

ILLINOIS REGISTER

ILLINOIS GAMING BOARD

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Video Gaming (General)
- 2) Code Citation: 11 Ill. Adm. Code 1800
- 3) Section Number: 1800.320 Emergency Action:
Amendment
- 4) Statutory Authority: Section 5-45 (b) of the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100/5-45 (b)] confers rulemaking authority upon a covered agency if the agency finds that an emergency exists requiring adoption of a rule upon fewer days than is required for general rulemaking under Section 5-40 of the IAPA. Section 5-45 (a) of the IAPA [5 ILCS 100/5-45 (a)] defines an “emergency as “any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.” As described in item 9 below, the present COVID-19 outbreak has created a situation in which the present inability of the Illinois Gaming Board (Board) and parties before the Board to serve documents by e-mail threatens the public interest, safety, and welfare.
- 5) Effective Date of Rule:
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: The emergency amendment will expire at the end of the 150-day period or upon adoption of permanent rules, whichever comes first.
- 7) Date Filed with the Index Department:
- 8) A copy of the emergency amendments, including any material incorporated by reference, is on file in the Illinois Gaming Board’s principal office and is available for public inspection.
- 9) Reason for Emergency: Because of COVID-19, many applicants and licensees of the Illinois Gaming Board (IGB), as well as interested persons under Section 1800.320 (b), are closed or have reduced hours. As a result, there is no way to ensure that mail sent by the Board is actually being received by the licensees. E-mail is a way of serving documents that can be received anywhere with assurance of delivery.

Additionally, this rule will enable a reduction in needed trips to the post office by Board employees as well as licensees, applicants, and interested persons. This reduction will, in turn, lessen the number of physical objects changing hands that can provide vectors for

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disease transmission. In this way, the proposed rulemaking will promote public health goals during the COVID-19 outbreak.

- 10) A Complete Description of the Subjects and Issues Involved: Section 10-75 of the Administrative Procedure Act (IAPA) [5 ILCS 100/10-75] permits an agency to establish requirements for serving certain notices via e-mail. It authorizes an agency to require any attorney representing a party to a hearing, and any person to the extent they are subject to licensure, permitting or regulation by the agency, to accept service of documents by e-mail. Section 10-75 applies to all administrative proceedings under Section 10-25 (contested cases) and 10-50 (decisions and orders) of the IAPA.

In conformity with Section 10-75 of the IAPA, the emergency rulemaking amends Section 1800.320 (b) to authorize e-mail service under Section 1800.320 (b) by applicants, licensees, interested persons, and the Board itself. The rulemaking is complementary to the emergency rulemaking published at 44 Ill. Reg. 10193 (June 12, 2020), effective May 27, 2020, that authorizes e-mail service by applicants, licensees and the Board outside of contested matters under Section 1800.320 (b).

- 11) Are there any other rulemakings pending to this Part? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
1800.2110	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.2120	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.2130	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.2140	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.2150	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.2160	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.2170	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.EXHIBIT A	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.EXHIBIT B	New Section	43 Ill. Reg. 13488; December 2, 2019
1800.110	Amendment	44 Ill. Reg. 4265; March 20, 2020
1800.350	New Section	44 Ill. Reg. 4265; March 20, 2020
1800.140	New Section	44 Ill. Reg. 10061; June 12, 2020
1800.615	Amendment	44 Ill. Reg. 10061; June 12, 2020
1800.690	Amendment	44 Ill. Reg. 10061; June 12, 2020
1800.715	Amendment	44 Ill. Reg. 10061; June 12, 2020
1800.720	Amendment	44 Ill. Reg. 10061; June 12, 2020
1800.790	Amendment	44 Ill. Reg. 10061; June 12 2020

- 12) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate under 30 ILCS 805.

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- 13) Information and questions regarding this rulemaking shall be directed to

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The full text of the emergency amendment begins on the next page.

