

## The Supplemental Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by further modifying the size of the Class D airspace area at Santa Monica Municipal Airport, Santa Monica, CA, to accommodate IFR aircraft departing and arriving at the airport. The airspace would be increased from a 2.7-mile radius to a 4-mile radius of the airport, leaving the extension to the northeast the same as the NPRM. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database. Expanding the current Santa Monica Municipal Airport Class D airspace would reduce those areas that pose a high collision risk to low level commercial, general aviation, military and helicopter operations.

Class D airspace designations are published in paragraph 5000, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the

scope of that authority as it would modify controlled airspace at Santa Monica Municipal Airport, Santa Monica, CA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 5000 Class D airspace.*

\* \* \* \* \*

#### AWP CA D Santa Monica, CA [Modified]

Santa Monica Municipal Airport, CA  
(Lat. 34°00'57" N., long. 118°27'05" W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4-mile radius of the Santa Monica Municipal Airport and within 1.5 miles each side of the 047° bearing of the Santa Monica Airport extending from the 4-mile radius to 4.6 miles northeast of the airport, excluding that airspace within the Los Angeles, CA, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on June 17, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–15133 Filed 6–24–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Part 502

#### Electronic One Touch Bingo System

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Request for Public Comment.

**SUMMARY:** The National Indian Gaming Commission (NIGC) is seeking comment on a proposed reinterpretation of an agency decision regarding the classification of server based electronic bingo system games that can be played utilizing only one touch of a button ("one touch bingo"). The proposed reinterpretation is in response to questions the NIGC received from the regulated community and the public about whether one touch bingo is a Class II or Class III game.

**DATES:** The agency must receive comments on or before August 26, 2013.

**ADDRESSES:** You may submit comments to the Commission by any one of the following methods, but please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to:* [reg.review@nigc.gov](mailto:reg.review@nigc.gov).

- *Mail comments to:* National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.

- *Hand deliver comments to:* 1441 L Street NW., Suite 9100, Washington, DC 20005.

- *Fax comments to:* National Indian Gaming Commission at 202–632–0045.

**FOR FURTHER INFORMATION CONTACT:** Michael Hoenig, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: 202–632–7009; email: [reg.review@nigc.gov](mailto:reg.review@nigc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

This notice is directed to the public in general and may be of interest to a wide range of parties, including, but not limited to, tribal gaming operations, tribal gaming regulators, and tribal, state, and local governments. The NIGC is inviting interested parties to participate in this proposed reinterpretation by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposal.

## II. Background

The NIGC has received several questions from the regulated community regarding the status of one touch bingo as a Class II or a Class III game pursuant to the Indian Gaming Regulatory Act (IGRA). In an electronic one touch bingo game, the player inserts money into the gaming machine, which is connected to other bingo machines in an electronically linked bingo system, and presses a button once to play a game of bingo. This, according to prior NIGC Office of General Counsel legal opinions and a Chairman's decision on a game-specific tribal gaming ordinance, does not constitute Class II bingo because it does not require players to participate in the bingo game by taking further action to cover the numbers on the cards.

In 2008, the Metlakatla Indian Community submitted an amendment to its tribal gaming ordinance which defined Class II gaming as including one touch bingo. Specifically, the Community set forth the following definition: "Class II gaming includes an electronic, computer or other technologic aid to the game of bingo that, as part of an electronically linked bingo system, assists the player by covering, without further action by the player, numbers or other designations on the player's electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player." Chairman Hogen disapproved the ordinance amendment based on this definition. The Chairman's decision (Metlakatla Decision or Decision) provided a detailed explanation of the game of bingo and the elements that must be present for it to be a Class II game. According to the Decision, the game of bingo under IGRA has certain specific, essential elements, including the requirement that a player cover the drawn numbers on a bingo card and that the game be won by the first person to do so. 25 U.S.C 2703(7)(A)(i)(II) and (III). The Chairman reasoned that inherent in the "first person covering" language is an element of competition—namely, multiple players competing with one another to be the first to cover a particular pattern. According to the Metlakatla Decision, that competition does not exist in a one touch bingo game. Without the element of competition through player participation, then, the Decision concluded that one touch bingo does not meet the requirements of IGRA's *Class II gaming* definition.

