

NATIONAL INDIAN GAMING COMMISSION

NOTICE OF VIOLATION

NOV-16-01

To: Leonard M. Harjo, Principal Chief
Seminole Nation of Oklahoma
P.O. Box 1498
Wewoka, OK 74884

Terry Hale, Interim Chief Gaming Regulator and Agent for Service
Seminole Nation Gaming Agency
2015 W. Wrangler Blvd.
Seminole, OK 74868

A. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC or Commission) hereby gives notice that the Seminole Nation of Oklahoma (Respondent or Nation), located in Wewoka, OK, has violated NIGC regulations and the Nation's gaming ordinance by failing to ensure that Tribal Internal Control Standards (TICS) are established and implemented that provide a level of control equal to or exceeding the applicable standards set forth in NIGC regulations.

B. Authority

Under the Indian Gaming Regulatory Act and NIGC regulations, the Chairman may issue a Notice of Violation 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. 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

C. Applicable Federal Laws and Tribal Ordinance Provisions

1. Two general purposes of the IGRA are:

- a. to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operation and players; and
- b. to declare that the establishment of federal standards for gaming are necessary to meet Congressional concerns regarding gaming

and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. §§ 2702(2) and (3).

2. In September 2012¹ the NIGC promulgated Minimum Internal Control Standards (MICS) for Class II gaming. 25 C.F.R. Part 543. Internal controls are the primary procedures used to protect the integrity of casino funds and games and are a vitally important part of properly regulated gaming. Inherent in gaming operations are concerns related to customer and employee access to cash, questions of fairness of games, and the threat of collusion to circumvent controls. The MICS promote IGRA's purposes by ensuring that a tribe is the primary beneficiary of the gaming operation and protecting gaming as a means of tribal revenue.
3. The MICS require that the Seminole Nation Gaming Agency (SNGA), the Nation's gaming regulatory body, ensure that TICS are both established and implemented that provide a level of control that equals or exceeds those set forth in the NIGC MICS. 25 C.F.R. § 543.3(b).
4. In addition, the Seminole Tribal Gaming Ordinance requires the Nation's Chief Tribal Regulator to issue regulations to implement TICS. *Seminole Nation of Oklahoma Tribal Ordinance* No. TO-2011-11, Sections 105(a)(4) and 107(b)(5).
5. NIGC regulations also require that the Nation's gaming operations develop a System of Internal Control Standards (SICS) to implement the TICS, as approved by the SNGA. 25 C.F.R. § 543.3(c). Thus, both the SNGA and the operations have an obligation to ensure the implementation of the TICS.
6. SICS is defined as “[a]n overall operational framework for a gaming operation that incorporates principles of independence and segregation of function, and is comprised of written policies, procedures, and standard practices based on overarching regulatory standards specifically designed to create a system of checks and balances to safeguard the integrity of a gaming operation and protect its assets from unauthorized access, misappropriation, forgery, theft, or fraud.” 25 C.F.R. § 543.2.
7. While the MICS detail hundreds of standards for internal controls that cover many aspects of a gaming operation, the following specific standards are applicable here:
 - a. accounting controls must be established and procedures implemented to safeguard assets and ensure that each operation prepares accurate, complete, legible, and permanent records of all

¹ The MICS were amended on Oct. 25, 2013. 78 FR 63874.

transactions pertaining to gaming revenue and activities for operational accountability. 25 C.F.R. § 543.23(b)(1);