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TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING
SUBTITLE D: VIDEO GAMING
CHAPTER I: ILLINOIS GAMING BOARD

PART 1800
VIDEO GAMING (GENERAL)

SUBPART A: GENERAL PROVISIONS

Section	
1800.110	Definitions
1800.115	Gender
1800.120	Inspection
1800.130	Board Meetings

SUBPART B: DUTIES OF LICENSEES

Section	
1800.210	General Duties of All Video Gaming Licensees
1800.220	Continuing Duty to Report Information
1800.230	Duties of Licensed Manufacturers
1800.240	Duties of Licensed Distributors
1800.250	Duties of Terminal Operators
1800.260	Duties of Licensed Technicians and Licensed Terminal Handlers
1800.270	Duties of Licensed Video Gaming Locations

SUBPART C: STANDARDS OF CONDUCT FOR LICENSEES

Section	
1800.310	Grounds for Disciplinary Actions
1800.320	Minimum Standards for Use Agreements
<u>EMERGENCY</u>	
1800.330	Economic Disassociation
1800.340	Change in Ownership of Terminal Operators and Assets Held by Terminal Operators

SUBPART D: LICENSING QUALIFICATIONS

Section	
1800.410	Coverage of Subpart

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- 1800.420 Qualifications for Licensure
- 1800.430 Persons with Significant Influence or Control
- 1800.440 Undue Economic Concentration

SUBPART E: LICENSING PROCEDURES

Section

- 1800.510 Coverage of Subpart
- 1800.520 Applications
- 1800.530 Submission of Application
- 1800.540 Application Fees
- 1800.550 Consideration of Applications by the Board
- 1800.555 Withdrawal of Applications and Surrender of Licenses
- 1800.560 Issuance of License
- 1800.570 Renewal of License
- 1800.580 Renewal Fees and Dates
- 1800.590 Death and Change of Ownership of Video Gaming Licensee

SUBPART F: DENIALS OF APPLICATIONS FOR LICENSURE

Section

- 1800.610 Coverage of Subpart
- 1800.615 Requests for Hearing
- 1800.620 Appearances
- 1800.625 Appointment of Administrative Law Judge
- 1800.630 Discovery
- 1800.635 Subpoenas
- 1800.640 Motions for Summary Judgment
- 1800.650 Proceedings
- 1800.660 Evidence
- 1800.670 Prohibition on Ex Parte Communication
- 1800.680 Sanctions and Penalties
- 1800.690 Transmittal of Record and Recommendation to the Board
- 1800.695 Status of Applicant for Licensure Upon Filing Request for Hearing

SUBPART G: DISCIPLINARY ACTIONS AGAINST LICENSEES

Section

- 1800.710 Coverage of Subpart
- 1800.715 Notice of Proposed Disciplinary Action Against Licensees

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1800.720	Hearings in Disciplinary Actions
1800.725	Appearances
1800.730	Appointment of Administrative Law Judge
1800.735	Discovery
1800.740	Subpoenas
1800.745	Motions for Summary Judgment
1800.750	Proceedings
1800.760	Evidence
1800.770	Prohibition on Ex Parte Communication
1800.780	Sanctions and Penalties
1800.790	Transmittal of Record and Recommendation to the Board
1800.795	Persons Subject to Proposed Orders of Economic Disassociation

SUBPART H: LOCATION OF VIDEO GAMING TERMINALS IN
LICENSED VIDEO GAMING LOCATIONS

Section	
1800.810	Location and Placement of Video Gaming Terminals
1800.815	Licensed Video Gaming Locations Within Malls
1800.820	Measurement of Distances from Locations
1800.830	Waivers of Location Restrictions

SUBPART I: SECURITY INTERESTS

Section	
1800.910	Approvals Required, Applicability, Scope of Approval
1800.920	Notice of Enforcement of a Security Interest
1800.930	Prior Registration

SUBPART J: TRANSPORTATION, REGISTRATION,
AND DISTRIBUTION OF VIDEO GAMING TERMINALS

Section	
1800.1010	Restriction on Sale, Distribution, Transfer, Supply and Operation of Video Gaming Terminals
1800.1020	Transportation of Video Gaming Terminals into the State
1800.1030	Receipt of Video Gaming Terminals in the State
1800.1040	Transportation of Video Gaming Terminals Between Locations in the State
1800.1050	Approval to Transport Video Gaming Terminals Outside of the State
1800.1060	Placement of Video Gaming Terminals

