

So, Mr. President, I will conclude by saying that seven of the currently living former Secretaries of Defense agree with Charles Krauthammer that we need to expand the B-2 program, and I believe it, too.

Mr. President, I ask unanimous consent that this editorial by Charles Krauthammer be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 13, 1995]

THE B-2 AND THE "CHEAP HAWKS"

(By Charles Krauthammer)

We hear endless blather about how new and complicated the post-Cold War world is. Hence the endless confusion about what weapons to build, forces to deploy, contingency to anticipate. But there are three simple, glaringly obvious facts about this new era:

(1) America is coming home. The day of the overseas base is over. In 1960, the United States had 90 major Air Force bases overseas. Today, we have 17. Decolonization is one reason. Newly emerging countries like the Philippines do not want the kind of Big Brother domination that comes with facilities like Clark Air Base and Subic Bay. The other reason has to do with us: With the Soviets gone, we do not want the huge expenses of maintaining a far-flung, global military establishment.

(2) America cannot endure casualties. It is inconceivable that the United States, or any other Western country, could ever fight a war of attrition like Korea or Vietnam. One reason is the CNN effect. TV brings home the reality of battle with a graphic immediacy unprecedented in human history. The other reason, as strategist Edward Luttwak has pointed out, is demographic: Advanced industrial countries have very small families, and small families are less willing than the large families of the past to risk their only children in combat.

(3) America's next war will be a surprise. Nothing new here. Our last one was too. Who expected Saddam to invade Kuwait? And even after he did, who really expected the United States to send a half-million man expeditionary force to roll him back? Then again who predicted Pearl Harbor, the invasion of South Korea, the Falklands War?

What kind of weapon, then, is needed by a country that is losing its foreign bases, is allergic to casualties and will have little time to mobilize for tomorrow's unexpected provocation?

Answer: A weapon that can be deployed at very long distances from secure American bases, is invulnerable to enemy counter-attack and is deployable instantly. You would want, in other words, the B-2 stealth bomber.

We have it. Yet, amazingly, Congress may be on the verge of killing it. After more than \$20 billion in development costs—costs irrecoverable whether we build another B-2 or not—the B-2 is facing a series of crucial votes in Congress that could dismantle its assembly lines once and for all.

The B-2 is not a partisan project. Its development was begun under Jimmy Carter. And, as an urgent letter to President Clinton makes clear, it is today supported by seven secretaries of defense representing every administration going back to 1969.

They support it because it is the perfect weapon for the post-Cold War world. It has a range of about 7,000 miles. It can be launched instantly—no need to beg foreign dictators for base rights; no need for weeks of advance

warning, mobilization and forward deployment of troops. And because it is invisible to enemy detection, its two pilots are virtually invulnerable.

This is especially important in view of the B-2's very high cost, perhaps three-quarters to a billion dollars a copy. The cost is, of course, what has turned swing Republican votes—the so-called "cheap hawks"—against the B-2.

But the dollar cost of a weapon is too narrow a calculation of its utility. The more important calculation is cost in American lives. The reasons are not sentimental but practical. Weapons cheap in dollars but costly in lives are, in the current and coming environment, literally useless: We will not use them. A country that so values the life of every Capt. O'Grady is a country that cannot keep blindly relying on non-stealthy aircraft over enemy territory.

Stealth planes are not just invulnerable themselves. Because they do not need escort, they spare the lives of the pilots of the fighters and radar suppression planes that ordinarily accompany bombers. Moreover, if the B-2 is killed, we are stuck with our fleet of B-52's of 1950s origin. According to the undersecretary of defense for acquisition, the Clinton administration assumes the United States will rely on B-52s until the year 2030—when they will be 65 years old!

In the Persian Gulf War, the stealthy F-117 fighter flew only 2 percent of the missions but hit 40 percent of the targets. It was, in effect, about 30 times as productive as non-stealthy planes. The F-117, however, has a short range and thus must be deployed from forward bases. The B-2 can take off from home. Moreover, the B-2 carries about eight times the payload of the F-117. Which means that one B-2 can strike, without escort and with impunity, as many targets as vast fleets of conventional aircraft. Factor in these costs, and the B-2 becomes cost-effective even in dollar terms.

The final truth of the post-Cold War world is that someday someone is going to attack some safe haven we feel compelled to defend, or invade a country whose security is important to us, or build an underground nuclear bomb factory that threatens to kill millions of Americans. We are going to want a way to attack instantly, massively and invisibly. We have the weapon to do it, a weapon that no one else has and that no one can stop. Except a "cheap hawk," shortsighted Republican Congress.

Mr. INHOFE. Mr. President, I yield the floor.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, the Senate will now resume consideration of S. 343, the regulatory reform bill, which the clerk will read.

The assistant legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 1487, in the nature of a substitute.

Domenici amendment No. 1533 (to amendment No. 1487), to facilitate small business involvement in the regulatory development process.

Hutchison amendment No. 1539 (to amendment No. 1487), to protect against the unfair imposition of civil or criminal penalties for the alleged violation of rules.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio [Mr. GLENN] is recognized to speak for up to 45 minutes.

Mr. GLENN. Mr. President, I thank the Chair.

Mr. President, we have heard a lot the last few days about horror stories of regulations, horror stories about Government's heavy hand and how civil servants that serve this country well most of the time sometimes get carried away with the program and throw their Federal regulatory weight around to the point where it really is intrusive in the lives of our citizens and do some things that just defy common sense.

I am not going to be the last one to stand here today and say that never happens. I think when we rise on the floor here and make repeated remarks and make repeated examples of things that are not of obvious truthfulness, that we do a disservice. So some of the things that have been said here on the floor in the last few days I want to spend some time this morning correcting.

