

CHAPTER 69.5-01-09 NORTH DAKOTA BREEDERS' FUND

Section

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69.5-01-09-01. Definitions.

1. "Accredited North Dakota-bred race horse" means a horse qualifying for and duly registered in the North Dakota breeders' fund program. For purposes of awards and purse supplements, such accreditation for horses racing shall continue through the age of twelve years. Awards for breeding mares and stallions shall continue as long as there is progeny racing.
2. "Breeder" means the owner or lessee, or the respective breed-registering organization of the dam at the time of foaling in North Dakota.
3. "Donor mare" means the mare which produces an embryo or an oocyte which, after fertilization, is transferred into the uterus of a recipient mare.
4. "Embryo transfer" means the process of transferring a donor mare embryo into a recipient mare.
5. "North Dakota-bred" means a foal born in North Dakota out of a mare registered as a broodmare under section 69.5-01-9-02 with the North Dakota racing commission prior to the foal's birth, and which mare was in North Dakota:
 - a. On or before February first of the year foaled; or
 - b. Within thirty days after the date of a bona fide purchase or lease transaction, whichever of those dates is the latest, and provided, in either case, that mare remained physically within the boundaries of North Dakota until foaling.
6. "North Dakota-foaled" means a horse born in North Dakota.
7. "Racehorse owner" means the owner or lessee of record with the respective breed-registering organization at the time the horse participates in a race qualifying the horse for breeders' fund awards or purse supplements under the provisions of this chapter.
8. "Recipient mare" means the surrogate mare carrying a donor mare's embryo.
9. "Stallion owner" means the owner of a stallion registered as a breeding stallion in the North Dakota breeders' fund program. North Dakota breeders' fund awards accruing to the owner of a stallion as a result of qualifying race performances by North Dakota-breds sired by a stallion shall be awarded to the owner of the stallion at the time of conception of such progeny.

In a case involving extraordinary circumstances, the North Dakota racing commission or designated registering agency retains the right to allow or disallow the registration of a foal as North Dakota-bred at its sole discretion.

The requirements of this section apply to all breeds.

History: Effective January 1, 1990; amended effective March 1, 2002; July 1, 2011; January 1, 2015; October 1, 2022; April 1, 2024.

General Authority: NDCC 53-06.2-05

Law Implemented: NDCC 53-06.2-04.1, 53-06.2-11

69.5-01-09-02. Registration and requirements for North Dakota-bred eligibility.

1. The breeder or owner of a North Dakota-bred horse shall register such horse with the North Dakota racing commission before racing to be eligible to receive breeders' fund award payments. The commission may contract with and designate an official registering agency to implement the registration of North Dakota-bred horses.
 - a. The original breed registration certificate must be embossed by the commission or official registering agency before the entry into any race eligible for breeders' fund awards.
 - b. Failure to have all required paperwork submitted and breed registration certificate embossed before racing shall disqualify a horse from an award or payment from the North Dakota breeders' fund.
 - c. The purchaser of a horse is required to have all paperwork submitted and breed registration certificate embossed before racing the horse. Failure to meet these requirements shall disqualify a horse from an award or payment from the North Dakota breeders' fund.
2. Broodmare registration. A broodmare must meet the qualifications as outlined in subsection 4 of section 69.5-01-09-01 to be eligible for broodmare award payments based on a percentage of the North Dakota breeders' fund program awards earned by accredited North Dakota-bred horses foaled by the mare. In addition, the broodmare must meet the following conditions:
 - a. The North Dakota racing commission or the designated agency must receive or have access to the broodmare's original breed paper or electronic registration certificate for embossing, a completed North Dakota breeders' fund program registration application as furnished by the North Dakota racing commission, and a registration fee of thirty dollars.
 - b. Failure to properly register the broodmare, as outlined in section 69.5-01-09-01 and in this section, will disqualify any subsequent claims for North Dakota breeders' fund award payments.
 - c. A broodmare may be registered at any time before the time that she delivers a foal.
3. Stallion registration. To be eligible to receive stallion award payments, the following requirements must be met:
 - a. Stallions must physically be in North Dakota and registered with the North Dakota racing commission or official registering agency by February first of the current breeding year. The stallion's original breed registration certification must be received by the North Dakota racing commission or official registering agency for embossing, with a completed North Dakota breeders' fund program registration application and a registration fee of thirty dollars. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate. A leased stallion must renew its stallion registration each year.