- b. the Nation's TICS must require that documentation such as checklists, programs, and reports be prepared to evidence all internal audit work and that follow-up be performed regarding compliance with TICS, SICS, and MICS, including all instances of noncompliance. 25 C.F.R. § 543.23(c)4;
- c. the SNGA's internal audit department must document the performance of the revenue audit procedures, the exceptions noted, and the follow-up of all audit exceptions. 25 C.F.R. § 543.24(c);
- d. internal controls must include adequate backup and data recovery procedures. 25 C.F.R. § 543.20(j)(1)-(2). In addition, recovery procedures must be tested at specific intervals at least annually and results documented. Backup data files and recovery components must be managed with at least the same level of security and access controls as the system for which they are designed to support. 25 C.F.R. § 543.20(j)(3)-(4);
- e. at least monthly for computerized player tracking systems, the gaming operations must perform the following procedures: review authorization documentation for all manual point additions/deletions for propriety; review exception reports, including transfers between accounts; and review documentation related to access to inactive and closed accounts. 25 C.F.R. § 543.24(d)(4)(ii)(A)-(C);
- f. the Nation must establish and implement policies and procedures for the verification of the receipt, issuance, and use of controlled inventory, including but not limited to keys and pre-numbered and/or multi-part forms, on at least a monthly basis. 25 C.F.R. § 543.24(d)(10)(i);
- g. at least monthly, the gaming operations must review variances related to bingo accounting data which must include, at a minimum, variances noted by the Class II system for cashless transactions in and out, external bonus payouts, vouchers out, and coupon promotions out. The operations must investigate and document any variance noted. 25 C.F.R. § 543.24(d)(1)(iii);
- h. the operations must ensure the monthly footing of a randomly selected sample of redeemed bingo vouchers and the tracing of the totals to the totals recorded in the voucher systems and to the

amount recorded in the applicable cashier's accountability document. 25 C.F.R. § 543.24(d)(1)(v);

- i. at least monthly, the gaming operations must review promotional payments, drawings, and giveaway programs to verify payout accuracy and proper accounting treatment in accordance with the rules provided to patrons 25 C.F.R. § 543.24(d)(4)(i);
- j. the SNGA must perform an internal audit relative to Title 31. TICS at Section 129(A)(1);
- k. the gaming operations must implement procedures to safeguard the integrity of technological aids to the play of bingo during installations, operations; modifications; removal, and retirements that include maintaining initial meter readings related to installed game servers and player interfaces. 25 C.F.R. § 543.8(g)(3)(i)(I);
- l. the operations must maintain sufficient installation testing documentation that includes testing of: communication with the Class II gaming system, the accounting system, and the player tracking system; currency and vouchers to bill acceptors; voucher printing, meter incrementation, and pay tables for verification; player interface denominations; all buttons to ensure they are operational and properly programmed; system components; and locks. 25 C.F.R. § 543.8(g)(5)(i)(A)-(K);
- m. controls must be established and procedures implemented to verify that patrons are paid the appropriate amount after a voucher is verified. 25 C.F.R. § 543.8(i)(1)(ii);
- n. the gaming operations must comply with a minimum bankroll formula to ensure they maintain cash or cash equivalents in an amount sufficient to satisfy obligations to patrons as they are incurred. 25 C.F.R. § 543.18(c)(4);
- o. the cage and vault inventories must be counted independently by at least two agents who must make individual counts to compare for accuracy and to maintain individual accountability. 25 C.F.R. § 543.18(c)(3);
- p. outside agents may be granted remote access for system support, provided that each access session is documented and maintained at the place of authorization. 25 C.F.R. § 543.20(h)(1)(i)-(vii) and (2);
- q. the surveillance system must monitor and record a general overview of activities occurring in each cage and vault area with sufficient