The Metlakatla Decision also concluded that one touch bingo is not a Class II "game similar to bingo." The

Decision reasoned that, because one touch bingo does not include the requisite element of competition, it cannot meet the NIGC's regulatory definition of *other games similar to bingo*, which requires the game to "permit players to compete against each other." Finally, the Decision determined that allowing the game system, rather than the player, to "cover" the bingo card incorporates all characteristics of the game of bingo into an electronic machine and system, and thereby renders one touch bingo a Class III electronic facsimile of a game of chance.

The Commission, however, finds that the more reasonable interpretation of IGRA's definition of Class II gaming leads the conclusion that one touch bingo is a Class II bingo game. The NIGC proposes to reinterpret the position regarding one touch bingo as set forth in the Metlakatla Ordinance disapproval and is seeking comment on this proposal. The NIGC believes that this proposed reinterpretation is more in keeping with IGRA's definition of bingo and will bring clarity to the industry.

## III. Summary of Proposed Reinterpretation

Pursuant to IGRA, Class II bingo has three elements. First, it must be played for prizes, including monetary prizes, with cards bearing numbers or other designations. Next, the holder of the card must cover such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined. Finally, the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards. 25 U.S.C. 2703(7)(A)(i)(I)–(III).

One touch bingo meets IGRA's statutory requirements for a game of bingo. The type of one touch game at issue here is played for prizes, usually money, on a card bearing numbers or symbols. It also satisfies IGRA's second element that "the holder of the card covers [the] numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined." In one touch bingo, the player covers the numbers or designations when drawn. That step is achieved by the assistance of a machine via the first, and only, touch of the button. Finally, the game meets the third element. The machine assists the player in being the first person to cover the designated arrangement, and the game is won by the first person to cover the pre-designated winning pattern in the electronically linked bingo system.

The Ninth Circuit Court of Appeals has held that the 3 elements of IGRA and NIGC regulations for bingo are all

that the law requires for Class II bingo. *United States v. 103 Elec. Gambling Devices*, 223 F.3d 1091, 1096 (9th Cir. 2000) ("IGRA's three explicit criteria, we hold, constitute the sole legal requirements for a game to count as class II bingo"); see also *United States v. 162 MegaMania Gambling Devices*, 231 F.3d 713, 719 (10th Cir. 2000) (finding that Section 2703(7) sets forth 3 explicit criteria for classification of Class II). Further, the court in *103 Electronic Gambling Devices* held that "there is nothing in IGRA or its implementing regulations . . . that requires a player to independently locate each called number on each of the player's cards and manually 'cover' each number independently and separately. The statute and the implementing regulations merely require that a player cover the numbers without specifying how they must be covered." *United States v. 103 Elec. Gambling Devices*, *supra* at 18.

Thus, the previous interpretation's requirement that the cover of the bingo card be done manually by the player through an additional pressing of a button is an additional requirement not mandated by the statute. Player participation in an electronically linked one touch bingo game still exists and players are actively and actually participating in the game. Whether a player presses a button one time or two, the player is engaging with the machine, participating in the bingo game, and competing with fellow players on the electronically linked bingo system.

Likewise, in one touch bingo, the possibility that more than one player can simultaneously get "bingo" does not conflict with IGRA's requirement that the game be won by "the first person to cover." In *United States v. 162 Megamania Gambling Devices*, 231 F.3d 713 (10th Cir. Okla. 2000), the United States sought to seize bingo machines operated by various Oklahoma tribes for Johnson Act violations. The government argued, in part, that MegaMania was a Class III game "because a player does not have to be the first player to cover the designated pattern of numbers to win." *Id.* at 721.

In response, the 10th Circuit Court of Appeals underscored the lower court determination that "nothing in the Gaming Act or regulations prohibits more than one winner" and held that "the language in [IGRA] concerning the 'first person' to win is not limited to a straight-line game and should not be read in isolation from the traditional variations of bingo that allow interim prizes and simultaneous winners." *Id.* at 722. Accordingly, a machine that allows two simultaneous bingos in a game may

still be a Class II bingo machine. *Id.*; See also 103 *Electronic Gaming Devices*, 223 F.3d at 1098–99 (the 9th Circuit reached the same conclusion, holding “winning” does not necessarily mean “vanquishing” all other opponents, and identifying Congress’ intent to permit interim prizes, given that some traditional variants of bingo allow them.).

Nor does the fact that a game of bingo can be played with one touch of a button by itself transform the machines into a Class III electronic facsimile of the game of bingo. One touch bingo does not incorporate all of the characteristics of bingo. The machine, for example, does not replicate the competitive element of bingo. Players still compete with other players, not the machine.

