

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)b.2.D
(29 Del.C. §4815(b)(3)b.2.D)
3 DE Admin. Code 502

FINAL

ORDER

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 Del.C. §4815(b)(3)b.2.D and §10115, the State of Delaware, Department of Agriculture's Standardbred Breeder's Fund (herein "the Fund") proposed to amend its regulations. The Fund's purpose in proposing this amendment was to permit the use of embryo transplantation technology. This amended regulation 2.0 redefines "Bred" so as to permit the use of this fertilization technique.

Notice of a public comment period of thirty (30) days on the Fund's proposed amendment was published in the *Delaware Register of Regulations* for June 1, 2006 as well as in two Delaware newspapers of general circulation in accordance with 29 Del.C. §10115. This is the Fund's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Fund received no public comments in response to its notice of intention to adopt the proposed amended regulation.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Fund's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended regulation was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt it.

IV. ORDER

AND NOW this 2nd day of November, 2006, it is hereby ordered that:

1. The proposed amendment to the Fund's regulations is adopted;
2. The text of the regulation shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 Del.C. §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders in this matter as may be just and proper.

IT IS SO ORDERED.

502 Delaware Standardbred Breeders Fund Regulations

1.0 Introduction

1.1 These regulations are authorized pursuant to 29 Del.C. §4815(b)(3)b.2.D, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:

- 1.1.1 Standardbred horses;
- 1.1.2 that are bred in a manner prescribed in Section 2.0;
- 1.1.3 that are the product of a registered Delaware stallion;

1.1.4 that are registered, and whose sire is registered with the Administrator of the Program;
and,

1.1.5 listed in their registry books.

1.2 Those horses eligible to race under said Delaware Standardbred Breeder's Program shall be any foal of any registered Delaware stallion standing at a Delaware breeding farm and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will stand the stallion for that full season on a Delaware breeding farm. A copy of any such lease shall be filed with the United States Trotting Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.

1.3 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:

1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;

1.3.2 Nominating, sustaining and entry fees on horses and races;

1.3.3 Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;

1.3.4 Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,

1.3.5 Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.

1.4 The funds for the Program and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with state laws and procedures. A report shall be prepared and filed annually by the Secretary of Agriculture with the Delaware Harness Racing Commission and the Board of the Breeder's Program Fund setting forth an itemization of all deposits to and expenditures from said fund.

1.5 Races in the Program shall be contested at each licensed harness track in the State of Delaware. Purses and awards for program races, shall be in compliance with the rules and regulations of the Board and the Delaware Harness Racing Commission.

1.6 The Board can propose to amend these regulations by the affirmative vote of eight of its eleven members. Changes to the rules of eligibility for the Program will be effective at the beginning of the next breeding season and the corresponding racing season.

2.0 Definitions

The following words and terms, when used in this part for purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise. Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

"Bred" means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. ~~A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.~~

"Breeder" means the owner of the dam at the time of breeding through foaling.

"Breeding Season" is the season during which reproduction occurs and which runs from February 1st to August 1st of the calendar year.

"Delaware-bred Horse" means a Standardbred by a Delaware sire and registered with the Administrator by May 15th of the yearling year.

"Delaware Resident" means a person as defined in 3 Del.C. §10032.

"Delaware Sire" means a Standardbred stallion that regularly stands for a breeding season in Delaware and is registered with the Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a the lease filed with the Administrator of the Program at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and a non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above. A Delaware Sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races within or without the State of Delaware, only after the breeding season in Delaware ends. A violation of this regulation will disqualify the Standardbred stallion from being registered with the Breeders' Program for the breeding season of the year following the violation.

"Private Treaty" No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the breeding fee.

"Registrant" is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

"Satisfactory Performance Line" means the path of the Standardbred on the racetrack as charted by the licensed charter at Dover Downs and/ or Harrington Raceway during which the horse does not break stride for any reason.

6 DE Reg. 1497 (5/1/03)

8 DE Reg. 336 (8/1/04)

9 DE Reg. 111 (7/1/05)

3.0 Eligibility for Delaware-bred Races

3.1 To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2-year old registered with the Administrator by May 15th of its yearling year or a 3-year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall have been registered with the Department of Agriculture by March 1, 2000 and said 3-year old registered with the Administrator by May 15th of its yearling year.

3.2. To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3-year old registered with the Administrator by May 15th of its yearling year.