- clarity to identify individuals within the cage and patrons and staff members at counter areas and to confirm the amount of each cash transaction. 25 C.F.R. § 543.21(c)(4)(i);
- r. the surveillance system must monitor with sufficient clarity a general overview of all areas where cash or cash equivalents may be stored or counted. 25 C.F.R. § 543.21(c)(5)(i);
 - s. gaming operations must prepare accounting records on a double-entry system of accounting, maintaining detailed subsidiary records, compare recorded accountability for assets to actual assets at periodic intervals, and take appropriate action with respect to any variances. 25 C.F.R. § 543.23(b)(2)(ix);
 - t. procedures must be implemented to, at least monthly, review variances related to bingo accounting data in accordance with an established threshold, which must include, at a minimum, variance(s) noted by the Class II gaming system for cashless transactions in and out, external bonus payouts, vouchers out and coupon promotions out and to investigate and document any variance noted. 25 C.F.R. § 543.24(d)(1)(iii);
 - u. at least monthly, the gaming operations must review statistical reports for any deviations from the mathematical expectations exceeding a threshold established by the TGRA for bingo and investigate and document any deviations compared to the mathematical expectations required by 25 C.F.R. § 547.4. 25 C.F.R. § 543.24(d)(1)(iv);
 - v. at least annually, all computerized player tracking systems must be reviewed by agent(s) independent of the individuals that set up or make changes to the system parameters. The review must be performed to determine that the configuration parameters are accurate and have not been altered without appropriate management authorization, and test results must be documented and maintained. 25 C.F.R. § 543.24(d)(4)(iii); and
 - w. at least quarterly, unannounced currency counter and currency counter interface (if applicable) tests must be performed, and the test results documented and maintained. All denominations of currency and all types of cash out tickets counted by the currency counter must be tested. 25 C.F.R. § 543.24(d)(8)(i).

D. Circumstances of the Violation

1. The Nation is a federally recognized Indian Tribe with tribal headquarters in Wewoka, Oklahoma.
2. The Nation operates three facilities at which it offers both Class II and Class III gaming: the Seminole Nation Casino in Seminole, OK; the River Mist Casino in Konowa, OK; and the Wewoka Trading Post Casino in Wewoka, OK.
3. Between 1999 and 2002, the Nation: operated Class III gaming without a compact;² continued play of the games despite the issuance of 3 warning notices, a notice of violation, a proposed civil fine assessment, and a temporary closure order to stop the play of Class III games; and further expanded the illegal gaming, leading to another notice of violation, proposed civil fine assessment, and a temporary closure order of all of the Nation's facilities.
4. The Nation appealed the notices of violation, proposed civil fine assessments, and the temporary closure orders to the Commission. In May 2002, the Commission affirmed the notices of violation and closure orders, which the Nation appealed to federal court. In June 2003, the Commission assessed a combined civil fine in the amount of \$11,276,000.00.
5. In December 2003, the Nation and the Commission reached a settlement in the federal suit. As part of that agreement, the Nation agreed to pay the civil fine. The Nation makes quarterly civil fine payments of 10% of its net gaming revenue toward the satisfaction of the fine.
6. On January 20, 2012, the Nation requested that the Commission waive the balance remaining on the civil fine.³
7. By letter dated November 14, 2012, the Commission declined to waive the fine, indicating that "the AUP reports from the past several years show a pattern of high risk practices that are noncompliant with NIGC regulations."
8. The Commission indicated, however, that it would waive the remaining fine balance provided the Nation demonstrated, for a period of three years that it had: corrected the significant findings noted in the AUP reports for fiscal years 2011 and 2012; and demonstrated a level of internal control oversight that ensures compliance with NIGC regulations.

² The Nation now has a tribal-state compact for the lawful operation of Class III gaming.

³ This was the fifth time the Nation petitioned the Commission for waiver or reduction of the civil fine. The details of the prior requests are not relevant here.

9. Less than a year later, on June 13, 2013, the Nation requested a reduction or waiver of the remaining balance, arguing that the balance would be fully paid within the three year time frame.
10. The Commission agreed to stay payment of the civil fine and review whether the Nation corrected the significant findings from the 2011 and 2012 AUP reports and whether it could otherwise demonstrate compliance with NIGC regulations.
11. Toward that end, between mid-2013 and early 2015, NIGC staff reviewed the Nation's internal audit function for the fiscal years ending September 30, 2012, September 30, 2013, and September 30, 2014⁴, the consolidated audited financial statements and the AUP reports for the three gaming operations for those years, management responses to the AUP reports, internal audit plans of action, and 6-month review follow up reports.
12. The purpose of our review was to determine if the Nation corrected the significant findings noted in the AUP reports for the fiscal years ended September 30, 2011, and September 30, 2012, and to assess the overall effectiveness of the Nation's internal audit process to determine the level of compliance by the gaming operations with the adopted TICS. As part of this review we assessed the Nation's internal audit function for fiscal years 2012, 2013, and 2014.
13. The most significant and troubling finding, with respect to all three gaming operations, was that NIGC staff was unable to determine whether appropriate follow-up was conducted, and whether necessary measures were taken to correct the significant AUP findings from 2011 and 2012, because basic documentation required by 25 C.F.R. § 543.23(c)(4) to be maintained was not kept and follow-up regulatory requirements were not implemented, as discussed below.
14. In particular, NIGC staff found that the Nation's internal audit department failed to adequately produce documentation to evidence the work it performed or the conclusions it reached including the documents examined, testing procedures performed, or the persons interviewed for the completion of routine audit checklists. *See* 25 C.F.R. § 543.23(c)(4).
15. The internal audit function was not able to provide sufficient audit evidence to determine whether the gaming operations were in substantial compliance with the TICS. NIGC provided on-site training to the Nation's internal audit staff the week of May 27, 2014, covering topics for achieving an effective internal audit function including: adequate

