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**RULE 19
DISSEMINATORS**

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19.005 General. The Commission may waive one or more of the requirements of this Rule if the Commission determines the waiver is consistent with the state policy set forth in these Rules.

19.010 Definitions. As used in this Rule:

1. "Director" means the Commission of the Arkansas Racing Commission or the Commission's designee.

2. "Buyer" means a person who receives horse or other animal racing information within the State of Arkansas from a disseminator by means other than a live broadcast, and who uses the information to determine winners of or payoffs on wagers accepted at a race book operated by the buyer. The term is not applicable to a person who receives services related to pari-mutuel wagering activity applicable to Rule 22.

3. "Live broadcast" means an audio and video transmission of a race, or series of races, as it occurs at a track and which is furnished by a disseminator to a user for a fee..

4. "User" of a live broadcast means an operator of a race book, sports pool or gambling game who is licensed in this state and receives and displays a live broadcast within this state and uses information contained in the broadcast to determine winners of or payoffs on wagers the operator accepts..

19.020 License required; finding of suitability for a person providing transmission services; applications.

1. Applications for disseminator licenses submitted pursuant to these Rules, or applications for a finding of suitability submitted pursuant to these Rules by a person providing transmission services in association with a disseminator, must be made, processed, and determined in the same manner as applications for nonrestricted gaming licenses, using such forms as the Commission may require or approve.

2. Except as provided in subsection 3, no person who owns, controls, or has any interest of any kind in a company or other enterprise that must hold a disseminator license, nor any person who applies for or holds a disseminator license, nor any employee or agent of any such persons, may hold a gaming license.

3. The Commission may grant a disseminator license to a person who holds a license to operate and who operates a race book or sports pool. A disseminator license issued to such a person authorizes the person:

- (a) To disseminate only live broadcasts;
- (b) To contract with not more than one track or association of tracks at a time for the purpose of disseminating live broadcasts; and
- (c) To disseminate live broadcasts from not more than one track at a time.

19.025 Information regarding post time. The disseminator who provides live broadcasts shall, for a reasonable fixed fee, or if otherwise required by any contractual agreement by and between the disseminator and buyer, provide the post times of such races to buyers as soon as the disseminator makes that information available to users.

19.030 Rates and billings; user reports.

1. For live broadcasts of racing meets that were distributed within Arkansas during the previous year, disseminators shall charge users a percentage of the amounts wagered at each user's establishment on the live broadcast races, which must not exceed the lesser of the effective percentage rate of the previous year's racing meet as increased by one half of 1 percent, or:

- (a) Three percent if the previous year's average daily handle generated by such races at all users' establishments did not exceed \$150,000;
- (b) Two and three-fourths percent if the previous year's average daily handle generated by such races at all users' establishments was greater than \$150,000 but did not exceed \$250,000;
- (c) Two and one-half percent if the previous year's average daily handle was greater than \$250,000 but did not exceed \$350,000;
- (d) Two and one-fourth percent if the previous year's average daily handle generated by such races at all users' establishments was greater than \$350,000 but did not exceed \$450,000;
- (e) Two percent if the previous year's average daily handle generated by such races at all users' establishments was greater than \$450,000.

2. For live broadcasts of racing meets that were not distributed in Arkansas during the previous year, or that were distributed but which are substantially different from the previous year's meet, disseminators shall charge users a percentage of the amounts wagered in the users' establishment on live broadcast races, which must not exceed three percent.

(a) A racing meet may be considered to be substantially different from the previous year's racing meet if:

- (1) The racing meet was broadcast during a substantially different time of the year the previous year;
- (2) The racing meet was broadcast during a substantially different time of the day the previous year;
- (3) The racing meet was modified to include new tracks;
- (4) The racing meet was modified to exclude tracks from which racing was previously broadcast; or
- (5) There has been a substantial increase or decrease in the number of racing days.

(b) If the average daily handle generated by new or substantially different races at all users' establishments is determined at the conclusion of the racing meet to exceed \$150,000, the disseminator shall, not later than 60 days after the conclusion of the racing meet, determine the

applicable percentage rate for that meet using the standards of subsection 1 and shall rebate to each user on a pro rata basis determined from each user's handle, the amount of fees collected in excess of the amount that could have been charged pursuant to subsection 1 if the racing meet had been distributed the previous year or if it was not substantially different from the previous year's meet.

