

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Medication
- 2) Code Citation: 11 Ill. Adm. Code 603
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
603.60	Amendment
603.140	Amendment
603.160	Amendment
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Amendments: April 23, 2007
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: It will not expire before the end of the 150-day period.
- 7) Date Filed with the Index Department:
- 8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The amendment makes some penalties for drug positives discretionary in certain circumstances. Currently, the Board has no discretion in those penalties. If drug positives occur in the 2 month interim which fall while the new rule is in notice, they could only be litigated under the new penalties if the trainer or owner appeals the stewards ruling. This creates a fairness issue for anyone affected by the new rule before it becomes effective. Because of the retroactivity clause, class four positives and isoxsuprine positives could be adjudicated under the new rule only if the owner or trainer appeals. However, if they do not appeal within 5 days of the stewards ruling, the stewards ruling becomes effective and the rights of the other purse owners in the race become vested, which prevents application under the new rule under any circumstances. The result is that trainers and owners who can afford to appeal could be processed under the new rule, but those who could not afford to appeal could not. The fairest and cleanest action is to implement the Board's intent immediately.
- 10) A Complete Description of the Subjects and Issues Involved: The proposed amendments will implement actions passed by the Board at its March 13, 2007 meeting. The actions taken by the Board are a result of recommendations made by the Illinois Racing Board Medication Task Force. The Task Force recommended discretionary, not mandatory,

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disqualification and purse redistributions for Class 4 and Class 5 drugs (subsection 603.140(d)). Class 4 and 5 drugs are generally those therapeutic drugs used during training for inflammation, soreness, or for analgesic reasons. If a Class 4 or 5 drug is present in the horse's system, the trainer remains subject to a civil penalty. The stewards are given specific criteria to decide whether a purse shall be redistributed, such as recommendations by the State Veterinarian and State Chemist, as to the significance of the level of drug.

The Task Force also recommended developing threshold levels (subsection 603.60(f)) for two therapeutic drugs that appear to stay in the horse's system for long periods of time and are therefore problematic, Isoxsuprine (Class 4) and Ppyrilamine (Class 3). A threshold level for Ppyrilamine is not included in this rulemaking because the research at this time is incomplete. The proposed rulemaking also includes a retroactivity clause.

These amendments are progressive and necessary due to the advances of drug testing technologies that now make it possible to detect drugs in trace level concentrations.

- 10) Are there any proposed rulemakings pending in this Part? No
- 11) Statement of Statewide Policy Objectives: No local governmental units will be required to increase expenditures.
- 12) Information and questions regarding these amendments shall be directed to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 7-701
Chicago, Illinois 60601
(312) 814-5017

The full text of the Emergency Amendments begins on the next page:

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TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER c: RULES APPLICABLE TO ALL OCCUPATION LICENSEES

PART 603
MEDICATION

Section

603.10	Pre-Race Saliva Tests
603.20	Racing Soundness Exam
603.30	Foreign Substances and Pharmaceutical Aids Banned
603.40	Twenty-four Hour Ban
603.50	Trainer Responsibility
603.55	Prima Facie Evidence
603.60	Permitted Use of Foreign Substances and Threshold Levels
603.70	Furosemide
603.75	Environmental Contaminants
603.80	Needles, Syringes and Injectables
603.90	Drugs, Chemicals and Prescription Items
603.100	Detention Barn
603.110	Test Samples
603.120	Referee Samples
603.130	Laboratory Findings and Reports
603.140	Distribution of Purses
603.150	Post Mortems
603.160	Penalties
603.170	Veterinarian's Records
603.180	Carbon Dioxide Tests
603.190	Erythropoietin and Darbepoietin Antibody Testing Program

AUTHORITY: Authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 21 Ill. Reg. 3232, effective March 4, 1997; amended at 22 Ill. Reg. 2217, effective January 1, 1998; amended at 22 Ill. Reg. 3594, effective February 1, 1998; amended at 25 Ill. Reg. 15611, effective December 1, 2001; amended at 26 Ill. Reg. 12360, effective August 1, 2002; amended at 27 Ill. Reg. 5027, effective March 7, 2003; amended at 27 Ill. Reg. 7331, effective April 15, 2003; amended at 28 Ill. Reg. 1374, effective January 19, 2004; amended at 28 Ill. Reg. 4751, effective March 1, 2004; emergency amendment at 28 Ill. Reg. 7565, effective May 11, 2004, for a maximum of 150 days; emergency expired October 7, 2004; amended at 28

