

# National Indian Gaming Commission

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## NOTICE OF VIOLATION

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NOV-18-03

To: Ev Ann White Feather, Tribal Secretary  
Cheyenne River Sioux Tribe  
P.O. Box 590  
Eagle Butte, SD 57625

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Cheyenne River Sioux Tribe (Tribe), located on the Cheyenne River Indian Reservation, and operating the Cheyenne River Sioux Bingo Operation (CRST Bingo), has violated the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and the Tribe's gaming ordinance by failing to submit annual audited financial statements for fiscal year 2017.

2. Authority

Under IGRA and NIGC regulations, the Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman.<sup>1</sup>

3. Applicable Federal Laws and Tribal Ordinance Provisions

- A. IGRA requires an annual audit of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC.<sup>2</sup>
- B. NIGC regulations define "gaming operation" as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses.<sup>3</sup>
- C. NIGC regulations require a tribe to engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year.<sup>4</sup>

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<sup>1</sup> 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

<sup>2</sup> 25 U.S.C. § 2710(b)(2)(C).

<sup>3</sup> 25 C.F.R. § 502.10.

<sup>4</sup> 25 C.F.R. § 571.12(b).

- D. The NIGC regulations further require a tribe to submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s), to the NIGC within 120 days after the end of each gaming operation's fiscal year.<sup>5</sup>
- E. Section 9 of the Cheyenne River Sioux Tribe Gaming Ordinance, approved by the NIGC Chair on April 10, 2018, requires the Tribe to conduct annual independent audits of its gaming operations and to submit the results of those audits to the NIGC within 120 days after the end of each fiscal year of the gaming operation.<sup>6</sup>

#### 4. Role of Independent Audit Report

The submission of the annual independent audit report by a certified public accounting firm is critical to the NIGC's mission to protect the integrity of Indian gaming. A firm's ability to conduct an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principles provides a certain level of assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

#### 5. Circumstances of the Violation

- A. The Cheyenne River Sioux Tribe is a federally recognized Indian tribe with tribal headquarters in Eagle Butte, South Dakota. The Tribe commenced gaming in 1995.
- B. IGRA requires that tribes submit annual audits of each gaming operation.<sup>7</sup> NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year.<sup>8</sup> The NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year.<sup>9</sup> Further,

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<sup>5</sup> 25 C.F.R. § 571.13(a).

<sup>6</sup> See also Cheyenne River Sioux Tribe Gaming Ordinance, Ordinance 53B, § 5 (approved by the NIGC Chair on May 4, 1995) (stating, "The Tribe shall require an independent audit of gaming operations to be conducted annually and the Tribe shall submit the resulting audit reports to the National Indian Gaming Commission.").

<sup>7</sup> 25 U.S.C. § 2710(b)(2)(C).

<sup>8</sup> 25 C.F.R. § 571.12(b).

<sup>9</sup> 25 C.F.R. §§ 571.13.

the Tribe's gaming ordinance requires the Tribe to provide an annual independent audit to the NIGC.<sup>10</sup>

- C. The Tribe operated its gaming operation, CRST Bingo, at 2001 Main Street, Eagle Butte, South Dakota, during part of fiscal year 2017.
- D. CRST Bingo offered Class II gaming.
- E. Based on the most recent financial statements and audit submitted to the NIGC, the fiscal year for CRST Bingo runs from October 1 to September 30. Therefore, the financial statements and audit for CRST Bingo for fiscal year 2017 were due to the NIGC on or before January 28, 2018.
- F. The Tribe failed to submit the fiscal year 2017 financial statements and audit to the NIGC by January 28, 2018.
- G. On February 6, 2018, NIGC Compliance Officer James McKee had a telephone call with the Tribe's legal counsel, Jessica Four Bear, regarding the overdue fiscal year 2017 audit. Ms. Four Bear informed CO McKee that the audit of the gaming operation was complete, but the Tribe was waiting on the CPA firm to complete a tribal audit before submitting the gaming audit.
- H. On February 6, 2018, Region Director Linda Durbin sent a letter to the Tribal Chairman Harold Frazier summarizing CO McKee's discussion with Ms. Four Bear and reminding the Tribe of the late audit. RD Durbin requested updates regarding the completion of the fiscal year 2017 audit.
- I. On April 5, 2018, CO McKee had a telephone call with the Tribe's Administrative Officer, Kenneth Little Thunder, and asked about the status of the late audit. CO McKee sent a follow-up email to Mr. Little Thunder summarizing their conversation on the same day.
- J. On May 3, 2018, NIGC Chairman Jonodev Chaudhuri sent a letter to Tribal Chairman Harold Frazier informing the Tribe that it had satisfied the terms of the settlement agreement between the Tribe and the NIGC Chair for the Tribe's failure to submit several years of audited financial statements (SA-16-2-02). The Chair emphasized that the Tribe was still required to comply with IGRA, NIGC regulations, and the Tribe's gaming ordinance, and the satisfaction letter did not have any bearing on the Tribe's failure to submit its fiscal year 2017 audit.
- K. On June 6, 2018, the NIGC Compliance Director Dustin Thomas issued a Letter of Concern to Tribal Chairman Frazier regarding the late fiscal year

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<sup>10</sup> Cheyenne River Sioux Tribe Gaming Ordinance, § 9 (approved by the NIGC Chair on April 10, 2018); *see also* Cheyenne River Sioux Tribe Gaming Ordinance, Ordinance 53B, § 5 (approved by the NIGC Chair on May 4, 1995).