Let me say I feel strongly about this for our people that work in civil service for this Nation. For the last 8 years until last fall I was chairman of the Governmental Affairs Committee. One of our areas of oversight, our areas of jurisdiction, is the civil service of this country. We work very closely with them. We have representatives of civil service groups that come in and talk to us on a regular basis. We keep in touch with them on almost a daily basis with staff. We work to get them better pay and working conditions and so on.

So, we work with the people of OPM, the Office of Personnel Management, to make sure that the people in civil service are treated fairly. Many of them are very talented people who serve the Government and who could be doing better outside. They have every bit of the same dedication for their country as we have right here, and they feel strongly. It hurts them when they are unfairly castigated, unfairly pointed out as doing things that are wrong in administering the laws of this land.

So I wanted to correct some of the things that have been said. I know my distinguished colleague from Utah pointed out that he has his daily 10 transgressions in the area of misuse of rules and regulations. I sort of overlooked these things until they started being picked up and published in some of our papers in Ohio.

So I think I have it as a duty to correct some of these things. We have asked the administration downtown to look into some of these things. Some of the information I have puts a little different slant on some of these things. I want to run through a few of these this morning because I think it is important to protect the reputation, protect the feelings—if you want to put it on that basis also—of people who work

very hard in the civil service. I want to correct some of these things.

It was said the other day on the floor—I believe it was No. 10 on the list for that particular day—that the Federal Government was “delaying a Head Start facility for years because of the dimensions of the rooms.”

The reality of the situation was that this is misleading because it was not due to Federal regulations at all. And I would add that S. 343, the Dole-Johnston bill, would do nothing in any way to solve this problem.

The fact is that Head Start regulations do not address room dimensions. Head Start applies reasonable and flexible standards to its facilities, and over the past 6 years these flexible standards have allowed Head Start to develop thousands of new facilities.

The example that was given by my distinguished colleague was due to a legal dispute between a subcontractor and the city of New York. It had nothing to do with Federal regulations. If such legal disputes are the problem, then I think we should question support of what some describe S. 343 as—a lawyers’ full employment act of 1995.

Now, another one was put out which turns out to be a myth also. The claim was that the Federal Government was:

Forcing a man to choose between his religion and his job because rules do not allow workers to wear a mask over a beard.

The reality. This is flat wrong. OSHA knows of no cases in which an employer received a citation because their employees were not wearing properly fitting respirators because their workers wore beards for religious reasons. In fact, OSHA regularly grants exemptions for protective gear requirements for employees who object due to “personal religious convictions.”

Now, the general rule of respiratory protection is for the protection of the people involved, but obviously if a person has a beard for a religious purpose or whatever, they try to take care of that. They do not insist that a person be cited in a situation like that. They give an exemption for that. And that is their policy.

Another one was cited that morning. It was No. 7 that particular morning on the list of items of ridiculous regulations. I quote:

Fining a gas station owner \$10,000 for not displaying a sign stating that he accepts motor oil for recycling.

The reality. There is no such Federal regulation. EPA does not require gas stations to post signs stating that they accept used motor oil. There is no Federal RCRA regulation requiring the posting of such a sign. RCRA does require gas station owners just to label tanks used to store recycled oil, but that is to prevent contamination of stored, used motor oil with other solvents or other contaminants. So there was no regulation on a sign that would accept motor oil for recycling.

Another one stated that same morning. This was No. 3, I believe, on the list:

Prohibiting an elderly woman from planting a bed of roses on her land.

The reality. There is no current regulation which could prohibit planting a rose bed. This allegation is one that keeps cropping up all the time, it turns out. I was not aware of this, but they say this is one that comes around from time to time—it has been around for years—in Republican administrations and Democratic administrations. It has been recycled for years, and the State in which this is alleged to have occurred has varied with the telling of the story. In some cases it has been Wyoming, in others it has been Texas or Louisiana. So they have heard this over at the agency for a long time.

Whenever it surfaces, EPA or the Army Corps of Engineers attempts to track down the specific situation, so every time this rumor comes up they go at it again to make sure they have not missed something. And since the name of this supposed elderly woman has never surfaced, it has been very difficult to verify it. It involves checking with multiple field offices of various Federal agencies. Despite these numerous checks, there never has been any wetlands case identified that involved anyone planting a rose bush. So that one has been around for years.

Another one. This was cited as No. 2 the morning this particular one was given. It said, and I quote:

Fining a man \$4,000 for not letting a grizzly bear kill him.

Well, the reality is it simply is not true. This story was circulated in a Wall Street Journal editorial on June 23, 1993. The story painted a portrait that would have flattered a Hollywood screen writer and mischaracterized the real facts as much as they were misrepresented on the floor.

A rancher was fined \$4,000 for shooting a grizzly bear which is listed as an endangered species, but he shot him because it had killed and eaten some of the rancher’s sheep.

Now, the fact is the bear did not attack or threaten the rancher or anyone in his family. Indeed, it is certainly not illegal to kill an endangered species when a human life is threatened.

The rancher in this case was fined because he killed an endangered species for killing the sheep—listen to this—after he was financially compensated for the loss of his sheep, after he was assured that he would be compensated for any further losses, and after he declined the State of Montana’s offer to build an electric fence to protect the sheep and after he was informed that if he killed the bear anyway he would be prosecuted.

We do not have too many bears in my home State of Ohio, so I guess we are not going to be coming under some of these same problems, but to the western States that is an important one.

Another one. And this was No. 1 on the hit list the other day on the floor. It says:

Requiring braille instructions on drive-through ATM machines.

Well, according to the American Bankers Association,

It is entirely conceivable and not unexpected that a passenger may exit the automobile to use the drive-up ATM and this passenger may be an individual who is visually impaired.

So when no other machines on the premises are available, this is an entirely rational regulation. It recognizes the need for these machines for passengers and walkup users both.