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Ill. Reg. 11250, effective August 1, 2004; amended at 28 Ill. Reg. 15790, effective December 1, 2004; emergency amendment at 29 Ill. Reg. 2779, effective February 22, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 4116, effective February 25, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 5726, effective April 8, 2005; amended at 29 Ill. Reg. 12265, effective July 24, 2005; amended at 29 Ill. Reg. 14038, effective September 1, 2005; emergency amendment at 30 Ill. Reg. 14371, effective August 21, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18729, effective November 20, 2006; amended at 31 Ill. Reg. effective January 1, 2007; emergency amendment at 31 Ill. Reg. _____, effective April 23, 2007, for a maximum of 150 days.

Section 603.60 Permitted Use of Foreign Substances and Threshold Levels

a) Non-Steroidal Anti-Inflammatories (NSAID): Threshold Levels

- 1) Only one non-steroidal anti-inflammatory drug (NSAID) may be present in a horse's body while it is participating in a race. The presence of more than one NSAID, greater than the threshold level, is forbidden and will result in the purse being redistributed.
- 2) Subject to the prohibition contained in Section 603.40 (24 hour ban), the only foreign substances that now meet the criteria established in Section 603.80 are phenylbutazone (or its metabolite oxyphenylbutazone), flunixin, and ketoprofen.
- 3) The threshold level of phenylbutazone shall be less than 5.0 micrograms (mcg) per milliliter (ml) of serum or plasma. The threshold level for oxyphenylbutazone shall be less than 5.0 mcg/ml of serum or plasma.
 - A) Within a 365 day period, in the event a post-race sample from a horse contains an amount of phenylbutazone or oxyphenylbutazone greater than or equal to 5.0 mcg/ml but less than 10.0 mcg/ml of serum or plasma, the trainer shall be subject to the following penalties absent mitigating circumstances:
 - i) first offense, minimum fine of \$250;
 - ii) second offense, minimum fine of \$500;
 - iii) third or subsequent offense, minimum fine of \$1,000 and a 15 day suspension.

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- B) Within a 365 day period, in the event a post-race sample from a horse contains an amount of phenylbutazone or oxyphenylbutazone greater than or equal to 10.0 mcg/ml of serum or plasma, the trainer shall be subject to the following penalties absent mitigating circumstances:
 - i) first offense, minimum fine of \$500 and the purse shall be redistributed;
 - ii) second offense, minimum fine of \$1,000, a 15 day suspension and the purse shall be redistributed;
 - iii) third or subsequent offense, minimum fine of \$2,500, a 30 day suspension and the purse shall be redistributed.

- 4) The threshold level of flunixin shall be less than 20.0 ng/ml of serum or plasma and the threshold level of ketoprofen shall be less than 10.0 ng/ml of serum or plasma. In the event a post race sample from a horse contains an amount of :
 - A) flunixin greater than or equal to 20.0 ng/ml but less than 100.0 ng/ml or ketoprofen greater than or equal to 10.0 ng/ml but less than 50.0 ng/ml, the trainer shall be subject to the following penalties, within a 365 day period, and absent mitigating circumstances:
 - i) first offense, minimum fine of \$250;
 - ii) second offense, minimum fine of \$500;
 - iii) third or subsequent offense, minimum fine of \$1,000 and a 15 day suspension.