⁴ The internal audit process represents a vital element in the protection of tribal assets, the preservation of operational integrity, and the evaluation and improvement of effective risk management, control, and governance practices.

documentation; testing procedures; audit checklist completion; report writing; audit file maintenance; internal audit requirements; and follow-up audit procedures. In August 2014, NIGC staff conducted on-site training for the Nation on the minimum bankroll formula calculation.

16. NIGC staff returned the week of January 12, 2015, to review the internal audit function for fiscal year 2014 and discovered that despite the training provided, the Nation still did not maintain sufficient audit evidence to determine whether the gaming operations were in substantial compliance with the TICS.
17. On July 24, 2015, I wrote to Willis Deatherage, SNGA Chairman and expressed grave concerns about the Nation's ability to adequately protect its gaming operations.
18. Between September 8 and 25, 2015, NIGC audit staff conducted an on-site Internal Control Assessment and an internal audit review of the Nation's three gaming operations.
19. The ICA was a study and evaluation of the system of internal controls specific to the conduct and recognition of gaming related transactions governing cash handling, documentation, game integrity, and auditing of the three gaming operations. The objective was to observe and test to measure compliance with NIGC MICS. The examination was made for the time period beginning February 1, 2015, through July 31, 2015, (the testing period). The results continued to show significant areas of non-compliance.
20. A review of the internal audit function continued to show that the Nation was unable to produce sufficient audit evidence to determine whether the three gaming operations were in substantial compliance with the TICS. Moreover, at least some of the significant findings discovered by NIGC staff should also have been identified by the Nation's internal audit staff; yet none were. In addition, the internal audit work papers and audit files were still not adequately prepared to evidence the internal audit work performed, including all instances of noncompliance. The internal audit department neither properly documented the conclusions reached, nor the resolution of all exceptions.
21. During the testing period, the SNGA had neither established TICS regarding, nor had the three operations implemented SICS for a data recovery policy as required by 25 C.F.R. § 543.20(j). As a result, data recovery procedures are not tested on an annual basis, with documentation of results.