Now, there was another one on one of the other days here. These lists that my colleague from Utah has put out have been I think two mornings I know of, maybe three mornings but two mornings for sure. So this was No. 10 on the list as we counted David Letterman style on the floor on another morning. It was said that we stopped an owner from building on a wetland of 0.006 acres, about the size of a Ping-Pong table.

Well, the reality of the situation when it was checked is this. The applicant proposed to place 30 cubic yards of fill material in a creek and EPA received objections to the proposed project from local property owners. The local property owners themselves complained about this. And the applicant was unwilling to reduce the size of the fill, was unwilling to move the proposed building 25 feet to avoid dumping fill material in the creek. The applicant then attempted to obtain a waiver from the local city to its requirements, not Federal but to its requirement of a 25-foot buffer zone. The applicant evidently obtained a waiver of some sort from the city and did not need to dump fill material in the creek. Those are the facts of the situation.

Another one that day. I think this was No. 7 on the list. I quote:

Fined a company for not having a comprehensive hazardous materials communication plan for its employees even though the company only has two part-time employees.

Well, the reality of the situation is that OSHA does not require a “comprehensive hazardous materials communication plan.” It does have a right to know standard or a hazardous communications standard that protects employees when they are working with potentially toxic substances. And that is common sense. The simple right to know principle would have made a difference, for instance, for a nursing home maintenance worker who unknowingly—he had not been told about this so he did not know what the hazardous materials were—unknowingly mixed bleach and common lime remover in a bucket and was killed by the resulting toxic gas.

Another one was pointed out as a Federal transgression on administration of regulations. This was another one on the list that same day, No. 6.

Required a \$6 hospital mask instead of a \$1.25 mask with no analysis of the benefits and costs.

Well, what is the reality of this one? This one is slightly more complicated. In the last 10 years, the rate of new

cases of tuberculosis has increased by 23 percent, reversing a 30-year downward trend. Outbreaks have occurred in hospitals in Atlanta, Miami, and New York City. In 1993, OSHA released its guidelines for protecting workers from exposure to TB.

That means they are going to be in where the TB patients are.

The OSHA guidelines are based on a document issued by the Centers for Disease Control and Prevention in 1990. The CDC guidelines recommend employees wear NIOSH-approved high-efficiency particulate air respirators as a minimum level of protection.

In 1993, OSHA was petitioned to protect workers against contracting TB in certain workplaces. When the proposed rule is published—

It is not finalized.

when the proposed rule is published, it will include a preliminary risk assessment, a cost of compliance analysis, an analysis of effective indices, and the evaluation of the rule's benefits. Through these analyses, OSHA will then determine which type of mask would adequately protect workers from TB.

Another one pointed out as the heavy hand of Federal regulation that day:

Required such stringent water testing that local government considered handing out bottled water to save money.

The reality is this. EPA has recognized the high cost of water testing for some small communities can be a serious problem, particularly if water supplies are contaminated and need treatment. EPA has been working for several years to assist States in implementing science-based programs of waivers from monitoring requirements while still assuring the safety of water supplies.

Most States now have waiver programs, but they are not always actively used. But for the vast majority of Americans, drinking water safety monitoring inspection is inexpensive and effective. Costs range from 1 cent to 9 cents a month for 90 percent of U.S. households, far less than the cost of bottled water, as was pointed out.

I will also point out that President Clinton specifically asked EPA on March 16 of this year to undertake revision of water testing to ensure water safety at a reasonable cost. EPA has subsequently met with officials from 19 States that are developing a new approach to streamline the drinking water monitoring.

Ironically, I will point out, the Dole bill, S. 343, might delay implementation of many of these streamlining rules. It could delay solving the problem rather than help out.

Another one pointed out that day as a regulatory misfire, No. 1—counting down 10 to 1 like David Letterman does:

A company was fined \$34,000 by the EPA for failing to fill out form R, even though they did not release any toxic material.

EPA could find no record of any case exactly like this. We think there may be some because the dollar figure is similar, but there is no record of a case like that. EPA is seeking penalties of \$34,000 against two companies that did release potentially harmful chemicals.

Two companies, Washington Ornamental Iron Works and Thatcher Tubes, were fined for failure to report air emissions to EPA's toxics release inventory, as required by section 313 of the Emergency Planning and Community Right To Know Act.

The principle behind this statute is that citizens in a community have a right to know what chemicals are being released into their communities, what chemicals their children are breathing, what chemicals they themselves are breathing, when these releases take place and in what quantity.

Washington Ornamental Iron Works of Gardena, CA, was fined \$34,000 for failure to report for the years 1990 and 1991. In 1990, the iron works released 14,000 pounds of trichloroethylene. In 1991, the iron works released 12,000 pounds of the same material. They finally came into compliance in June 1995 after receiving a civil administrative complaint from EPA.

Why is this important? At high levels of exposure, this kind of trichloroethylene causes central nervous system disorders, irregular heart rate, and pulmonary edema. Production of this solvent is scheduled to be phased out by the year 2002 because of its ozone-depleting characteristics also.

I think in a case like that, the fine was well justified. I do not know about form R—nobody knows what happened on form R. That is one case where the \$34,000 fits, and I think justly.

Another one happened to also involve a \$34,000 fine. Thatcher Tubes of Muscatine, IA, was fined \$34,000 for failure to report the company emitted 7,300 pounds of methylethylketone in 1991 and 8,783 pounds of the same chemical in 1992. Methylethylketone is irritating to the eyes, mucous membranes, and the skin. Headache and throat irritations are reported among people exposed to the concentration near the maximum level allowed in the workplace. At higher levels, workers complained of numbness in the fingers and arms, sometimes a leg. Dermatitis was sometimes reported following prolonged exposure to vapors.

Those are two EPA could find where the \$34,000 figure fit. I think anybody could look at these things and say, "Good, let us applaud the EPA for what they did for protecting all of us and for the people in those particular communities in those cases."

Here is another one. No. 7 on the list the particular day it was given on the floor.

