

This is an amendment to 15.1.2.2 NMAC, 15.1.2.5 NMAC, 15.1.2.6 NMAC, 15.1.2.7 NMAC, 15.1.2.8 NMAC, and 15.1.2.10 NMAC. This rule was renumbered to comply with current NMAC requirements.

15.1.2.2 SCOPE: This rule applies to information provided to the Gaming Control Board under the New Mexico Gaming Control Act and to the State Gaming [F] Representative pursuant to an approved Indian Gaming Compact with the State of New Mexico.

15.1.2.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section [or paragraph].

15.1.2.6 OBJECTIVE: This rule [is intended to] establishes criteria for determining the confidentiality of information and data received by the Gaming Control Board and circumstances under which the Gaming Control Board may disclose confidential information in its possession.

15.1.2.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. “compact” means an approved gaming compact and revenue sharing agreement between a Tribe and the State.

B. “gaming enterprise” means the tribal entity created and designated by the Tribe as having authority to conduct Class III gaming pursuant to a valid gaming compact with the State of New Mexico.

C. “proprietary information” means written processes, data, or other internal records or materials developed by and available exclusively to the owner, the disclosure of which would seriously impair the owner’s operations or its ability to operate or compete against similar operations.

D. “State” means the State of New Mexico.

E. “State Gaming Representative” means the person designated by the Gaming Control Board pursuant to the Gaming Control Act who is responsible for actions of the State set out in the compact.

F. [~~“Tribal Gaming Agency”~~] means the tribal governmental agency that has been identified to the State Gaming Representative as the agency for actions of the Tribe set out in the compact.

~~_____~~ **G. [~~“Tribe”~~]** means any Indian tribe or pueblo located within the State that has entered into an approved gaming compact and revenue sharing agreement with the State.

15.1.2.8 CONFIDENTIAL INFORMATION:

A. Confidential information includes any information, document, or communication that is:

(1) required by law or rules promulgated by the board to be furnished in connection with an application or preliminary application submitted to the board or [which] that may otherwise be obtained by the board in connection with the application;

(2) provided to the members, agents, or employees of the board by a licensee when such information is required to be submitted or disclosed under the law or rules promulgated by the board;

(3) provided to the members, agents, or employees of the board by a governmental agency or an informer; [or]

(4) compiled by the members, agents, or employees of the board from other confidential information, including lists of persons who have been approved for, or denied, work permits by the board; or

(5) obtained or compiled by the board or its agents in the course of an investigation of an applicant or licensee; the information, document or communication remains confidential unless and until disclosure is permitted under the Act.

B. Confidential information does not include:

(1) names and business addresses of applicants or the fact that an applicant has filed an application with the board;

(2) names and business addresses of any and all of an applicant’s parent companies, affiliates, subsidiaries, partners, limited partners, major shareholders owning more than five percent (5%) of an applicant’s stock, trustees, successor trustees, trust beneficiaries, or of any person that controls or is in a position to control or exercise other significant involvement in the operations of the applicant or licensee;

(3) names and business addresses of all officers and key employees of the applicant;

(4) names and business addresses of parties with whom the applicant or licensee contracts or expects to contract to support the operation of gaming establishments, including the names and addresses of landlords owning the premises where gaming will occur;

(5) names and business addresses of manufacturers and distributors with whom the applicant or licensee contracts or expects to contract for the sale, lease, or use of gaming devices;

(6) written order of final board approval or denial of an application and/or any other final action of the board taken on any other matter involving an applicant or licensee, including but not limited to, enforcement actions, investigations, rulings on motions and requests for legal determinations;

(7) legal documents submitted by applicants or licensees, including but not limited to, motions, requests for legal determinations, comments, briefs, notices of appeal, etc.; provided, however, that information contained or attached to such documents that otherwise meets the confidentiality requirements of this section will be treated accordingly pursuant to [s] Subsection A of 15.1.2.8~~[(A)]~~ NMAC and all its subparts above;

(8) documents or information that is available from another state agency, federal agency, or other public source; or

(9) any other information ruled by the board, in its discretion, not to be confidential.

C. The board members, agents, and employees will receive, process, store and maintain all confidential information in a manner and location sufficient to ensure that the confidential information is secure and that access is strictly limited to authorized persons. Only members of the board, its employees, and agents, including persons designated by the board or authorized by law to conduct investigations of applicants and licensees, may have access to the confidential information.

D. Confidential information will be disclosed upon issuance of a lawful order by a court of competent jurisdiction ordering the board to release such information. Absent such an order, confidential information will be disclosed only with the prior written consent of the subject applicant or licensee.

15.1.2.10 INFORMATION PROVIDED UNDER GAMING COMPACTS:

~~[~~ ~~A.~~ ~~Except as otherwise provided in this section, information provided by a Tribe to the State Gaming Representative under a valid gaming compact with the State is not considered confidential when the information relates to gaming operations and the gaming enterprise.~~

~~]~~ ~~B.~~ ~~Trade secrets, information relating to security and surveillance systems, cash handling and accounting procedures, building layout, gaming machine payouts, investigations into alleged violations of laws or regulations, personnel records, and proprietary information regarding the gaming enterprise of the tribe, Class III gaming conducted by the Tribe, or the operation of Class III gaming, are considered confidential information. Such information may not be released without prior written approval of a duly authorized representative of the Tribe. [The foregoing restrictions do not prohibit:~~

~~(1) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;~~

~~(2) the State from disclosing the names of persons, firms, or corporations conducting Class III gaming pursuant to the terms of the valid compact, locations at which such activities are conducted, or the dates on which the activities are conducted;~~

~~(3) publishing the terms of a gaming compact with the State;~~

~~(4) disclosing information necessary to audit, investigate, prosecute or arbitrate violations of any compact or other applicable laws or to defend suits against the State, or information relating to dispute resolution, including documents relating to arbitration and communications between parties to an arbitration or between the parties and the arbitrators;~~

~~(5) complying with subpoenas or court orders issued by courts of competent jurisdiction; or~~

~~(6) disclosing any financial statement or audit furnished to the State Gaming Representative or the state treasurer by the Tribal Gaming Agency pursuant to a compact.]~~