- b. When a stallion is purchased after February first of the current breeding season, the new owner must register the stallion within thirty days after the date of a bona fide purchase with the North Dakota racing commission or official registering agency to be eligible for the North Dakota breeders' fund program.
 - c. Stallions must remain in North Dakota for the entire current breeding season from February first to July thirty-first. Stallions registered pursuant to subdivision b must be in North Dakota as of the date of registration and remain in North Dakota through July thirty-first.
4. Foal registration and certification. For a horse foaled in North Dakota to be registered and subsequently certified as a North Dakota-bred, the following requirements must be met:
- a. Any time from foaling through December thirty-first of the foaling year that the horse was foaled in North Dakota, the foal must be registered with the North Dakota racing commission or official registering agency. The registration form must be provided by the commission and must contain the date, name, registration number, owner's name of the foaling dam, date the foal was born, and foal owner's statement that the foal was born in North Dakota. The application to register a foal in the North Dakota breeders' fund program as a North Dakota-bred must be accompanied by a thirty dollar registration fee.
 - b. Registration applications that meet all other requirements provided in this section, but are received after the December thirty-first deadline, may be processed and approved provided that applications and registration fees received after December thirty-first of the foaling year are accompanied by a late fee of three hundred dollars.
 - c. An investigator appointed by the commission shall have access to the premises on which qualified mares, North Dakota-registered stallions, and North Dakota-bred foals or horses are kept. The investigator may perform random inspections of North Dakota-registered foals as required by the commission.
 - d. The original or electronic breed registration certificate must be embossed by the commission or official registering agency prior to the entry into any restricted race.
 - e. Failure to have the breed registration certificate embossed shall disqualify a horse from entry in a race restricted to, or with preference given to, accredited North Dakota-bred horses, and shall prohibit an award or payment from the North Dakota breeders' fund.
 - f. The owner of the dam of a foal submitted to the registering agent or the North Dakota racing commission for registration in the North Dakota breeders' fund program must notify the North Dakota racing commission ten days prior to shipping if the dam is to be leaving the state prior to ninety days after foaling.
 - g. The foal of a mare registered in the North Dakota breeders' fund program, but owned by an out-of-state individual or corporation, will be required to be inspected by a state-licensed veterinarian and a commission state form veterinarian's certificate verifying that the foal was born in the state of North Dakota submitted with the original foal application paperwork. All of these items are at the expense of the owner.
5. Embryo transfer. For a resulting foal from an embryo transfer to be eligible for accreditation in the North Dakota-bred program, the donor mare must be accredited in the broodmare registry before foaling.
- a. If a donor mare is bred in North Dakota, the donor mare may be shipped out of North Dakota to have the embryo removed but must return to North Dakota within thirty days to continue her domicile, or if the donor mare is to be bred in subsequent cycles at an out-of-state location to obtain additional embryos, the broodmare must return to North

Dakota and resume her domicile within thirty days of her final breeding date for that year's breeding season. Nothing in this section would prohibit an accredited broodmare that is serviced out-of-state from producing multiple embryos which are transferred to recipient mares during the period of time she is permitted to be out-of-state for breeding purposes.

- b. Effective January 1, 2023. Before the resulting foal of an embryo transfer is eligible for North Dakota accreditation, the following requirements must be met:
- (1) All recipient mares shall be permanently identified using methods listed on the "recipient mare form" provided by the commission. The "recipient mare form" must be completed by the breeder and returned to the commission by November first of the year before foaling. A "recipient mare form" may not be accepted by the commission after this date.
 - (2) Recipient mares must be domiciled in North Dakota no less than thirty days before the due date indicated on said "recipient mare form" and remain in North Dakota until the foal is born. If a recipient mare is not domiciled in North Dakota at least thirty days before the due date listed on said form, or leaves North Dakota before foaling, the resulting foal is ineligible for entry into the North Dakota-bred program.
 - (3) Any breeder whose "recipient mare form" is on file with the commission shall be responsible to notify the commission in writing, within thirty calendar days, of any changes in domicile location or ownership. In addition, any new owners of said recipient mares, if any, shall notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare.
 - (4) If there is a transfer in ownership of a foal in utero, the new owner shall be responsible to notify the commission in writing, within thirty calendar days, regarding the domicile location of the recipient mare carrying the foal in utero.
 - (5) Failure to comply with these requirements will result in foals being ineligible for entry into the North Dakota-bred program.
 - (6) "Recipient mare forms" may not be accepted by the commission after November first of the year before foaling.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022; April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-03. Administration of North Dakota breeders' fund program.

1. The North Dakota racing commission shall deduct one-half of one percent from each pari-mutuel pool resulting from a licensed race meet or simulcast display for the purpose of providing a North Dakota breeders' fund as provided for by North Dakota Century Code section 53-06.2-11. All moneys held in the fund must be deposited with the North Dakota state treasurer in accordance with North Dakota law. All moneys shall remain in the control of the state treasurer until, upon action of the North Dakota racing commission, funds are transferred to the breeders' fund account. The executive director of the racing commission is responsible for the timely deposit of all revenue derived from the breeders' fund take-out and shall keep accurate records of deposits and disbursements.
2. The management procedures, rules, fee schedules, registration forms, publications, and all other instruments necessary to the operation of the North Dakota breeders' fund program by the official registering agency are subject to the review and approval of the commission. The commission must be provided copies of the completed registration forms for all horses entered

in the North Dakota breeders' fund program, or the North Dakota stallion or broodmare registry. The official registering agency shall provide the commission with a financial accounting of the North Dakota breeders' fund program by an independent accountant within ninety days of the end of the fiscal year. The costs of administering this program will be funded by the North Dakota breeders' fund.