 - B) flunixin greater than or equal to 100.0 ng/ml or ketoprofen greater than or equal to 50.0 ng/ml, the trainer shall be subject to the following penalties, within a 365 day period, and absent mitigating circumstances:

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- i) first offense, minimum fine of \$500 and the purse shall be redistributed;
 - ii) second offense, minimum fine of \$1,000, a 15 day suspension and the purse shall be redistributed;
 - iii) third or subsequent offense, minimum fine of \$2,500, a 30 day suspension and the purse shall be redistributed.
- 5) If the phenylbutazone, oxyphenylbutazone, flunixin or ketoprofen overage is due to the negligence of the veterinarian attending the horse, the veterinarian shall be subject to the same penalties as are set forth in subsections (a)(3)(A) and (B) and (a)(4)(A) and (B).
- 6) To help horsemen determine the test levels of phenylbutazone, oxyphenylbutazone, flunixin, and ketoprofen, the Board laboratory will test, for the actual cost of processing the sample, all equine serum or plasma samples submitted to it which are accompanied by an affidavit indicating time, method, and route of administration.
- 7) Penalties for violations of this Section shall be based on the following criteria:
 - A) previous warnings and rulings for violations of this Section;
 - B) the age and experience of the violator;
 - C) whether the violator has ever been the subject of a medication ruling in this or any other racing jurisdiction;
 - D) what action, if any, was taken to avoid the violation;
 - E) the purse of the race.
- b) The following foreign substances may be administered externally to a horse entered to a race: Leg paints and liniment which do not contain any "caine" derivatives, pharmacodynamic and/or chemotherapeutic agents, and which can be applied topically without penetrating the skin.

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- c) Subject to the prohibition contained in Section 603.40 (24-hour ban), the following foreign substances, commonly referred to as anti-bacterial, anti-fungal, anti-protozoal or anti-ulcer drugs, may be present in the body of a horse participating in a race.

1) Anti-Bacterials

Amikacin
Ampicillin
Ampicillin sodium
Azolsulfamide
Chloramphenicol
Doxycycline
Enrofloxacin (Baytril)
Erythromycin sulfate
Gentamicin sulfate
Kanamycin sulfate
Methnamine
Levamisole (tetramisole)
Metronidazole
Neomycin sulfate
Nitrofurantoin
Oxytetracycline
Penicillin G. Benzathine
Penicillin G. Potassium
Sulfadimethazine
Sulfadimethoxine
Sulfamethoxazole
Sulfametranidazole
Sulfapyridine
Sulfathiazole
Tetracycline
Trimethoprim

2) Anti-Fungals

Amphotericin B
Griseofulvin
Neomycin Undecylenate
Nystatin

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3) Anti-Protozoals

Nitazoxanide (Navigator)
Ponazuril (Marquis)
Pyrimethamine (Daraprim)

4) Anti-Ulcers

Cimetidine (Tagamet)
Omeprazole (Prilosec or GastroGard)
Ranitidine (Zantac)

- d) This listing of anti-bacterial, anti-fungal, anti-protozoal and anti-ulcer drugs is all inclusive and shall not include any other anti-bacterial, anti-fungal, anti-protozoal or anti-ulcer drug.
- e) A foreign substance of accepted therapeutic value may be administered as prescribed by a veterinarian when threshold levels and guidelines for its use have been approved by the Board and this Part has been duly amended. The Board shall give due consideration to threshold levels and guidelines that have been established by the Quality Assurance Program Committee of the Association of Racing Commissioners International when making additions to the permitted list.
- f) Official test samples may contain the following drug substance, or its metabolites, in an amount that does not exceed the threshold level:
- 1) The threshold level of Isoxsuprine shall be less than 1,000.0 ng/ml in urine.
- g) The provision of this subsection shall be applied retroactively when substantively applicable, including all actions pending before the Board without regard to when the cause of action accrued; provided, however, that this amendment shall not operate to affect rights of individuals that have fully vested prior to its effective date.

(Source: Amended by emergency rulemaking at 31 Ill. Reg. _____, effective April 23, 2007, for a maximum of 150 days)

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Section 603.140 Distribution of Purses