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- 1800.1065 Registration of Video Gaming Terminals
- 1800.1070 Disposal of Video Gaming Terminals

SUBPART K: STATE-LOCAL RELATIONS

- Section
- 1800.1110 State-Local Relations

SUBPART L: FINGERPRINTING OF APPLICANTS

- Section
- 1800.1210 Definitions
- 1800.1220 Entities Authorized to Perform Fingerprinting
- 1800.1230 Qualification as a Livescan Vendor
- 1800.1240 Fingerprinting Requirements
- 1800.1250 Fees for Fingerprinting
- 1800.1260 Grounds for Revocation, Suspension and Denial of Contract

SUBPART M: PUBLIC ACCESS TO INFORMATION

- Section
- 1800.1310 Public Requests for Information

SUBPART N: PAYOUT DEVICES AND REQUIREMENTS

- Section
- 1800.1410 Ticket Payout Devices
- 1800.1420 Redemption of Tickets Following Removal or Unavailability of Ticket Payout Devices

SUBPART O: NON-PAYMENT OF TAXES

- Section
- 1800.1510 Non-Payment of Taxes

SUBPART P: CENTRAL COMMUNICATIONS SYSTEM

- Section
- 1800.1610 Use of Gaming Device or Individual Game Performance Data

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SUBPART Q: RESPONSIBLE GAMING

Section

- 1800.1710 Conversations About Responsible Gaming
- 1800.1720 Responsible Gaming Education Programs
- 1800.1730 Problem Gambling Registry
- 1800.1740 Utilization of Technology to Prevent Problem Gambling

SUBPART R: IMPLEMENTATION OF TECHNOLOGY

Section

- 1800.1810 Implementation of Technology

SUBPART S: INDEPENDENT TESTING LABORATORIES

Section

- 1800.1910 Independent Outside Testing Laboratories
- 1800.1920 Minimum Duties of an Independent Outside Testing Laboratory
- 1800.1930 Testing of Video Gaming Equipment
- 1800.1940 Approval of Video Gaming Equipment

SUBPART T: IN-LOCATION PROGRESSIVE GAMES

Section

- 1800.2010 In-location Progressive Games
- 1800.2020 Optional Nature of In-location Progressive Games
- 1800.2030 Procedures Within Licensed Video Gaming Locations
- 1800.2040 Payments of Progressive Jackpot Amount
- 1800.2050 Deductions from Progressive Jackpots
- 1800.2060 Progressive Jackpot Coordinator

AUTHORITY: Implementing and authorized by the Video Gaming Act [230 ILCS 40].

SOURCE: Adopted by emergency rulemaking at 33 Ill. Reg. 14793, effective October 19, 2009, for a maximum of 150 days; adopted at 34 Ill. Reg. 2893, effective February 22, 2010; emergency amendment at 34 Ill. Reg. 8589, effective June 15, 2010, for a maximum of 150 days; emergency expired November 11, 2010; amended at 35 Ill. Reg. 1369, effective January 5, 2011; emergency amendment at 35 Ill. Reg. 13949, effective July 29, 2011, for a maximum of 150 days; emergency expired December 25, 2011; amended at 36 Ill. Reg. 840, effective January 6, 2012; amended by emergency rulemaking at 36 Ill. Reg. 4150, effective February 29, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 5455, effective March 21, 2012; amended at 36