3. The racing industry advisory committee shall be the officially recognized advisory body to the North Dakota racing commission on all matters pertaining to the North Dakota breeders' fund program. The actions of the racing industry advisory committee shall be advisory only and shall not be binding upon the North Dakota racing commission. Establishment and membership of the racing industry advisory committee as to number and representative affiliation shall be at the discretion of the North Dakota racing commission.
4. Any person who desires to contest the accuracy of the commission's records or accounting of the North Dakota breeders' fund distribution in any one year shall file a written claim with the commission prior to the end of the calendar year. The written claim must state the basis for the claim.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022; April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-04. Registration required for North Dakota-bred eligibility.

Repealed effective March 1, 2002.

69.5-01-09-05. Decision as to eligibility of North Dakota-bred.

Questions as to the registration, eligibility for registration, or breeding of a North Dakota-bred horse must be decided by the North Dakota racing commission or official registering agency. The North Dakota racing commission or the official registering agency may demand and inspect any breed registration certificate or record of a North Dakota breeder and may require affidavits in support of any claim for North Dakota-bred registration. Concerning questions as to parentage, the official registering agency may require testing of the horse in question, as well as its sire and dam. Such testing must be done by an organization approved by the official registering agency. The results of this test may be taken into consideration by the official registering agency in its determination of the horse's parentage. A decision of the official registering agency shall be subject to review by the commission, which retains the right to make the final decision as to any right or liability under this article.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-06. False statement concerning North Dakota-bred registration.

Any person who fails to disclose, or states falsely any information required in the registration process of the North Dakota breeders' fund program, may be subject to penalties at the discretion of the commission. Owners and breeders of accredited North Dakota-breds who receive an owner's bonus, or breeders' award, shall refund to the North Dakota breeders' fund any amount so received in the event it is later determined that any information provided to the North Dakota racing commission during the accreditation process which formed the basis for accreditation as a North Dakota-bred was incorrect or untrue. Such penalties may also include disqualification and exclusion from the North Dakota breeders' fund program of both the horses and persons involved in the dispute.

History: Effective January 1, 1990; amended effective March 1, 2002; April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-07. North Dakota-bred racing program.

Any organization licensed by the commission to conduct a race meeting with pari-mutuel wagering shall provide a North Dakota-bred program and publish such conditions in the condition book prior to the commencement of the race meeting. Prior to publication and distribution of the condition book, the commission shall review and approve the North Dakota-bred racing program. Any changes thereto must be filed with the commission and none may substantially deviate from the conditions previously published, unless approved by the commission.

The racing secretary at each racetrack shall be required to write and offer no less than one race each day for accredited North Dakota-bred horses. If the race meeting being conducted is a mixed-race meeting, there shall be offered no less than one race each day per major breed racing (thoroughbreds and American quarter horses) for accredited North Dakota-bred horses. In the event a race does not fill, a race may be opened with North Dakota-bred horses preferred. For the purposes of this clause, a full gate shall consist of six or more horses. All entries must be publicly posted in the race office whether the race fills or not.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-08. Change of ownership.

Upon transfer of ownership of a North Dakota-bred horse, it is the responsibility of the current owner (purchaser) to notify the North Dakota breeders' fund program registering agency or the North Dakota racing commission of any change by providing a copy of the breed certificate showing record of ownership transfer, the North Dakota racing commission transfer of ownership form.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-09. Establishment of North Dakota-bred added money and award payments at a race meeting.

The North Dakota racing commission shall establish North Dakota breeders' fund program added money and award payment levels for accredited North Dakota-bred maiden, claiming, allowance, and stakes races at commission-licensed race meetings and authorize increases and decreases in those levels as the racing commission deems appropriate with respect to funds available in the North Dakota breeders' fund.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022; April 1, 2024.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-10. Distribution of funds for North Dakota-bred pari-mutuel races.

1. A minimum of seventy-five percent of the previous calendar years' deposits accruing to the North Dakota breeders' fund shall be awarded to accredited North Dakota-bred horses who qualify for awards. Any race considered in this category must have a minimum purse of two thousand dollars. All amounts will be determined in United States currency.
2. The North Dakota racing commission shall establish the award level distribution amounts for in-state and out-of-state racing each year. All in-state awards must be paid out no later than

December thirty-first each year, while out-of-state awards must be paid out no later than February twenty-eighth each year.