2017 audit. Director Thomas asked the Tribe to submit the late audit or a corrective action plan by June 20, 2018.

- L. The Tribe did not respond with either the audit or a plan by June 20, 2018.
- M. On June 29, 2018, RD Durbin called the Tribal Chairman's office. RD Durbin was informed that Tribal Chairman Frazier was out of the office on travel.
- N. On July 3, 2018, RD Durbin sent the June 6, 2018 Letter of Concern to Tribal Treasurer Benita Clark.
- O. On July 16, 2018, Jessica Four Bear, now the Executive Director of the Cheyenne River Economic Development Corporation – the tribal entity that began managing CRST Bingo in June 2018– sent an email to Director Thomas. Ms. Four Bear stated the fiscal year 2017 audit was not yet completed, but asked whether the Tribe could do anything to come into compliance.
- P. On July 30, 2018, Ms. Four Bear sent an email to the NIGC and attached a corrective action plan addressed to Director Thomas. In the corrective action plan, Ms. Four Bear stated the fiscal year 2017 audit was in progress and would be available within three to four weeks. Also in the corrective action plan, Ms. Four Bear stated that the Tribe planned to reopen CRST Bingo during the Tribe's annual fair and Labor Day celebrations between August 30 and September 3, 2018. Based on observations by NIGC staff and conversations with tribal officials, the Tribe had suspended gaming operations at the CRST Bingo in approximately September 2017.
- Q. On August 7, 2018, CO McKee had a telephone call with the Ms. Four Bear. Ms. Four Bear stated the fiscal year 2017 audit would be completed "any day now." Ms. Four Bear also indicated that the Tribe still planned to offer gaming at CRST Bingo over the Labor Day weekend.
- R. On August 27, 28, and 31, 2018, RD Durbin called and left several messages for Ms. Four Bear regarding the late audit and the potential re-opening for the Labor Day weekend. Ms. Four Bear did not respond to RD Durbin's calls and messages.
- S. On September 6, 2018, Ms. Four Bear informed CO McKee by email that the fiscal year 2017 audit would be done "any day now."
- T. As of the date of this Notice of Violation, the Tribe has not submitted the fiscal year 2017 audit and financial statements to the NIGC.

6. Measures Required to Correct the Violation

To correct the violation, the Tribe must submit the fiscal year 2017 audit and financial statements by November 2, 2018. This amount of time is reasonable given the Tribe's July 30, 2018 corrective action plan, which stated the fiscal year 2017 audit was in progress and would be submitted within three to four weeks from the date of the corrective action plan. The Tribe must submit the audit and financial statements by postal mail or email to the NIGC at:

NIGC Attn: Financial Statements  
1849 C Street NW  
Mail Stop #1621  
Washington, DC 20240

or

financials\_AUPfilings@nigc.gov

7. Appeal

The Tribe may appeal this Notice of Violation within 30 days of service. The Tribe may either 1) request a hearing before a Presiding Official under 25 C.F.R. Part 584, or, 2) may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions pursuant to 25 C.F.R. Part 585. In any event, an appeal of this Notice of Violation should be submitted to the NIGC at the following address:

NIGC Attn: Office of General Counsel  
1849 C Street NW  
Mail Stop #1621  
Washington, DC 20240

The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must refer to this Notice of Violation.

If the Tribe elects to have a hearing, the Tribe must file a brief with the Commission (within ten days after filing a notice of appeal) which states with particularity the relief desired and the grounds in support including, when available, supporting evidence in the form of affidavits. If the Tribe prefers a closed hearing, it must include, with the brief, a request to do so and why. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the brief. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony. The Tribe may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

8. Fine-Submission of Information

The violation cited above may result in the assessment of a civil fine against the Tribe in an amount not to exceed \$50,276 per violation per day. The Tribe may submit written information about the violation to the Chairman within 15 days after service of this NOV (or such longer period as the Chairman may grant for good cause).<sup>11</sup> The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 24<sup>th</sup> day of October, 2018.



Jonodev O. Chaudhuri  
Chairman

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<sup>11</sup> 25 C.F.R. § 575.5(a).

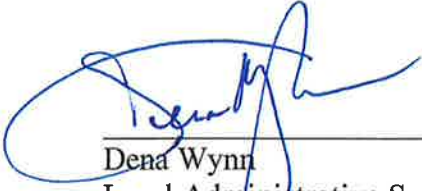
**Certificate of Service**

I, Dena Wynn, certify that this **NOV-18-03** was sent by certified U.S. mail, return receipt requested, on this 24<sup>th</sup> day of October, 2018 to:

Ev Ann White Feather, Tribal Secretary  
Cheyenne River Sioux Tribe  
P.O. Box 590  
Eagle Butte, SD 57625

Courtesy Copy to:

Harold Frazier, Chairman  
Cheyenne River Sioux Tribe  
P.O. Box 590  
Eagle Butte, SD 57625  
haroldcfrazier@yahoo.com



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Dena Wynn  
Legal Administrative Specialist  
National Indian Gaming Commission