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Ill. Reg. 10029, effective June 28, 2012; emergency amendment at 36 Ill. Reg. 11492, effective July 6, 2012, for a maximum of 150 days; emergency expired December 2, 2012; emergency amendment at 36 Ill. Reg. 12895, effective July 24, 2012, for a maximum of 150 days; amended at 36 Ill. Reg. 13178, effective July 30, 2012; amended at 36 Ill. Reg. 15112, effective October 1, 2012; amended at 36 Ill. Reg. 17033, effective November 21, 2012; expedited correction at 39 Ill. Reg. 8183, effective November 21, 2012; amended at 36 Ill. Reg. 18550, effective December 14, 2012; amended at 37 Ill. Reg. 810, effective January 11, 2013; amended at 37 Ill. Reg. 4892, effective April 1, 2013; amended at 37 Ill. Reg. 7750, effective May 23, 2013; amended at 37 Ill. Reg. 18843, effective November 8, 2013; emergency amendment at 37 Ill. Reg. 19882, effective November 26, 2013, for a maximum of 150 days; emergency amendment suspended by the Joint Committee on Administrative Rules at 38 Ill. Reg. 3384, effective January 14, 2014; suspension withdrawn at 38 Ill. Reg. 5897; emergency repeal of emergency amendment at 38 Ill. Reg. 7337, effective March 12, 2014, for the remainder of the 150 days; amended at 38 Ill. Reg. 849, effective December 27, 2013; amended at 38 Ill. Reg. 14275, effective June 30, 2014; amended at 38 Ill. Reg. 19919, effective October 2, 2014; amended at 39 Ill. Reg. 5401, effective March 27, 2015; amended at 39 Ill. Reg. 5593, effective April 1, 2015; amended at 40 Ill. Reg. 2952, effective January 27, 2016; amended at 40 Ill. Reg. 8760, effective June 14, 2016; amended at 40 Ill. Reg. 12762, effective August 19, 2016; amended at 40 Ill. Reg. 15131, effective October 18, 2016; emergency amendment at 41 Ill. Reg. 2696, effective February 7, 2017, for a maximum of 150 days; amended at 41 Ill. Reg. 2939, effective February 24, 2017; amended at 41 Ill. Reg. 4499, effective April 14, 2017; amended at 41 Ill. Reg. 10300, effective July 13, 2017; amended at 42 Ill. Reg. 3126, effective February 2, 2018; amended at 42 Ill. Reg. 3735, effective February 6, 2018; emergency amendment at 43 Ill. Reg. 9261, effective August 13, 2019, for a maximum of 150 days; emergency amendment, except for the definition of "in-location bonus jackpot game" or "in-location progressive game" and the definition of "progressive jackpot" in Section 1800.110 and except for Section 1800.250(x), suspended at 43 Ill. Reg. 11061, effective September 18, 2019; emergency amendment at 43 Ill. Reg. 9788, effective August 19, 2019, for a maximum of 150 days; emergency amendment at 43 Ill. Reg. 11688, effective September 26, 2019, for a maximum of 150 days; emergency amendment at 43 Ill. Reg. 13464, effective November 8, 2019, for a maximum of 150 days; emergency amendment suspended by the Joint Committee on Administrative Rules at 43 Ill. Reg. 13479, effective November 12, 2019; suspension withdrawn at 44 Ill. Reg. 3583; emergency amendment to emergency rule at 44 Ill. Reg. 3568, effective February 21, 2020, for the remainder of the 150 days; amended at 43 Ill. Reg. 14099, effective November 21, 2019; amended at 44 Ill. Reg. 489, effective December 27, 2019; amended at 44 Ill. Reg. 1961, effective December 31, 2019; amended at 44 Ill. Reg. 3205, effective February 7, 2020; emergency amendment at 44 Ill. Reg. 10193, effective May 27, 2020, for a maximum of 150 days; amended by emergency rulemaking at 44 Ill. Reg. _____, effective _____, for a maximum of 150 days.