- a) The Board recognizes that occasionally post-race specimens do not reach the laboratory within 72 hours nor can all samples be thoroughly analyzed within 72 hours. However, as a convenience to horsemen, all purse money shall be distributed no later than 72 hours after a race, unless the laboratory has issued a report to the stewards pursuant to these rules.
- b) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no foreign substance has been administered in violation of these rules to the horse winning such purse money.
- c) Upon receipt of a positive laboratory report, the stewards or the Executive Director of the Board shall immediately direct that no purse money shall be awarded to the horse in question pending a final determination by the stewards or the Board of the accuracy of the laboratory's report. The stewards or the Executive Director of the Board shall notify the owner, trainer, and any other person having care or custody or control of the horse. If the purse money has been distributed, the stewards or the Executive Director shall order it returned pending determination of the accuracy of the laboratory's report. The stewards or the Executive Director of the Board shall proceed to conduct an inquiry or the Board shall conduct an inquiry or hearing.
- d) If the report of a laboratory is not contested or if the stewards or the Board determine that the laboratory report is accurate, all purse money won by the horse in the race in question shall be forfeited and redistributed among the remaining horses according to their order of finish, except as provided in Section 603.160. No such forfeiture and redistribution shall affect the distribution of pari-mutuel pools.
- e) If no positive laboratory report has been issued to the stewards or the Board within 60 days after the date of a race, the owner of a horse shall become legally entitled to the money in the purse and it shall be conclusively presumed that the conditions precedent to such entitlement have been met. Provided, however, positive laboratory reports issued more than 60 days after the date of a race may be considered by the stewards or the Board as evidence of a rule violation under Sections 603.50, 603.60, or 603.70.
- f) If a positive laboratory report has been issued, whatever remains of that particular test sample shall be retained until all legal proceedings have been concluded.

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(Source: Amended by emergency rulemaking at 31 Ill. Reg. _____, effective April 23, 2007, for a maximum of 150 days)

Section 603.160 Penalties

- a) Any person who administers or conspires to administer any foreign substance to any horse in violation of any of the rules in this Part shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed.~~have his/her license suspended or revoked and may also be subjected to a civil penalty.~~
- b) Penalties for violations of this Part shall be based on the following criteria:
- 1) the nature of the foreign substance; e.g., cough medicine, steroid, narcotic, stimulant, depressant, etc.;
 - 2) the accessibility of the drug; e.g., can be purchased over the counter, only with a prescription, only with a license for controlled substances, cannot be purchased in this country;
 - 3) the age and experience of the violator;
 - 4) whether the violator has ever been the subject of a medication ruling in this or any other racing jurisdiction;
 - 5) what action, if any, was taken by the violator of the rules to avoid such violation;
 - 6) the purse of the race.
- c) Any person who violates any of the provisions of this Part for which no specific penalty is provided may be penalized by the stewards or the Board in accordance with the provisions for penalties contained elsewhere in the rules or in the Illinois Horse Racing Act of 1975. When imposing penalties, the stewards or the Board shall consider all relevant factors including, but not limited to those specified in this Part.
- d) Penalties for Class 4 and 5 drug violations:

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- 1) Class 4 as defined in the most current Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances (ARCI, 2343 Alexandria Drive, Suite 200, Lexington, KY 40504). Except as provided in Sections 603.60 and 603.70 of this Part, upon finding of a Class 4 substance, the trainer shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed.
- 2) Class 5 as defined in the most current Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances (ARCI, 2343 Alexandria Drive, Suite 200, Lexington, KY 40504). Except as provided in Section 603.75 and subsection 603.60(c) of this Part, upon finding of a Class 5 substance, the trainer shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed.
- 3) In determining a disqualification and purse redistribution under this subsection, the Stewards shall use the following criteria:
 - A) A recommendation by the Board veterinarian and/or Board chemist regarding the significance of the concentration of the drug or metabolite present and the estimated withdrawal time.
 - B) A recommendation by industry experts including equine pharmacologists and equine physiologists regarding the effect of the drug on the horse in the concentration found and/or estimated withdrawal times.
 - C) Repeat violations of these medication and prohibited substance rules by the same trainer or with respect to the same horse.
 - D) Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse.
 - E) The criteria set forth in subsection 603.160(b).
- 4) The provision of this subsection shall be applied retroactively when substantively applicable, including all actions pending before the Board without regard to when the cause of action accrued; provided, however,

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that this amendment shall not operate to affect rights of individuals that have fully vested prior to its effective date.

(Source: Amended by emergency rulemaking at 31 Ill. Reg. _____, effective April 23, 2007, for a maximum of 150 days)