Nevada rancher, Wayne Hague, faces a potential 5-year prison sentence under the Clean Water Act by hiring someone to clear scrub brush from irrigation ditches on his property. The ditches have been used since the turn of the century.

Facts of the case, back to reality again: Virtually every part of this statement is false. The case did not even involve violations of the Clean Water Act. The scrub brush, as it is called, consisted of over 100 piñon

and juniper trees in the Toiyabe National Forest in Nevada. He claimed his property was actually on Federal property. Mr. Hague's actions constituted an unauthorized destruction of Federal property in violation of Federal criminal law.

Another one: Fish and Wildlife Service required a farmer to stop economic activities on his 1,000 acres because of the presence of the red-cockaded woodpecker. The reality is this is just factually incorrect. This example refers, we believe, to Mr. Cohen, a timberland owner of North Carolina who owns far more than 1,000 acres of land, but private property owners, like Mr. Cohen have the opportunity to develop a habitat conservation plan that allows them to both protect the endangered species and to use their land productively.

Many organizations and developers are participating in such plans to protect the woodpecker. Mr. Cohen has submitted a management plan to the U.S. Fish and Wildlife Service, and it has been approved and he is logging his land in a productive way that does not destroy the endangered species.

Another one which was myth No. 3 on the day that it was stated:

OSHA fined a company \$500 for failure to submit a report that no employee was hurt last year.

This is something that was a problem, but the problem has already been fixed. This is no longer a problem. OSHA is committed to injecting common sense into the enforcement process when an employer has an effective health and safety program but fails to meet the exact letter of the law, such as failure to fully complete or sign the annual form. That well-meaning employer is treated differently.

Over the last year, OSHA citations for these recordkeeping requirements have declined by between 60 and 70 percent. It reflects OSHA's new emphasis in this administration on compliance with the spirit rather than simply the letter of the law. OSHA will continue to issue citations when employers clearly disregard their obligation to maintain records of work-related injuries and illnesses. It is important that OSHA continue to provide employees with the message that complete and accurate occupational injury records are of paramount importance. Records of workplace illnesses provide employers and workers information that can help them identify hazards and prevent injuries and illnesses in the future.

Mr. President, those are just a few of the responses. We could not get the complete answers to all of the things that were charged on the floor. I think we see there is a lot of myths going around here. I wanted to make sure the reality of these situations was also brought to light today. I hope that we will have better substantiation of any charges in the future because it reflects poorly on the Federal employees, those in civil service who are trying to administer the law and do it fairly and

correctly, not only adhering to the letter of the law but also doing it in a fair manner so that people do not have undue problems with the Federal Government.

I am the last one to say there are not a lot of problems. I have been advocating regulatory reform for years in the Governmental Affairs Committee. We have a bill, S. 1001, which we think does a better job of balancing the requirements for protecting the public while not overburdening people with rules and regulations.

Let me go on to another one stated on the floor also. The distinguished Senator from Iowa has been on the floor for 2 days when I was on the floor, at least, and has repeated this one story in particular that I wanted to address today, because it disturbed me enough the first day that, if it were true, I really wanted to look into it. His description of it was very, very graphic. He talked about Mr. Higman in Akron, IA, and how some 40 agents of the Federal Government—EPA I believe it was stated—came rushing into this establishment with their guns cocked, pointing at everybody, particularly the accountant, as I recall, and that this whole thing cost Mr. Higman about \$200,000 in court costs, all because a disgruntled employee gave false information about pollutants, toxic materials at this business site.

Well, I was very curious about this because I thought if there was that kind of egregious behavior going on around the country without due cause, we should be looking into it and maybe we should have a hearing on this. I did not know. So we looked into it. It turns out that a letter was sent to Senator GRASSLEY on August 18, 1993. I would like to read you selected parts of this because it puts a little different light on this incident about these people rushing in with guns cocked, pointing at people in Mr. Higman's establishment in Akron, IA.

The special agents that I am quoting comes in part from the letter from EPA to Senator GRASSLEY. This person was asked by Administrator Browner to respond to Senator GRASSLEY's letter, I gather, of July 1, 1993, concerning a criminal enforcement action taken in 1991 against the Higman Sand & Gravel Co. in Akron, IA. I am pleased to be able to respond. Special agents of EPA's criminal investigation division conducted a search at the Higman site pursuant to a Federal search warrant authorized by a Federal magistrate and approved by a U.S. attorney. This was not something where people decided willy-nilly to come rushing in. The search warrant was authorized by a Federal magistrate, approved by a U.S. attorney.

The affidavit for the search warrant was based on information from, they thought, a confidential, reliable informant that hazardous waste was being stored at the site. The Higman Co. is not a permitted facility to store

hazardous waste. It does not have the proper facilities.

Information was also received from another Federal law enforcement agency that searches of the homes of some of the Higman employees had recovered machine guns and explosives and that the agents conducting the search at the Higman Co. site might encounter armed individuals and explosives. An informant advised the agents that a loaded rifle was always kept in the office at the Higman Co.

Based on this information, 17 law enforcement officials from the EPA, ATF, and the Iowa Department of Criminal Investigations participated in the execution of the search warrant at the Higman Co. There were not 40. This says 17, which is certainly enough; there were 10 employees at the company when the search was conducted. The agents recovered loaded weapons from the site, and the hazardous waste specified in the search warrant was found on the grounds of the company.

So the material was there. They were not authorized to have it there. The reason they were not permitted to have it there was because it might be a danger. What was it, cyanide? I do not know. What can you store that is a danger to other people around the community? These things have to have special storage, and this was not a site that was permitted to have this toxic material.

Now, this went to trial. I believe the Senator stated on the floor that Mr. Higman's court costs were somewhere around \$200,000. Now, a jury acquitted defendants Harold Higman, Jr., and Harold Higman, Sr., and Higman Sand & Gravel Co. in this case. The jurors were polled after the trial and stated they knew the Higman Co. was not a permitted facility and that the material recovered was in fact hazardous waste. However, they did not believe the Government proved that the hazardous waste was stored at the site knowingly.