SUBPART C: STANDARDS OF CONDUCT FOR LICENSEES

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Section 1800.320..Minimum Standards for Use Agreements
EMERGENCY

- a) In addition to the requirements set forth in the Act, a Use Agreement must satisfy the following:
 - 1) Only be between:
 - A) a licensed terminal operator that, beginning July 15, 2014, is licensed by the Board at the time the Use Agreement is signed; and
 - B) a licensed establishment, licensed truck stop establishment, licensed veterans establishment or licensed fraternal establishment;
 - 2) Contain an affirmative statement that no inducement was offered or accepted regarding the placement or operation of video gaming terminals in a licensed establishment, licensed truck stop establishment, licensed veterans establishment or licensed fraternal establishment;
 - 3) Contain an indemnity and hold harmless provision on behalf of the State, the Board and its agents relative to any cause of action arising from a use agreement;
 - 4) Prohibit any assignment other than from a licensed terminal operator to another licensed terminal operator;
 - 5) Contain a provision that releases the video gaming location from any continuing contractual obligation to the terminal operator in the event that the terminal operator has its license revoked or denied, has its renewal denied, or surrenders its license;
 - 6) State which sales agent, broker or other person, if any, procured the Use Agreement on behalf of the terminal operator;
 - 7) Not provide for automatic renewal in the absence of cancellation;
 - 8) Not be for a length of time exceeding eight years.
- b) Petitions

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- 1) The Board shall decide a petition brought by a terminal operator, licensed video gaming location or other interested party to determine the validity or enforceability of an agreement, or portion of an agreement, that purports to control the location and operation of video gaming terminals . For purposes of this Section an "interested party" is a party asserting legal rights whose enforcement requires, or may be materially and substantially affected by, Board action. Issues the Board has authority to decide under this subsection (b) include, but are not limited to, the following:
 - A) Whether the agreement is one that controls the placement or operation of video gaming terminals.
 - B) When two or more agreements between a licensed video gaming location and one or more terminal operators have overlapping effective dates, which of the agreements is valid during the period of overlap.
 - C) Whether an agreement, or portion of an agreement, complies with the requirements of the Act and this Part.
 - D) Whether a renewal provision in an agreement poses such obstacles against non-renewal, or confusion about the procedures for non-renewal, as to constitute an undue burden on the licensed video gaming location that has entered into the provision.
 - E) Whether a terminal operator or anyone on its behalf has used coercion, deception, or an inducement or incentive in violation of Section 25(c) of the Act or this Part to persuade a licensed video gaming location to enter into or renew an agreement.
 - F) Whether one or more terms of an agreement constitute practices detrimental to the public interest or against the best interests of video gaming.
- 2) Petitions under this subsection (b) shall be in writing and shall include an original and one copy unless submitted by e-mail to an e-mail address designated for that purpose on the Board's website. Any petitioner under this Section shall bear the burden of proof by clear and convincing evidence. A petition shall contain the following:

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- A) The name, current address, ~~and~~ current telephone number and e-mail address of the petitioner.
 - B) Detailed facts and reasons upon which the petitioner relies in arguing that an agreement, or portion of an agreement, is invalid or unenforceable. Petitions may include documentary evidence and affidavits. When the petitioner is petitioning as an interested party, the petition must include detailed facts and reasons upon which the petitioner relies in arguing that it has legal rights whose enforcement requires, or may be materially and substantially affected by, Board action.
 - C) A signature of the petitioner.
 - D) A verification of the petition in the following form:

"The undersigned certifies that the statements set forth in this petition are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he or she verily believes the same to be true."
 - E) A notarization.
- 3) Following receipt of a petition meeting the requirements of subsection (b)(2), the Administrator shall promptly send by certified mail or e-mail to each non-petitioning terminal operator or licensed video gaming location or other interested party named in the petition a complete copy of the petition, including all submitted documents. Non-petitioning parties named in the petition must file a response within 21 days after their receipt of the petition. All responses shall be in writing and shall include an original and one copy unless submitted by e-mail to an e-mail address designated for that purpose on the Board's website. A response shall be deemed filed on the date on which it is postmarked. The response shall contain the following:
- A) The name, current address, ~~and~~ current telephone number and e-mail address of the responding party~~licensee~~.