3. The official order-of-finish distribution amounts accredited must be as follows:
 - a. Fifty percent of the total scheduled award payment to a winning accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any;
 - b. Thirty percent of the total scheduled award payment to the placing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any; and
 - c. Twenty percent of the total scheduled award payment to the showing accredited North Dakota-bred horse and the accredited North Dakota-bred broodmare and sire of such horse, if any.
4. The North Dakota racing commission shall establish a point system assigning monetary values for each win, place, or show by North Dakota-bred horses at licensed race meets within the state and outside the state. The point system will assign values based on the relative moneys available for distribution inside the state and outside the state, and the number of horses that qualify for such awards inside the state and outside the state. The North Dakota racing commission shall award additional points within the system it establishes for qualifying performances by accredited North Dakota-bred horses who win, place, or show in a race at a licensed race meet outside the state where the purse is ten thousand dollars or more as follows:
 - a. Purse of ten thousand dollars or more but less than twenty-five thousand dollars is worth double points.
 - b. Purse of twenty-five thousand dollars or more but less than fifty thousand dollars is worth triple points.
 - c. Purse of fifty thousand dollars or more is worth quadruple points.
5. Distribution points for win, place, or show shall be established by the North Dakota racing commission for such performances by North Dakota-bred horses. Separate pools shall be established for moneys to be awarded to North Dakota-bred horses that earn awards at licensed races outside the state and for North Dakota-bred horses who earn awards at licensed races within the state.
6. The distribution of North Dakota breeders' fund award payments must be as follows:
 - a. Sixty percent of the scheduled award payment to owners of accredited North Dakota-breds who earn such awards, provided however, that if either the dam or sire, or both, are not duly registered in the program as broodmares or stallions, that the award percentages that would have accrued to them, had they been in the program, be paid to the owner of the accredited foal up to one hundred percent of the scheduled award.
 - b. Thirty percent of the scheduled award payment to the breeder of an accredited North Dakota-bred who earns awards, provided that the dam was registered in the North Dakota breeders' fund program as a broodmare at the time the accredited North Dakota-bred was foaled.
 - c. Ten percent of the scheduled award payment to the owner of the sire at the time of conception of an accredited North Dakota-bred who earns awards provided that the sire

was registered in the North Dakota breeders' fund program as a breeding stallion at the time the foal was conceived.

7. Applications for breeders' fund awards of the preceding out-of-state year's races must be postmarked to the North Dakota racing commission office on approved forms by January fifth of the year, following those races.
8. Award checks must have imprinted on them "This check is void if not cashed within sixty days after date of issuance". This statement is binding and checks not cashed within sixty days of issuance shall revert to the commission to be redeposited in the breeders' fund for future distribution awards with the exception that in the event the commission is unable to locate and award the recipient by United States first-class mail, the commission shall be given an additional sixty days beyond the void date of the award check to attempt to locate the payee. If unable to locate the payee within the additional sixty days, any such award shall revert to the commission to be held in the breeders' fund for future distribution. Any subsequent claims for such awards by the person or entities not cashing award checks as prescribed or not located as defined by this section shall not be allowed.
9. In no event may North Dakota breeders' fund moneys be used to subsidize restricted races, other than those restricted to North Dakota-breds.
10. All in-state breeders' fund awards must be calculated and paid by December thirty-first each year.
11. All out-of-state breeders' fund awards must be calculated and paid by February twenty-eighth each year.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2018; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-11. Open company wins awards.

Accredited North Dakota-bred horses that win open races at a North Dakota pari-mutuel track will be eligible to receive owner, breeder, and stallion awards authorized by the commission.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-12. Special interim clause.

Until such time as there exists a major racing facility in the state as described in section 69.5-01-09-13, the provisions of this chapter regarding the division of available breeders' fund moneys between races inside the state and races outside the state shall pertain. When such a racing facility exists, or is granted race dates or is licensed by the North Dakota racing commission prior to actual physical completion, the North Dakota racing commission may redefine the allocation of breeders' fund moneys for in-state races and out-of-state races. Regardless of the designation of a major racing facility, all moneys generated via simulcasting may be held by the commission and the percentage of distribution for any one year out of the total in the fund shall remain at the discretion of the commission.

History: Effective January 1, 1990; amended effective March 1, 2002.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11

69.5-01-09-13. Guidelines of a major racing facility.

In addition to any other requirements or conditions required by the commission, a major racing facility must:

1. Be recognized annually by the North Dakota racing commission as a major racing facility.
2. Offer minimum purses of no less than five thousand dollars for major breeds racing at this track.
3. Have at least a six-furlong track with properly designed turns and chutes.

History: Effective January 1, 1990; amended effective March 1, 2002; October 1, 2022.

General Authority: NDCC 53-06.2-04, 53-06.2-05

Law Implemented: NDCC 53-06.2-11