So the difference here is that everything that led the agents to come in there in the first place was true. There were loaded weapons. They found those on the site. The toxic material was there on the site. So all the reasons why they took the precautions and acted as they did and got approval from a Federal magistrate and a U.S. attorney, were verified with exactly what happened once they got into that community. EPA special agents are thoroughly trained in the use of force, and they exercise the use of force with great discretion, with the constitutional rights of affected citizens in mind. They take precautions in this area.

I ask unanimous consent that this letter be printed in its entirety in the RECORD so people can make their own judgments on that.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,

Washington, DC, August 18, 1993.

Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRASSLEY: Administrator Carol Browner has asked me to respond to your letter of July 1, 1993, concerning a criminal enforcement action taken in 1991 against the Higman Sand and Gravel Company in Akron, Iowa. I am pleased to be able to respond to your letter.

Special agents of EPA's Criminal Investigation Division conducted a search at the Higman site pursuant to a federal search warrant authorized by a Federal Magistrate and approved by a U.S. Attorney. The affidavit for the search warrant was based on information from a confidential reliable informant that hazardous waste was being stored at the site. The Higman Company is not a permitted facility to store hazardous waste.

Information was also received from another federal law enforcement agency that searches of the homes of some Higman employees had recovered machine guns and explosives and that the agents conducting the search at the Higman Company site might encounter armed individuals and explosives. An informant advised our agents that a loaded rifle was always kept in the office at the Higman Company.

Based on this information, seventeen law enforcement officials from the EPA, ATF, and the Iowa Department of Criminal Investigations participated in the execution of the search warrant at the Higman Company. There were ten employees at the company when the search was conducted. The agents recovered loaded weapons from the site and the hazardous waste specified in the search warrant was found on the grounds of the company.

A jury acquitted defendants Harold Higman, Sr., Harold Higman, Jr., and Higman Sand & Gravel Company in this case. The jurors were polled after the trial and stated that they knew the Higman Company was not a permitted facility and that the material recovered was in fact hazardous waste, however, they did not believe the government proved that the hazardous waste was stored at the site "knowingly."

EPA special agents are thoroughly trained in the use of force. They exercise the use of force with great discretion and always with the constitutional rights of affected citizens in mind. Our special agents are also trained to be concerned for their own safety and the safety of others when entering potentially dangerous surroundings. Special agents must weigh and balance all these considerations when executing a search warrant. The recent events in Waco, Texas are a chilling reminder of the very real dangers federal agents face in the performance of their law enforcement duties.

Although I favor an enforcement process without unnecessary confrontation, I would not presume to second-guess the judgment of those special agents who were responsible for the execution of a Federal search warrant for alleged criminal violations of Federal laws. While this Administration is dedicated to the establishment of an improved relationship between the EPA and the business community it regulates, and would always prefer to achieve environmental protection through voluntary compliance, this Agency is also charged with the congressional mandate to aggressively enforce against violators of the environmental laws. The Agency's execution of its enforcement responsibilities is always guided by the particular circumstances surrounding each individual case, exercising the best judgment with the information available.

I hope this responds to the specific concerns raised in your letter. If you wish to discuss your concerns further, please let me know so I can be of assistance.

Sincerely,

STEVEN A. HERMAN,
Assistant Administrator.

Mr. GLENN. Another one brought up on the floor also was that in the July 11 CONGRESSIONAL RECORD, there was an extended statement about how EPA's air permitting program is causing a lot of redtape for the grain elevators in the State of Iowa. This has been a problem, I know that. But I think the statement is misleading in that EPA is aware that small grain elevators operate only on a seasonal basis. They have been working with the Feed and Grain Association to get the facts about the amounts of small particle pollutant emissions that might be expected from these sources. They responded to Senator GRASSLEY's concerns in this regard. I am glad they have done so.

The main points I summarize as follows. EPA's air permitting program provides for a 2-year transition period during which small sources such as some grain elevators can avoid the need to get a Clean Air Act permit and maintaining records sufficient to document their low-level emissions. EPA is working with the Feed and Grain Association to identify more realistic assumptions on the amount of time an elevator can operate. They recognize that small grain elevators only operate on a seasonal basis, not year around. They are participating in an industry-sponsored source-testing effort aimed at the emissions factor, which is the estimate of how much small particle pollution is emitted per unit of grain processes. It is industry sponsored, and EPA is working right along with them on this.

So those efforts, while not completed yet—I grant that—should help clarify which, if any, grain elevators should be considered a major source of emission and subject to air permitting requirements.

Mr. President, these are just a few of the things that have come up here on the floor. I did not try to make the complete 100-percent rebuttal to all of the things said here on the floor because some of these may very well be cases where there were onerous oversteps made by Federal agents in the enforcement of laws. But I also state again what I have stated before.

If we want to see the difficulty with regulation, I think most of us in the Senate need only look in the mirror when we get up in the morning. Eighty percent of the regulations are required by law and passed in the Congress. We pass laws here with the House, back and forth, it goes to the President and is signed, and they implement the laws and regulations. Eighty percent of what they write there are regulations written pursuant to what we require right here.

So if we want to see one of the biggest problems with regulators, we bet-

ter just look in the mirror in the morning.

We have another problem here. What we are requiring with the proposed legislation, S. 343, there are going to be an awful lot of checks, an awful lot of requirements for regulations.

I had an example here of just one under the Clean Water Act. I will not go through all the details, as I have done the last couple days on the floor here.

This one regulation passed, implemented, just one out of several hundred under the Clean Water Act, just one requires 126 feet of shelf space. We checked with the Capitol Architect. I can tell Members what that is—three piles of documents from this well to the ceiling up there. That is 42½ feet, the Architect says. Mr. President, three piles of documents.