4.0 Eligibility of Breeders for Bonus Payments

Bonus payments of eight percent (8%) of money earned in the Program by a foal shall be paid to the owner of the mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by a foal shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Administrator of the Breeder's Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2 year olds. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000 per crop of foals. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

5.0 Eligibility of Owners of Delaware Sires for Awards

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the Administrator of the Breeder's Program during each breeding season when the sire inseminated the dams that, as a result of that insemination, produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

6.0 Records of Registration

Foals and sires eligible for registration shall be registered on official registration forms approved and maintained by the Administrator of the Program. The Administrator shall certify thereon the name and address of the Owner, or agent, social security number and or tax id number. If registration is made by an agent, the name and address of the owner and social security number and or tax id number shall also be provided. Breeding information must include name, color, sex, gait, sire, and dam. For sires, the address and contact information for the breeding farm where the stallion will be collected, and current phone number, address and contact information for where the stallion actually resides, if different from where semen collection occurs. The registration records shall be maintained by the Administrator of the Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

7.0 Duties and Powers of the Fund Administrator; Public Hearings; Appeals

7.1 In addition to the duties of the Fund's Administrator that are set forth elsewhere in these regulations, the Administrator is charged with receiving and reviewing for compliance with all rules and regulations of the Fund, information submitted by registrants who are seeking to register or renew the registration of horses for participation in the Program.

7.2 If, after performing the review set forth in the immediately preceding section, the Administrator determines, in his or her sole discretion, that the information supplied by a registrant is incomplete or false, the Administrator has the power to: deny any application for registration; deny an application to renew an existing registration; and to suspend or revoke an existing registration.

7.3 The Administrator must provide the registrant with a written decision explaining the reason(s) why the registration, or application for renewal of registration, has been denied, suspended or revoked. Such written decision shall inform the registrant of the right to file a request for an administrative hearing before the Fund. Such a request for a hearing shall be considered timely filed with the Fund if it is received by the Fund within ten (10) days of the date the Administrator mails his or her written decision to the registrant. Such a request for a hearing challenging the Administrator's written decision must state with specificity the ground(s) upon which the Administrator's written decision is being contested.

7.4 No more than thirty (30) days after receiving a registrant's request a public hearing before the Fund will be scheduled and at which the registrant will be permitted to subpoena, call and cross-examine witnesses, and to introduce documentary evidence challenging the Administrator's decision. The formal rules of evidence will not apply to such proceeding. The proceeding will be conducted in such a way as to allow for the creation of a verbatim transcript of the proceeding should either party wish to obtain one, the cost of such a transcript to be born by the requestor.

7.5 The Fund will, after considering all the evidence, and within thirty (30) days from the close of the public hearing, mail a written decision to the Administrator of the Fund and to the registrant stating its Findings of Fact and Conclusions of Law. An appeal from the decision by the Fund will be to the Superior Court of the State of Delaware on the record made before the Fund.

8.0 Records of Expenses

The Administrator of the Breeder's Program shall maintain a complete record of reasonable and necessary expenses and will submit bills to the Department of Agriculture following the normal procedures of the State of Delaware as set forth by the Finance Department within the Department of Agriculture. The Secretary of Agriculture has the responsibility to authorize all travel and major purchases.

9.0 Purses and Bonus Awards

9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The Administrator shall send a confirmation to the Department of Agriculture on a race week basis which will state the amount owed for purses of the Program.

9.2 Administrator of the Program shall compile bonus payments earned by breeders of Delaware Sires and Dams maintain a separate ledger of them. Bonus payments will be paid out at the end of the racing year. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000 per crop of foals. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

9.3 A person interested in the bonus payments and objecting to calculations or determinations thereof

as shown on the records of the Administrator of the Program shall be responsible for taking written appeals to the Board in the manner provided for appeals from decisions of the Administrator pertaining to registrations.

9.4 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Program.

10.0 Responsibilities-Owners or Lessees of Standardbred Stallions and Mares

10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Administrator of the Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program at the time of application for registration in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application established by the Administrator of the Program.

10.2 An owner or lessee of a stallion eligible for the Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records of the stallion and the records of the breeding farm and complying with the requirements of the Program. The "Authorized Agent" information shall be incorporated into the stallion registration form and filed as such.