Also, there is an exception for bingo in the regulatory definition of electronic facsimile, which exempts electronic bingo that broadens player participation by allowing multiple players to play with or against each other rather than with or against a machine. As this proposed reinterpretation finds that one touch bingo meets the statutory definition of the game of bingo and does not incorporate all the characteristics of bingo into the machine, the application of the exception is not necessary. However, the previous interpretation concluded “as it is applied to bingo, . . . the “except when” language of 502.8 [] require[s] some—even minimal participation in the game by the players above and beyond the mere pressing of a button to begin the game.” We find this interpretation in error because whether a game constitutes bingo or not cannot be reduced to the number of times a button is pushed. Rather, as set out above, we must look to whether the statutory elements of the game are met. And, as also set out above, we find that for one touch bingo they are. One touch bingo does incorporate player participation in the game beyond the pressing of a button.

Finally, the Commission should give consideration to an interpretation of bingo that embraces rather than stifles technological advancements in gaming. The Senate Select Committee on Indian Affairs affirmed in its report regarding the Indian Gaming Regulatory Act that it “intends that tribes be given the opportunity to take advantage of modern methods of conducting Class II games and the language regarding technology is designed to provide maximum flexibility.” S. Rep. No. 100–446 at p. A–9. In explaining its policy toward technology, a key distinction for the Committee was that technological aids are “readily distinguishable from the use of electronic facsimiles in which

a single participant plays a game with or against a machine rather than with or against other players.” *Id.* One touch bingo does not change that fundamental aspect of bingo. Whether played on a one or two touch machine in a linked system, the player is still competing with other bingo players for a prize.

For all of the above reasons, the NIGC proposes to reinterpret its position on one touch bingo, as previously set forth in the June 4, 2008 decision disapproving the Metlakatla Indian Community’s Tribal Gaming Ordinance.

Dated: June 19, 2013, Washington, DC.

**Daniel J. Little,**

*Commissioner.*

**Tracie L. Stevens,**

*Chairwoman.*

[FR Doc. 2013–15031 Filed 6–21–13; 11:15 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG–2013–0129]

RIN 1625–AA08

#### Special Local Regulations; Marine Events, Spa Creek and Annapolis Harbor, Annapolis, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its proposed rule concerning amendments to the regattas and marine parades regulations. The rulemaking was initiated to establish special local regulations during the swim segment of the “TriRock Triathlon Series,” a marine event to be held on the waters of Spa Creek and Annapolis Harbor on July 20, 2013. The Coast Guard was notified on May 21, 2013, that the event had been cancelled.

**DATES:** The proposed rule is withdrawn on June 25, 2013.

**ADDRESSES:** The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG–2013–0129 in the “SEARCH” box, and then clicking “Search.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call or email Mr. Ronald Houck, Waterways Management Division, Sector Baltimore, MD, U.S. Coast Guard; telephone 410–576–2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil). If you have questions on viewing material in the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 3, 2013, we published a notice of proposed rulemaking entitled “Special Local Regulations; Marine Events, Spa Creek and Annapolis Harbor, Annapolis, MD” in the **Federal Register** (78 FR 20066). The rulemaking concerned the Coast Guard’s proposal to establish temporary special local regulations on specified waters of Spa Creek and Annapolis Harbor at Annapolis, MD, effective from 6 a.m. to 9:30 a.m. on July 20, 2013. The regulated area included all waters of the Spa Creek and Annapolis Harbor, from shoreline to shoreline, bounded by a line drawn near the entrance of Spa Creek originating at latitude 38°58’40” N, longitude 076°28’49” W, thence south to latitude 38°58’32” N, longitude 076°28’45” W. The regulated area is bounded to the southwest by a line drawn from latitude 38°58’34” N, longitude 076°29’05” W thence south to latitude 38°58’27” N, longitude 076°28’55” W, located at Annapolis, MD. The regulations were needed to temporarily restrict vessel traffic during the event to provide for the safety of participants, spectators and other transiting vessels.

##### Withdrawal

The Coast Guard is withdrawing this rulemaking because the event has been cancelled.

##### Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 1233.

Dated: June 3, 2013.

**Kevin C. Kiefer,**

*Captain, U.S. Coast Guard, Captain of the Port Baltimore.*

[FR Doc. 2013–15092 Filed 6–24–13; 8:45 am]

**BILLING CODE 9110–04–P**