The average cost, we are told by testimony in the Governmental Affairs Committee, was about \$700,000 per regulation, that is necessary. I am not one that says we cut back on that. If we are going to have a regulation, we should do it right and make sure the application is absolutely correct.

In the time I have remaining, I would like to point out, also, that these regulations are not all just dreamed up by some Government bureaucrat. Mr. President, 80 percent of them are required by what we require here on the floor, in the laws that we pass.

We are the ones requiring them. I think all the cost analysis that we are now putting over there and requiring on the agencies by this legislation, we should apply to ourselves, right here, when we are considering passing a law. Why do we not do the cost studies, not pass something unless we do the cost studies, not put it over there, require all sorts of studies, and say it is too expensive?

Now we provide a capability for legislative review. We call it so we can bring a rule back, redo it here, after they have done it over there. We should be correcting that in the first instance, right here.

Let me run through just a few of the things, regulations that have saved lives. Toy safety. Small parts on children's toys. We estimate 12 choking deaths are related to such small parts annually. Should we not protect our children against that, if we can? If we can just have some regulations that help establish the right procedures on that? Of course.

Child resistant cigarette lighters. The Consumer Safety Commission issued a safety standard in 1993 that established a requirement to make disposable cigarette lighters child resistant. Fires started by children under age 5 cause an estimated average of 150 deaths, approximately 1,100 injuries, nearly \$70 million in property damage.

Can we not do better than that? I think we can. That is what they have done. These are regulations that save lives every year. All regulations are not goofy. All regulations are not

something just dreamed up by some bureaucrat and misadministered or maladministered.

Poison prevention safety closures. They estimate that packaging for products like aspirin or turpentine making them child resistant saved over 700 lives per year. Ban on bean bag cushions. Where they had problems with these things, deaths occurred when a pocket was created in a cushion that could trap an infant's exhaled carbon dioxide and the infant could not breathe properly. Had regulations on that that saved lives.

Child-resistant packaging for mouthwash. Very simple things like that, but they save lives. Fireworks requirements. Safe cribs. Flammable children's sleepwear. Power mowers. Are these things that are just dreamed up? No, most of these things, I would say, are required by legislation we passed here. Most of these things are implemented over in the agencies because we required them to be implemented with the legislation that we passed here.

Automatic residential garage door openers. Hit that thing and it comes down. Well, if a child happens to get under it, and the report indicates that some 54 children between the ages of 2 and 14 had died after being trapped under such garage doors. Died. Is it wrong to say that it has to have a safety device on it? Equipment manufacturers, after January 1, 1993, provide features to minimize the likelihood that a child would be trapped and killed by a garage door.

We have more regulations on lead poisoning, and brown lung disease regarding the textile workers. In 1978 there were an estimated 40,000 cases of brown lung—also byssinosis—but in 1985 the prevalence of the disease declined to about 900 cases, or less than 1 percent of cotton textile workers.

There is evidence that complying with OSHA's cost dust standard increased productivity in the textile industry. A 1980 article in the Economist reported that a tighter dust control measure required by OSHA's rule prompted firms to replace outdated machinery with newer, more efficient systems, and they were more productive after they did that.

Exposure to HIV and hepatitis B.—rules were put out to protect workers who routinely were exposed to blood or other infectious material. Saved lives.

Mine explosions and fires. Safety requirements there have been very effective. In my home State of Ohio, which is affected by that because we have a lot of mines in southeast Ohio, near the area I grew up. The ventilation standards for underground coal mines prevent the accumulation of methane and cold dust fuel for explosions and fires.

In the 25 years before passage of the Coal Mine Health and Safety Act of 1969, 901 miners were killed in explosions. I can remember explosions happening when I was a kid back there. There would be a mine explosion and

several people would be killed. It would be a terrible thing. In the 25 years after that act was passed, the explosions claimed 133 miners, instead of the 901. Mine falls are also covered by safety rules, black lung disease, mine cave-ins, all with improved, decreased mortality rates.

Mr. President, I say that I did not really plan to get into all of these things originally when these things were brought up on the floor, but I found that some of our papers back home in Ohio were picking up on these examples and using them in editorials, and I thought I better correct some of these things to make sure we understand that all of these rules and regulations that were cited here on the floor are not bad.

Some of them are misunderstandings and some of them are good regulations, even though they are pointed out in a different light.

I do not have much time remaining, but let me say one other thing. We had E. coli debates here on the floor the last couple of days, and votes here on the floor the last couple of days.

I heard on the radio when I was driving in this morning, an outbreak, I believe in Atlanta, where there were 18 cases of E. coli reported yesterday. I already knew about 16 cases. I believe most of that was in Wisconsin. We have an outbreak now in Wisconsin, Tennessee, Illinois, and Georgia, of E. coli.

This is not something that is just a fictitious product of our imagination here when we express concern about E. coli, and we were told we were nit-picking, we were just trying to delay things, because we are concerned about the safety and health of people out there. We know what E. coli does. We lose an average in this country of 500 lives a year to E. coli. This bill would delay implementation of regulations that would help curtail that.

Mr. President, 3,000 to 7,000 total lives lost each year to foodborne illnesses. Cryptosporidium in the water supply, and so on. Up in Milwaukee, it killed 100 people, made 400,000 people deathly ill. Mr. President, 100 died. That is the reason the Senator from Wisconsin, Senator KOHL, was so concerned about this and brought this amendment to the floor.

These are not idle concerns we have had over here. We have been termed all sorts of things the last few days. One that stuck in my mind from the other side is we are liberal Democrats favoring big Government. Liberal Democrats favoring big Government. That is all we are doing—favoring big Government. This is the reason we are opposing S. 343.