3. The Commission may, in the Commission's sole and absolute discretion, permit a disseminator to charge users a percentage rate greater than that permitted by subsections 1 and 2 of this section, if the disseminator proposing to distribute the live broadcast and the users, who during the previous year generated at least sixty-six and two-thirds percent of the average total daily handle for a particular racing meet, file a petition with the Commission requesting that the rate be modified for that particular racing meet. The petition must state the rate the users agree to pay the disseminator and must be signed by the chief executive officer, or the chief executive officer's designee, of each user supporting the petition. The petition must be filed prior to submitting a proposal for the exclusive right to disseminate a live broadcast for that racing meet. The petition must include an affidavit of mailing that sets forth the date of mailing and that certifies that a copy of the petition has been sent to all users and other disseminators. All users that have not signed the petition and other disseminators shall have 10 calendar days from the date set forth in the affidavit of mailing or by such date as specified by the Commission in which to file with the Commission any comments or opposition to the petition. The Commission shall consider the interests of the users, the disseminators, and the state in determining whether the Commission will approve a rate greater than that permitted by subsection 1 or 2 of this section. If the Commission does not allow a different rate, the disseminator and users who have filed the petition may appeal that decision to the full Commission. The appeal must be filed with the Commission within 7 calendar days of the Commission's decision or by such date as specified by the Commission. The appeal must include an affidavit of mailing that sets forth the date of mailing and that certifies that a copy of the appeal has been sent to all users and other disseminators. All users that did not sign the petition and other disseminators shall have 7 calendar days from the date set forth in the affidavit of mailing or by such date as specified by the Commission in which to file with the Commission any comments or opposition to the petition. The decision of the Commission is final.

4. For services other than live broadcasts, disseminators shall charge buyers a fixed fee determined in advance.

5. A disseminator shall not offer or provide a service to a buyer or user at a fee or a percentage rate different from that charged to every other buyer or user for the same service.

6. Each disseminator shall regularly provide each of its buyers with a written statement of charges, separately identifying the services provided and the amount charged for each service.

7. Each buyer and user shall file monthly with the Commission a written report, itemized by track, of the amounts wagered at the buyer's or user's establishment of races and events for which a disseminator supplies the buyer or user with horse or other racing information used to determine winners of or payoffs on the wagers. These reports must separately disclose the amounts wagered and the resultant gross revenue on live broadcast races, pari-mutuel races and non-live broadcast/non-pari-mutuel races. Buyers and users shall file each report with the Commission and users shall furnish a copy of each report to the disseminator not later than the 24th day of the month

after the month covered by the report. If the Commission at any time discovers discrepancies between amounts wagered at a buyer's or user's establishment and amounts charged or paid for disseminator services, the Commission may so inform the buyer or user and disseminator. Each buyer and user shall permit its disseminator to examine such records of the buyer or user as are necessary to verify the accuracy of the buyer's or user's monthly reports. It shall be an unsuitable method of operation for any disseminator, except with the prior written approval of the Commission, to disclose to any person the contents of any report received or record examined pursuant to this subsection.

19.040 Rate changes.

1. Disseminators shall notify the Commission and each affected buyer of any rate increase at least 30 days before the effective date of the increase, stating in detail the reasons for the increase. A buyer affected by a rate increase may, within 30 days after receiving notice of the increase, file written objections with and request a hearing before the Commission. The filing of an objection does not operate to stay the effectiveness of the rate increase, but the Commission may grant a stay on such terms and conditions as the Commission deems appropriate. The Commission may grant or deny the request for hearing at its sole and absolute discretion.

2. If the Commission grants a buyer's request for a hearing pursuant to subsection 1, the Commission shall give all buyers and disseminators written notice of the hearing at least 20 days in advance of the hearing. The notice must specify the time and place of the hearing and fairly summarize its purposes.

3. At the hearing, all interested parties may be heard and may present evidence in support of or in opposition to the rate increase.

4. At the conclusion of the hearing, the Commission may set or adjust the rates to be charged, determine the nature and extent of the services to be provided, order a refund, or take such other action as the Commission considers appropriate. The Commission shall make its determinations based upon the evidence and testimony presented at the hearing. The determinations of the Commission must be in writing and must specify the applicable rates and the effective dates of such rates or the amount of any refund.

5. The determination of the Commission is final, binding, and conclusive upon the disseminator and all affected buyers.

6. This section does not apply to a rate increase for a live broadcast.

19.060 Records.

1. Each disseminator shall maintain the following records with respect to each race or event regarding

which the disseminator distributes information to a buyer or user:

- (a) The scheduled post time as supplied by the disseminator;
- (b) The actual post time as defined in these Rules;
- (c) The name, number, and official finishing position, as supplied by the track, of each entrant finishing in a position for which a payoff is made or offered;
- (d) The official payoff results; and