10.3 No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee.

11.0 Sire Registration Fees

11.1 Sires shall initially register for the Delaware Standardbred Breeder's Program no later than December 1st of the approaching breeding season, or no later than January 1st with an additional supplemental registration fee equal to the regular registration fee.

11.2 All fees must accompany this registration and must be submitted by registered or certified mail.

11.3 Registration fees for the Delaware Standardbred Breeder's Program are non-refundable.

11.4 Sire registration fee for a stallion shall be \$500.00. The supplemental registration fee shall be \$1,000.00.

11.5 The annual stallion registration fees may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Program.

11.6 An owner of a Standardbred stallion registered with the Administrator shall submit by September 1st after the breeding season which the stallion serviced mares a copy of the USTA "Mares Bred Report."
8 DE Reg. 336 (8/1/04)

12.0 Sire Renewal Fees

12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

13.0 Races

13.1 The purses for all races under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Walkovers receive 50% of the purse. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through eight shall receive 4-3-2 points, respectively.

13.2 In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in one elimination in order to start in the final. All horses shall be on the gate in eliminations and the final.

13.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.

13.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Program.

13.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

13.5.1 Age;

13.5.2 Sex; and

13.5.3 Gait.

13.6 Beginning in 2004, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$15,000.00 and the finals shall be \$100,000.00. The Board of the Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit, or decrease purses in the event of insufficient funds.

13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

2 Year Olds		3 Year Olds	
Pacers	Trotters	Pacers	Trotters
2:10	2:14	2:06	2:12

13.8 Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs and the final at that racetrack.

13.9 The Administrator of the Program shall be responsible for races conducted under the Program and shall ensure that:

13.9.1 each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.

13.9.2 entry for races run under the Program is required to be received by the Racing Office at the date and time specified on the track condition sheet.

13.9.3 The eligibility and class of all horses participating in races is carefully screened.

13.9.4 The Administrator, or his/her designee, is present for the race draw by the Judges for all races conducted under the Program.

6 DE Reg. 1497 (5/1/03)

7 DE Reg. 497 (10/01/03)

8 DE Reg. 336 (8/1/04)

14.0 Nomination and Sustaining Payments

14.1 Nomination and sustaining payments shall be made to the Program in U.S. funds.

14.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section. If the date due is on a Sunday and/or a legal federal holiday which falls on a Saturday, payment is due by the following Monday. If the due date falls on a Monday that is a legal holiday, such payment is due on Tuesday. Payment made by commercial delivery services shall be treated the same as those made by letters bearing a postmark.

14.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

14.3.1 Forty (40) dollars each; and

14.3.2 Due by May 15th of the yearling year.

14.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.

14.5 If the May 15th deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if it is received by March 15th of the two (2)

year old year. This payment is in addition to the regular sustaining payment due on March 15th.

14.6 Sustaining payments shall be as follows:

(3) year old)	14.6.1	Two (2) Year Old payments	
		March 15th	\$100 (must be made to ensure elibility as a three
		May 15th	\$200
	14.6.2	Three (3) Year Old payments	
		March 15	\$300
		Declaration Fee	\$500 ((for each track)

6 DE Reg. 1497 (5/1/03)

5 DE Reg. 1274 (12/1/01)

15.0 Investment Plan and Use of Fees

15.1 All proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware a Delaware Standardbred Breeder's Program and any interest earned on these monies shall be invested in an endowment account until race year 2002.

15.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program, shall be deposited in the endowment account.

15.3 For race year 2003, two million dollars (\$2,000,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on the endowment fund in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year.

15.4 For the year 2004 and each race year thereafter, three million dollars (\$3,000,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on the endowment fund in the preceeding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year.

15.5 Any monies from the purse account for the Program at the end of the race year shall revert to the endowment account of the Program.

5 DE Reg. 1274 (12/1/01)

8 DE Reg. 336 (8/1/04)

*** Please note that no changes were made to the regulation as originally proposed and published in the June 2006 issue of the *Register* at page 1833 (9 DE Reg. 1833). Therefore, the final regulation is not being republished. Please refer to the June 2006 issue of the *Register* or contact the Harness Racing Commission for more information.**

A complete set of the rules and regulations for the Standardbred Breeders Fund is available at: <http://www.state.de.us/research/AdminCode/title3/500/502/index.shtml#TopOfPage>

10 DE Reg. 982 (12/01/06) (Final)