Mr. President, that is not the case. I am as concerned as anybody in this body about the health and safety of people across this country. I am as concerned as anybody about having a regulatory system in this country that does not permit excesses but, at the same time, hits that balance of protecting the people from the kinds of things we

are talking about here this morning. It protects the people of our country whose health and safety has been hard won over the last 25 years. Have there been excesses? Of course there have been excesses. But by and large have we had people's lives saved? Are our children breathing safer air? Are they drinking safer water? Are they protected more from food illnesses, and so on, than they were back 25 years ago? Yes, the answer is, and these regulations have done that. They have made a better, safer America.

Have there been times when things were overregulated, when people overregulated, got carried away by the particular regulation and went too far with it? Sure there are, and we ought to correct that. But to take a chance of rolling back the clock and saying, as a means of getting more money, disregarding the selfish greed some people might have, that we will let up on these regulations or will somehow make it more difficult to protect health and safety, I think is just plain wrong. That is the reason why we, at the appropriate time, will offer our amendment, S. 1001, as a substitute, because we think it does hit that better balance. It does not have the excesses that S. 343 has.

Mr. President, I only ask one thing, before I yield the floor, and that is when we bring examples to the floor, from now on, from whatever source, on whichever side of the aisle, we document these charges being made, the horror stories about rules and regulations and how maladministered they have been.

I will return to the statement I started out with. The civil service people and the rules and regulations writers, basically, in this country, are people as fine as anybody in this body; as fine as any Senator. They are just as dedicated to their country. They are just as dedicated to the health and safety of this country as anybody in this body. And they are on the firing line. They are charged with administering these things out there. And I do not think we often appreciate it. We castigate them there as though most civil servants administering these things are somehow deficient in mentality, I guess, and cannot administer with some sort of modicum of just plain old common sense.

Yet it is just exactly the opposite. These people are as dedicated as anyone here. If we want to see who is misleading them there, look in the mirror. That is what I tell my colleagues here. Because 80 percent of the regulations that are written are written pursuant—they are required by the legislation we pass here; 80 percent. We had that testimony in committee. That is the best estimate we can make, is 80 percent are required to be written by what we put in legislation here.

So I think our efforts at regulatory reform are good. I think, out of all this debate, we will come out of it with better legislation, better requirements.

But, at the same time, I say we should be requiring these same kinds of cost analysis, risk assessments, in the first place, right here. We should be looking at that before we pass legislation, not sending it over there and then griping about the people on the other side, downtown in the agencies, who are trying to administer the laws we pass and then we give them the devil because we did not give them enough guidance in the first place and they come up with something we do not like. We say, "Oh, isn't it terrible?"

I would like to see us take these same laws and requirements and require ourselves to do these thing before we pass legislation here on the floor. That would make common sense. Maybe we would really restore confidence in Government at that time.

I see the Presiding Officer getting a little nervous about my time here. I know I am a few minutes over, and I appreciate his indulgence.

I yield the floor.

AMENDMENT NO. 1539

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of amendment No. 1539, offered by the Senator from Texas [Mrs. HUTCHISON].

The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to the remarks of my distinguished colleague. I might just add that I have tremendous respect for him, but he has been pretty defensive here this morning on some of these illustrations. I was interested that 80 percent of all regulations are deemed necessary.

Mr. GLENN. They are required by law.

Mr. HATCH. They are required by law. Since there were almost 70,000 pages last year of regulations, I suspect you would have to say that 80 percent of those were required by law. What about the other 20 percent? You see the other 20 percent is what we are concerned about. If that is so, that is between 12,000 and 14,000 pages of regulations that were not required by law.

I think Senator GLENN has misunderstood my point. I have not said that all regulations are goofy. Of course not. If they were, it would take me 50 years of bringing up my list of 10 to even make a dent in the goofy regulations.

What is the point? That the Government is perfect? Efficient? Spends our money wisely? Is that what the point is here today? Because I do not think there is an American citizen alive who believes that.

I would just like to ask a question. Do you really believe out there, America, that you are not overregulated? Do you really believe these people here in Washington are always doing everything just wonderfully right for you? Do you believe small business is not oppressed? Do you believe that private properties are not being taken by ridiculous rules and regulations?

I know people, real down-home people, who have lost their properties

without just compensation, which is required under the Constitution, because of goofy regulations. I have to say I enjoyed listening to the distinguished Senator from Ohio this morning. I appreciate all the research he and apparently OSHA and EPA and other agencies have tried to put together to track all of this material down.

I hope these agencies are as quick and responsive to question the concerns raised by me and other members of the public. See, that is the problem here. They are not quick to resolve these goofy regulations that are ridiculous, that wear America down, that cost us our efficiency, that do not really help us, health-and-safety-wise, but just oppress small business, oppress individuals, oppress our farmers—taking property, land values in the process. But I do think the Senator from Ohio has made the point. We can debate the details of these illustrations, but I have tried to cite some examples this week to illustrate a problem that I think the American people can confirm.

Let me just make two additional points.

Mr. GLENN. Will the Senator yield?

Mr. HATCH. I will be happy to, sure.

Mr. GLENN. What I pointed out were things where the examples you gave were flat wrong. That is the point. Those are the ones I pointed out. They were flat not true, and I refuted a good portion of the ones that were pointed out here on the floor.

Everyone knows there is overregulation. I agree with that.

Mr. HATCH. We respectfully disagree. We think they are true, and they come from real, down-home, real-life Americans.

Mr. GLENN. I just gave the data, the specifics of each case here. You must not have been listening.

Mr. HATCH. I was listening. I think you admitted in many cases that this could happen, but there is another spin, another interpretation. I can acknowledge that. But let me just make two points.

That does not mean they are wrong. That does not mean they did not happen. Just because OSHA has a different point of view or EPA has a different point of the view—which naturally they do—that does not mean that they are right and that these poor down-home average citizens of America are wrong.