- (e) Such other information as the Commission may require.
- 2. Each disseminator shall comply with the following recording and reporting requirements:
 - A. Each user who uses information included in a live broadcast to determine winners of and payoffs on wagers accepted at the user's race book shall record simultaneously with the occurrence of the recorded event, for each live broadcast race:
 - (a) The scheduled post time supplied by the disseminator;
 - (b) The actual post time as defined in Rule 20;
 - (c) The name, number, and official finishing position, as supplied by the track, of each entrant finishing in a position for which a payoff is made or offered;
 - (d) The official race track payoff results announced in the live broadcast; and
 - (e) Such other information as the Commission may require.
 - B. Every user shall retain copies of the reports filed pursuant to Rule 20.030(7).
 - C. Each disseminator shall record the audio and video portions of each live broadcast the disseminator transmits to users. Disseminators shall use such recording equipment and procedures as the Commission may approve in advance, and shall preserve the recordings for at least 20 days after the occurrence of the events recorded unless the Commission orders preservation for a different length of time. Using such equipment as may be approved in advance by the Commission, each disseminator shall incorporate in the video portion of the recordings the date and, to the nearest second, the correct time of day at which the live broadcast is transmitted to users. The disseminator shall take reasonable steps to prevent discrepancies between the track time displayed as part of the live broadcast and the time generated as part of the recording, and shall maintain and, upon the Commission's request, submit records describing each such discrepancy in detail. In the alternative, a disseminator, upon approval from the Commission and subject to conditions prescribed by the Commission, is not required to record the audio and video portions of each live broadcast the disseminator transmits to users if the disseminator is able to obtain such recordings from the track originating such live broadcast provided that the track maintains the recordings for at least 20 days after the occurrence of the events recorded or for such different time period as approved by the Commission.
 - D. Disseminators and users shall create and maintain the records required by this or any other rule in such manner and using such forms as the Commission may require or approve. The Commission may require disseminators and users to create and maintain such other records and reports as are necessary or convenient for strict regulation of disseminators and users. At the Commission's request, disseminators and users shall submit the records specified in subsection A. Users and disseminators shall preserve the records required by this Rule (other than the recordings referred to in subsection C) for at least 5 years after they are made. The Board may at any time examine and copy the records of any user or disseminator.

3. Each disseminator shall create and maintain a report indicating the name and address of each buyer, the date each buyer subscribed and canceled its subscription, if applicable, and the amounts charged each buyer for each service provided by the disseminator during the previous calendar quarter. This report must be created no later than 15 days after the end of the calendar quarter.

4. Each disseminator shall create and maintain detailed schedules which depict the revenues, expenses, and results of operations for each live broadcast racing meet.

5. Upon request, each disseminator, buyer, and user shall provide a written consent to the Commission or Commission to examine and copy any and all records of any telephone, telegraph, or similar communications company or utility that may pertain to the operation of the disseminator, buyer, or user.

6. Disseminators, buyers, and users shall create and maintain the records required by this Rule in such manner and using such forms as the Commission may require or approve. The Commission may require disseminators, buyers, and users to create and maintain such other records and reports as are necessary or convenient for strict regulation of disseminators, buyers, and users. Disseminators, buyers, and users shall preserve the records required by this Rule for at least 5 years after they are made. The Commission may at any time examine and copy the records of any disseminator, buyer, or user.

19.070 Reviewed financial statements.

1. Each disseminator shall prepare financial statements covering all financial activities of the disseminator's establishment for each business year. The financial statements must be submitted to the Commission in duplicate not later than 120 days after the last day of the disseminator's business year. In the event of a license termination, change in business entity, or a change in the percentage of ownership of more than 20 percent, the licensee or former licensee shall, not later than 120 days after the event, submit to the Commission 2 copies of reviewed financial statements covering the period since the period covered by the previous statement. If a license termination, change in business entity, or a change in the percentage of ownership of more than 20 percent occurs within 120 days after the end of the business year for which a statement has not been submitted, the licensee may submit statements covering both the business year and the final period of business.

2. Each disseminator shall engage an independent accountant who shall review the financial statements in accordance with the statements on standards for accounting and review services, or, if the Commission requires or the disseminator engages him or her to do so, the independent accountant shall audit the statements in accordance with generally accepted auditing standards.

3. Unless the Commission approves otherwise in writing, the statements must be presented on a comparative basis. Consolidated financial statements may be filed by commonly owned or operated establishments, but the statements must distinguish the activities of each establishment from those of the other establishments.

4. If a disseminator changes its business year, the disseminator shall prepare financial statements covering the period from the end of the previous business year to the beginning of the new business year (the "stub" period). The disseminator shall submit the statements to the Commission not later than 120 days after the end of the stub period or incorporate the financial results of the stub period in the statements for the new business year.

5. Correspondence written in conjunction with the independent accountant's review or examination of the disseminator's financial statements must be submitted within 120 days following the end of the disseminator's business year.

6. All other correspondence from the independent accountant regarding internal control matters must be submitted to the Commission within 30 days after the disseminator receives it.

7. The Commission may request additional information or documents from either the disseminator or the disseminator's independent accountant, through the disseminator, regarding the financial statements or the services performed by the accountant.

End – Rule 19