter horse racing shall be classified as 8631, *Racing Stables – all other employees*.

Race track operations shall be classified as 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of merry-go-rounds, swings, roller coasters or other amusement devices and ticket collectors connected therewith*.

This classification does not apply to jockeys or harness racing drivers hired on a per race basis. Refer to companion Classification 8278, *Racing Stables – jockeys or harness racing drivers*.

* * * * *

Recommendation

Amend Section VIII, *Abbreviated Classifications – Numeric Listing*, for consistency.

PROPOSED

Section VIII – Abbreviated Classifications – Numeric Listing

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- 7207(5) Racing Stables–harness racing
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- 8278 Racing Stables–jockeys per race basis/harness drivers
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-
- 8631 Racing Stables–operation–all other employees
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* * * * *

Recommendation

Amend Part 4, *Unit Statistical Reporting Requirements*, Section IV, *Exposure Information*, Rule 4, *Exposure Amount*, subrule a, for consistency.

PROPOSED

Section IV – Exposure Information

4. Exposure Amount

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- a. For a number of standard classifications, this Plan provides for a basis of exposure other than payroll. A list of these standard classifications and the applicable unit of exposure is given in the table below.

Code No.	Standard Classification	Unit of Exposure
8278	Jockeys or Harness Drivers	Per Race
7707	Fire-Fightersing Operations, Volunteers	Per Capita, Per Year
7722	Police, etc., Volunteers	Per Capita, Per Year
8631	Racing Stables	Per Occupied Stall, Per Day

For each such standard classification that applies, report the total number of exposure units.

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