

NOTE: Government Code section 11340.85 requires the Board to post all notices, initial statement of reasons and texts of rules noticed to the public until 15 days after the proposed regulations are filed with the Secretary of State by the Office of Administrative Law.

CALIFORNIA HORSE RACING BOARD
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND
RULE 1632, JOCKEY'S RIDING FEE

The California Horse Racing Board (Board, or CHRB) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1632, Jockey's Riding Fee, to amend subsection 1632(b), which provides the jockey riding fees for losing mounts. The losing mount jockey riding fees under subsection 1632(b) have been increased consistent with California's 2019 minimum wage increase, which is 9.09 percent. The proposed amendment also deletes the dollar amounts for second and third place mounts in the "Less than \$10,000" category. The Board proposed to remove the second and third place mount fees under subsection 1632(b), as subsections 1632(b)(3) through 1632(b)(5) provide direction regarding the amounts to be paid non-winning jockeys, depending on the gross purse level. In addition, the proposed amendment amends subsection 1632(b)(5) for purposes of clarity.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, September 27, 2018**, or as soon thereafter as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Cypress, California**. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on September 24, 2018**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300

Sacramento, CA 95825
Telephone: (916) 263-6026
Fax: (916) 263-6022
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AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19501 and 19562, Business and Professions Code. Reference: Sections 19401 (a), 19401 (d), 19420, 19440, 19501, and 19502, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19401(a) and (d) provides that the intent of Chapter 4 is to allow pari-mutuel wagering on horse races, while assuring protection of the public and providing uniformity of regulation for each type of horse racing. Business and Professions Code section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19501 states that the scale of minimum jockey riding fees for losing mounts shall be increased whenever the state minimum wage is increased by the percentage of that increase. Business and Professions Code section 19502 provides that the Board shall not permit any portion of an entry, nomination, or other fee paid by an owner to be deducted from a jockey riding fee unless the entry, nomination, or other fee is paid exclusively by the owner and not reimbursed by any other person or entity. Business and Professions Code section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in California.

Business and Professions Code section 19501(b)(1) requires an increase in the scale of minimum losing mount jockey riding fees whenever the state minimum wage is increased by the percentage of that increase. The next increase in California's minimum wage will become effective January 1, 2019. The proposed amendment will increase subsection 1632's losing mount jockey riding fees in accordance with Business and Professions Code section 19501(b)(1).

Business and Professions Code section 19501(b)(1) requires an increase in the scale of minimum (losing) jockey riding fees whenever the state minimum wage is increased by the percentage of that increase; however, it does not provide for an increase in second and third place mount fees. Rule 1632 currently provides specific dollar amounts to pay losing mounts, as well as the dollar amounts for second and third place mounts in the "Less than \$10,000" category. Direction regarding second and third place mount fees is otherwise provided under the provisions of subsections 1632(b)(3) through 1632(b)(5).

Subsection 1632(b)(3) states that the Paymaster of Purses shall use the Horsemen's Agreement¹ to determine the horse owner's place purse when calculating non-winning jockey riding fees. Horsemen's Agreements state the percentage of the gross purse the horse owner will receive, based on the order of the finish. The owner's percentage of the gross purse is the dollar amount from which the Paymaster of Purses will calculate jockey mount fees. The riding fees for a race meeting are promulgated in the Paymaster of Purses' jockey riding fee scale.

Subsection 1632(b)(3) also provides that the losing mount riding fee shall be paid as provided under subsection 1632(b). This is due to the fact that the losing mount fees are specific dollar amounts based on the requirements of Business and Professions Code section 19501. The minimum jockey riding fees for losing mounts are increased whenever California's minimum wage is increased and are not based on the owner's share of the gross purse. Therefore, the losing mount fees must be stated in the regulation.

Subsection 1632(b)(4) provides the formula for calculating the second and third place mount fees for horse races with gross purses between \$10,000 and \$100,000 and up.

Subsection 1632(b)(5) provides additional direction regarding second and third place mount fees. The subsection has been amended for clarity to provide that the third place mount shall earn at minimum \$2 more than the losing mount, and the second place mount shall earn at minimum \$2 more than the third place mount. Subsection 1632(b)(5) ensures that losing mount fees are never equal to or greater than third place mount fees, and that third place mount fees shall be less than second place fees. This is necessary because the periodic increase in losing mount fees mandated by statute has resulted in situations in which the losing mount fee under subsection 1632(b) exceeds the third place mount fees. This is demonstrated by the most recent amendment of Rule 1632 (effective 01/01/18), which resulted in a losing mount fee under subsection 1632(b) of \$2 more than the third place mount fee.

To provide consistency and clarity, subsection 1632(b) has been amended to delete the dollar amounts for second and third place mounts in the "Less than \$10,000" category. When calculating jockey riding fees for second and third place mounts, the Paymasters of Purses should use the race meeting's jockey riding fee scales, which are based on the provisions of the Horsemen's Agreements, in conjunction with subsections 1632(b)(4) and 1632(b)(5). The proposed amendment will eliminate any inconsistencies that may arise due to the differences between the riding fees for second and third place mounts under subsection 1632(b), and the ongoing statutory increases to the losing mount fees.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Rule 1632 amends subsection 1632(b) to increase the losing mount jockey riding fees, and to eliminate the dollar amounts for second and third place jockey riding

¹ An agreement for the conduct of a race meeting negotiated by the racing association and the organization that represents the horse owners and trainers of each separate breed of racehorse that competes in the meeting. The agreement addresses such issues as the conditions for the race meeting, the distribution of commissions and purses not governed by statutory formulas, and other matters relating to welfare, benefits and prerogatives of the parties to the agreement.

fees for gross purses of less than \$10,000. The Board has determined it is not necessary to state the dollar amounts, as subsections 1632(b)(3) through 1632(b)(5) provide direction for calculating fees to be paid non-winning riders. This will eliminate any disparity between the non-winning jockey riding fees and will deter jockeys from intentionally losing a race rather than put forth his best effort in order to earn more money. This will increase the public's confidence in California horse racing, which may result in increased wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn may increase purses and commissions. The specific benefits anticipated from the regulation are compliance with current law and a balanced fee scale which will result in a fair and honest race product.

CONSISTENCY EVALUATION

During the process of developing these regulations and amendments, the CHRB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Mandate on local agencies or school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Rule 1632 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendment to Rule 1632 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3)

affect the expansion of businesses currently doing business within California. The proposed amendment to Rule 1632 is a benefit to the health and welfare of California residents because it promotes fairness and compliance with current law. The proposed regulation will provide clarity in calculating jockey riding fees for second and third place mounts which will create a balanced fee scale and eliminate any inequality. This will promote the public's interest in a fair and honest race product by deterring a jockey from intentionally losing a race rather than put forth his best effort in order to earn more money.

Effect on small businesses: none. The proposal to amend Rule 1632 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6026
Fax: (916) 263-6022
E-mail: haroldc@chr.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Manager
Policy and Regulations
Telephone: (916) 274-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based on, may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.