22. During the testing period, the SNGA had not established TICS, nor had the three operations implemented SICS for computerized player tracking systems to ensure the review of authorization documentation for all manual point additions/deletions for propriety; exception reports, including transfers between accounts; and documentation related to access to inactive and closed accounts, in violation of 25 C.F.R. § 543.24(d)(4)(ii)(A)-(C).
23. During the testing period, the SNGA had not established TICS, nor had the three operations implemented SICS for the verification of the receipt, issuance, and use of controlled inventory, including but not limited to keys, and pre-numbered and/or multi-part forms, on at least a monthly basis. 25 C.F.R. § 543.24(d)(10)(i).
24. During the testing period, the three operations had not implemented SICS for the review of variances noted by the “Class II system that include cashless transactions in and out, external bonus payouts, vouchers out, and coupon promotions out.” 25 C.F.R. § 543.24(d)(1)(iii).
25. During the testing period, the three operations had not implemented SICS to ensure the monthly footing of a randomly selected sample of redeemed bingo vouchers and the tracing of the totals to the totals recorded in the voucher systems and to the amount recorded in the applicable cashier's accountability document. 25 C.F.R. § 543.24(d)(1)(v).
26. During the testing period, the three operations were not performing monthly reviews of promotional payments in accordance with the rules provided to patrons. 25 C.F.R. § 543.24(d)(4)(i).
27. During the testing period, the three gaming operations did not maintain records of the initial meter readings related to installed game servers and player interfaces. 25 C.F.R. § 543.8(g)(3)(i)(I).
28. During the testing period, the three gaming operations did not maintain sufficient installation testing documentation that included testing of communication with the Class II gaming system, the accounting system, and the player tracking system; currency and vouchers to bill acceptors; voucher printing, meter incrementation, pay tables for verification; player interface denominations; all buttons to ensure they are operational and properly programmed; system components; and locks. 25 C.F.R. § 543.8(g)(5)(i)(A)-(K).
29. During the testing period, the Seminole Nation Casino and Wewoka Trading Post's⁵ policy of tickets expiring in 24 hours is contrary to the

⁵ The Report of Audit Exceptions for each gaming operation incorrectly states that this violation was noted at all casinos. It was not noted at River Mist.

redemption policy stated on the tickets and in the ticket validation system. It was discovered that “expired” cash-out tickets totaled more than \$75,000 between the two operations for fiscal year 2015. As a result, the operations are not honoring valid vouchers and not ensuring patrons are paid the appropriate amount, a business practice that calls into question game integrity. 25 C.F.R. § 543.8(i)(1)(ii).

30. During the testing period, for all three operations the minimum bankroll calculation dated June 30, 2015, was inaccurate. Currency maintained in gaming areas other than the cage were not included and recorded. In addition, the Seminole Nation Casino had a deficiency for its next business day cash requirement. 25 C.F.R. § 543.18(c)(4).
31. During the testing period, the River Mist and Wewoka Trading Post operations’ vault inventories were not counted independently by at least two agents. It was observed that vault personnel counted their funds but no other employee performed a second count. The manager on duty signed the vault inventory control documentation but did not perform an actual independent count. 25 C.F.R. § 543.18(c)(3).
32. During the testing period, it was determined that documentation for each remote access system support session is not maintained at the place of authorization. The Information Technology Department lacks oversight and system access control over gaming machine vendor remote access sessions. Consequently, vendors retain direct connectivity into their respective gaming servers. Furthermore, Information Technology has no insight into reporting or monitoring of gaming system performance and receives no report generations from each vendor. 25 C.F.R. § 543.20(h)(1)(i)-(vii) and (2).
33. During the testing period, the surveillance system at River Mist⁶ did not monitor and record a general overview of activities occurring in each cage and vault area with sufficient clarity to confirm the amount of each cash transaction. 25 C.F.R. § 543.21(c)(4)(i).
34. During the testing period, the surveillance system at River Mist⁷ did not monitor and record a general overview of all areas where cash or cash equivalents may be stored or counted. 25 C.F.R. § 543.21(c)(4)(i).
35. During the testing period, a comparison of the recorded accountability of assets to actual assets at periodic intervals was not completed as required at the three operations. 25 C.F.R. § 543.23(b)(2)(ix).

⁶ The surveillance function was not tested at Seminole Nation Casino or Wewoka Trading Post.

⁷ The surveillance function was not tested at Seminole Nation Casino or Wewoka Trading Post.