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- B) A clear and concise statement admitting or denying each of the allegations set forth in the petition.
 - C) For all allegations that the licensee denies, detailed facts and reasons upon which the non-petitioning party relies in arguing that the agreement, or portion of the agreement, is valid or enforceable. Responses may include documentary evidence and affidavits.
 - D) A signature of the licensee.
 - E) A verification of the licensee in the following form:

"The undersigned certifies that the statements set forth in this response are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he or she verily believes the same to be true."
 - F) A notarization.
- 4) The Administrator shall promptly provide a petitioning party with complete copies of all submitted responses meeting the requirements of subsection (c)(2).
 - 5) Before rendering a recommended decision, the Administrator may require the parties to attend a conference to attempt to settle any dispute under this subsection (b)(5).
 - 6) Administrator's Recommended Decision
 - A) Following the expiration of the 21-day response period, the Administrator shall issue a written recommended decision on the validity or enforceability of the contested agreement, or contested portions of the agreement, based on the contents of the petition and any responses.
 - B) The Administrator's recommended decision shall set forth the reasons the Administrator is recommending the granting or denial of the petition. When the petition asserts more than one claim as to

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the validity or enforceability of the agreement, or a portion of the agreement, the Administrator shall separately decide each claim.

- C) Copies of the Administrator's recommended decision shall be served on each party by personal delivery, certified mail or overnight express mail to the party's last known address, or e-mail provided pursuant to Section 1800.140 or subsection (b) (2) (A).

- 7) A petitioning party or party named in a petition brought under this subsection (b) may file exceptions to the recommended decision of the Administrator. The exception shall be filed with the Board no later than 14 days after receipt of the recommended decision. Exceptions shall specify each finding of fact and conclusion of law to which exception is taken. There shall be no oral argument on exceptions.

- 8) Intervention
 - A) Upon timely written application prior to the Administrator issuing a recommendation, the Administrator may, in his or her discretion, permit any interested party to intervene in the petition process, if that party may be materially and adversely affected by a final order arising from the petition.
 - B) In exercising his or her discretion, the Administrator shall consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
 - C) A petition for intervention must meet the same standards as an initial petition or response under subsection (b)(2) or (b)(3). It must also include sufficient facts for the Administrator to find that the intervening party may be materially and adversely affected by a final order arising from the petition.
 - D) Upon making a determination that a party may be permitted to intervene, the Administrator shall provide to the intervenor a copy of the original petition, as well as any responses. The Administrator shall also notify all other parties that the petition to intervene has been granted, and provide those parties with a copy of the petition to intervene.

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- 9) Prior to the Board rendering a decision, the Administrator may require the parties to attend a conference to attempt to settle any dispute under this subsection (b).
 - 10) Any relief given by the Board under this subsection (b) shall be limited to deciding which agreement, or portion of the agreement, is valid for the placement and operation of video gaming terminals in a licensed video gaming location. The Board has the express authority to order a licensed terminal operator to remove its Video Gaming Terminals from a licensed establishment if an agreement, or portion of the agreement, is invalidated. The Board shall not award monetary damages of any kind. Any failure by a party to abide by the Board's decision shall subject the licensee to discipline.
 - 11) Ex Parte Communication Prohibited. No party or its representative shall make any communication directly or indirectly with the Administrator, employees, or members of the Illinois Gaming Board regarding a pending petition that imparts material information or makes a material argument, except upon notice to and opportunity for all parties to participate.
 - 12) Final Board Order
 - A) The Board shall review the entire record, including the petitions filed, the Administrator's recommended decision, and any exceptions filed, and shall render a written order including the bases for its decision.
 - B) Copies of the final Board order shall be served on each licensee by personal delivery, certified mail or overnight express mail to the licensee's last known address.
 - C) A final Board order shall become effective upon personal delivery to a party or upon posting by certified or overnight express mail to the party's last known address.
- c) The Board shall promulgate a standard form for Use Agreements and establish an effective date for its implementation. All new and renewed Use Agreements entered into on or after that effective date shall incorporate the language of the standard form and shall be consistent with the standard form in all respects.

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- d) Unless otherwise indicated, whenever the term "agreement" is used in this Section, it refers to an agreement that purports to control the operation and placement of video gaming terminals.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. _____, effective _____, for a maximum of 150 days)