definition can signal a departure from Congressional intent.

4. Federal Courts Support the Commission's Determination Regarding the Definition

The crucial challenge to the Commission's early rulemaking came shortly after the Commission adopted its final rules. In *Cabazon Band* v. *NIGC,* 827 F.Supp 26 (DC 1993), eight tribes joined in a challenge to several of the Commission's rules including the definition for ''electronic or electromechanical facsimile'' at 25 CFR 502.8. Judge Lamberth observed:

[I]f the definition of facsimiles were less broad than that of gambling device, IGRA would be internally contradictory: technology that—ostensibly—now would be allowed for class II gaming under 25 U.S.C. 2703(7)(A) would be prohibited by the Johnson Act (since the repeal of the Johnson Act is only for class III gaming). Thus, only a definition of facsimile that is equivalent to that of gaming device renders the statute internally consistent and allows both statutes peaceably to coexist.

Plaintiff's main objection to the Commission's definition stems from their perception that the definition of gambling device sweeps within its ambit any device that might be used in gambling. This interpretation of the Johnson Act is incorrect. As several cases have held, Congress has acknowledged, and the Commission has noted in the preamble to its rules, the Johnson Act applies only to slot machines and similar devices (including the pull-tab games here in issue), not to aids to gambling (such as bingo blowers and the like). When the scope of the Johnson Act is properly determined, it is clear that the definition of gambling devices is significantly less broad than plaintiff's fear. Moreover, it is clear that Congress' intent in IGRA is fulfilled only when the IGRA's definition of facsimile adopts the Johnson Act's definition of gambling device.

Cabazon Band v. *NIGC,* 827 F.Supp. at 31. This case represents the only serious court challenge that has been brought against the Commission's rulemaking and its determination of appropriate definitions. On appeal, the plaintiff tribes dropped their challenge to the Commission rules and instead focused only on their request, denied in the District Court, for a declaratory judgment that certain video pull-tab games were class II. In reciting the history of the case in its appellate decision, the United States Court of Appeals for the District of Columbia noted ''Judge Lamberth's cogent opinion rejected each of the Tribe's arguments against these regulations as 'either moot or meritless.''' *Cabazon Band* v. *NIGC,* 14 F.3d 633, 634 (1994). (The Court of Appeals also upheld the ruling of Judge Lamberth that the video pull-tab games were class III.)

5. Conclusion

The Commission's action raises concerns about the separation of powers between an executive branch agency and Congress, and I am not therefore convinced that the rule change is an appropriate action for the Commission. True, as the proponents indicate, courts have found it convenient to use the common dictionary meaning of the term ''facsimile'' in deciding whether a particular video pull-tab game falls within the statutory definition for class II gaming. Also true, but not particularly understandable, the Court of Appeals for the District of Columbia, the same Court that six years earlier found Judge Lamberth's *Cabazon* opinion on the rule ''cogent,'' did indicate that the Commission's rule provided no assistance in interpreting the statute. (*See Diamond Games* v. *Reno,* 230 F.3d 365, 369 (D.C. Cir 2000)). However, that Court did not indicate in any way that the definitional rule varied from the IGRA or from Congressional intent.

It is the role of Congress to write the law and it is this Commission's responsibility faithfully to execute the law that Congress has passed. If the Congress through legislative enactment signals its desire to change the gaming classification structure under the IGRA, with the laudable result of permitting a wider range of class II games, or somehow moves the line between what is a technological aid permitted for the play of class II games and what is an electronic facsimile of a game of chance precluded from being considered class II, then I would be first-in-line to modify the original definition of facsimile. I am concerned though that the Commission's action today represents a revision of the law that Congress has created and improperly encroaches upon the legislative function. For now, therefore, I feel bound to dissent in the Commission's amendment because, according to the only relevant court decision on the matter, the original definition clearly manifests explicit Congressional intent and is the only definition that can do so.

Dated: June 8, 2002.

Montie R. Deer.

[FR Doc. 02–15035 Filed 6–14–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–061]

Drawbridge Operation Regulations; Hatchett Creek (US 41), Gulf Intracoastal Waterway, Venice, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a deviation from the regulations governing the operation of the new Hatchett Creek (US 41) bridge across the Gulf Intracoastal Waterway in Venice, Florida. This deviation allows the drawbridge owner to only open one leaf of the bridge from June 10, 2002 until July 31, 2002 to complete construction of the new bascule leaves.

DATES: This deviation is effective from 6 a.m. on June 10, 2002 until 6 p.m. on July 31, 2002.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–02–061] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida Department of Transportation requested that the Coast Guard temporarily allow the Hatchett Creek bridge to only open a single leaf of the bridge from June 10, 2002 until July 31, 2002. This temporary deviation from the existing bridge regulations is necessary to complete construction of the new bascule leaves. The Hatchett Creek (US 41), bridge has a horizontal clearance of 30 feet between the fender and the down span.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 to allow the owner to complete construction of the new bascule leaves. Under this deviation, the Hatchett Creek (US 41) bridge need only open a single leaf of the bridge from June 10, 2002 until July 31, 2002.

Dated: June 9, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–15200 Filed 6–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–062]

Drawbridge Operation Regulations; Atlantic Avenue Bridge (SR 806), Atlantic Intracoastal Waterway, Mile 1039.6, Delray Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a