36. During the testing period, the review of statistical reports for any deviations from the mathematical expectations exceeding a threshold was not completed on a monthly basis as required. 25 C.F.R. § 543.24(d)(1)(iv);
36. During the testing period, an annual review of the computerized player tracking system parameters to ensure they are accurate and have not been altered was not completed by agent(s) independent of the individuals that set up or make changes to the system parameters. 25 C.F.R. § 543.24(d)(4)(iii).
37. Four quarterly unannounced testing procedures were not performed on the drop and count function for the fiscal year ending September 30, 2015. 25 C.F.R. § 543.24(d)(8)(i).
38. Between May 2013 and September 2015, NIGC staff provided over 1700 hours of on-site training and technical assistance to the Nation.
39. On February 25, 2016, I and other NIGC representatives addressed a meeting of the Seminole Nation Tribal Council in Seminole, OK. At that time I expressed that I had substantial concerns about the ongoing lack of compliance with internal control standards at the Nation's three gaming facilities, as well as concerns about the Nation's regulatory oversight of these facilities. Some of the specific violations set forth herein were discussed at that meeting and I was clear that this NOV was the probable next step.
40. The above described violations indicate that the Nation has not met the objectives of providing reasonable assurances that: the gaming operations are in compliance with all applicable tribal, state, and federal laws and regulations; the assets are adequately safeguarded; and the integrity of the gaming operations are preserved.

E. Measures and Time Required to Correct the Violation

As detailed above, the NIGC has expended a substantial amount of time and effort over the last several years to assist the Nation in correcting these violations. I am therefore not confident that additional time will result in substantial compliance. More importantly, the more time passes, the less confidence I have that controls are in place at the Nation's gaming operations adequate to ensure that the Nation is the primary beneficiary of the gaming operations and that gaming is conducted fairly and honestly by both the operations and players.

NIGC regulations at 25 C.F.R. § 573.3(a)(4) require a reasonable amount of time be allowed to make corrections following an NOV. The Nation has been aware of the internal audit areas of non-compliance for several years. The NIGC advised

the Nation of the results of the ICA by letter dated January 28, 2016. Thus, thirty days from the date of service of this NOV is reasonable. The Nation has until **June 19, 2016** to bring the three gaming operations and the SNGA into substantial compliance by establishing and implementing all MICS, TICS, and/or SICs discussed herein. Failure to do so could result in a temporary closure order. 25 C.F.R. § 573.4 (a) (1)(i).

F. Appeal


Within thirty (30) days after service of this Notice of Violation, the Nation may appeal to the full Commission. The Nation may request a hearing under 25 C.F.R. Part 584, or 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 under 25 C.F.R. Part 585. In either event, a notice of appeal shall be submitted to the National Indian Gaming Commission, c/o DOI, 1849 C Street, NW, MS# 1621, Washington, DC 20240. Please also provide a copy via email to maria_getoff@nigc.gov. The Nation has a right to assistance of counsel in such an appeal. A notice of appeal must reference this NOV.

If the Nation elects to have a hearing, within ten (10) days after filing a notice of appeal, it must file with the Commission a brief that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. 25 C.F.R. § 583 (b)(2). If the Nation wishes to present oral testimony or witnesses at the hearing, it 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, whether a closed hearing is requested and why. 25 C.F.R. § 584.3(b).

G. Fine-Submission of Information

The violation cited above may result in the assessment of a civil fine against Respondent in an amount not to exceed \$25,000 per violation per day. Under 25 C.F.R. § 575.5(a), the Nation may submit written information about the violation to the Chairman within fifteen (15) days after service of this NOV (or such longer period as the Chairman may grant for good cause). 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 20th of May, 2016

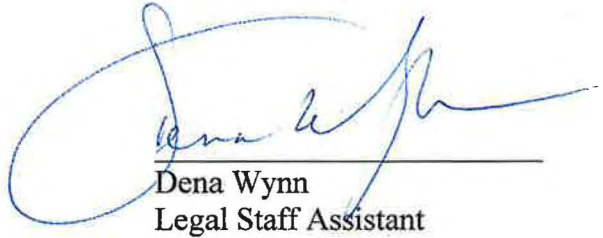

Jonodev O. Chaudhuri
Chairman

Certificate of Service

I certify that this **Notice of Violation** was sent by facsimile transmission and certified U.S. mail, return receipt requested, on this 20th day of May, 2016 to:

Leonard M. Harjo, Principal Chief
Seminole Nation of Oklahoma
P.O. Box 1498
Wewoka, OK 74884

Terry Hale, Interim Chief Gaming Regulator and Agent for Service
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Dena Wynn
Legal Staff Assistant