Let me just make these two quick points. One, we need regulations. We all acknowledge that. Many regulations serve the public well and protect our interests in maintaining healthy and safer workplaces and environment. I am the first to admit that. I agree with that. And I may even agree that up to 80 percent of those regulations are needed, under the statutes that we passed.

By the way, let us not let us off the hook either. Some of the statutes we pass are goofy.

Mr. GLENN. I agree with that.

Mr. HATCH. I heard the distinguished Senator from Ohio agree with that.

Mr. GLENN. I agree with that.

Mr. HATCH. Some of the statutes we pass are goofy. And let me agree with my colleague from Ohio, whom I happen to care a great deal for, even if he is defensive here today, that not only are some of the statutes goofy but we in the Congress, we do not define statutorily what we really want, sometimes, and we just leave it up to the bureaucracy to go out and screw up America. And sometimes they do. And I think anybody who does not agree with that proposition is not living in America, or even outside of America and watching what goes on in America, with some of our overregulatory excesses. That is what this is all about.

I have to say, thousands of workers for the Government work hard and they really do a good job, and many of the regulators do a great job. We are not meaning to malign all Federal regulators, certainly not. But we do know a lot of these regulations are goofy. We do know that a lot of them cost American business and small business a lot of unnecessary money and, thus, every American citizen. We do know that people are being hurt and oppressed in this country because of stupid, idiotic, ridiculous and, yes, to use my term, silly regulations. I have to say, acknowledging that most regulators do a good job and are really trying to do what is right, and we want to recognize and commend their efforts—but this bill does nothing to change good regulation. Good regulation is going to be sustained by this bill and it is going to be more scientifically proven.

We are going to use the best science, not just 1958 Delaney clause science that, really, everybody admits does not really apply today in this sophisticated day, where we can do parts per quintillion compared to the parts per thousand that we did back in 1958 when Delaney was passed, from a scientific standpoint.

All this bill does is try to rationalize the system to make it more accountable to the public. That is first. Second, notwithstanding the many necessary worthwhile regulations in effect, and notwithstanding the commendable efforts of many civil servants, this is a regulatory system out of control. I think the American public can confirm the need to fix the current system, as the Dole bill does, to ensure that common sense and accountability prevail. That is all we are talking about here.

Let me just make a couple of points and then I would like to see if we can get some time agreements.

Mr. President, the Federal bureaucracy does not work the way it should. It is wasteful, it is inefficient, and all too often hurts the American people it is trying to help. Americans have come to fear and even loathe the leviathan that has grown inside of this Washington, DC, beltway.

We have heard a lot about how this bill will harm the public health and safety. The opponents of the bill like to suggest that by stopping the runaway train of regulation we will reduce the protection of public health, safety, and the environment. That simply is not true, and I do not think many Americans believe it to be true.

Opponents of the bill continue to claim—in my view, erroneously—that lives will be lost because if this bill is passed. The fact is that lives are being lost due to the inefficiencies in the current regulatory system. By failing to pass this bill, thousands of people will die due to misplaced priorities in the current system.

There is a report put out by the National Center for Policy Analysis which illustrates this point. They asked Dr. John Graham, the director of the Harvard Center for Risk Analysis, to look at how the Federal bureaucracy spends money. He concluded that they do a very bad job—such a bad job that, if we got them to do it right, we could save 60,000 lives a year every year for the same amount we spend now—60,000 lives, if we would just do regulations right. In other words, a more efficient regulatory system would save lives. According to Dr. Graham, we could save the same number of lives we do now and do it for \$31 billion less.

I would like to give a couple of examples from Dr. Graham's study to show how absurd and wasteful the current system is. Right now we spend \$115.6 million per year on benzene emission control, and it saves only 5 years of one life; \$115.6 million per year on benzene emission control that saves only 5 years of one life—not five lives, but 5 years of one life in this country. If we spent the same amount of money on requiring the installation of collapsible steering columns in automobiles, we could save 1,684 years of life. That is an increase in efficiency of 33,680 percent.

Another example of misplaced resources is the \$100 million spent on control of release of low-level radiation from nuclear power plants. According to Dr. Graham—remember, he is a Harvard Ph.D. who is widely respected across the board by the left, right and everybody else—according to Dr. Graham, that \$100 million spent on control of release of low-level radiation from nuclear power plants buys 1 year of one life—just 1 year. However, if we spent that money on cervical cancer screening and treatment, it would save 2,000 years of life every year.

I would like to use one other example to illustrate how the money wasted by foolish bureaucrats hurts society. A February 1994 FYI publication by the Heritage Foundation calculated that over \$4 billion that is spent to prevent one death under the hazardous waste disposal ban could instead be used to keep over 47,000 criminals in jail for 3½ years. They further estimated that it would reduce the arrest charges over those 3½ years by 22,680 violent crimes, 7,711 robberies, 1,035 homicides, 586

rapes, 1191 other sexual assaults, and 658 kidnappings.

In other words, by spending our resources more wisely we can save even more lives. But, no, the Nader crowd, Ralph Nader, Joan Claybrook, people like that, are crying for an inefficient zero-risk attitude in certain select areas that do not allow us to save all of these lives in another area. These regulations cost us an arm and a leg to save a few months or years out of one life in this whole society when we could be saving 60,000 lives every year. That is what this bill is about, getting some common sense into the regulatory system.

Opponents of this bill might respond by arguing for spending even more money on collapsible steering columns, jails, and more regulations while preserving the status quo. But the status quo is not acceptable. We should be maximizing the benefits to society and minimizing the risk, and doing it intelligently and in a decent way. And this bill will help us to get there. The current bureaucratic mess misses the best opportunities to really help Americans and impose this crushing cost on our citizens. I wanted to make that little point here today.

The Senator from Ohio again referred to his alternative substitute amendment this morning, noting that he planned to offer it. Could I ask the Senator if he is prepared to offer his substitute this morning or today, because I think we ought to get into that. It is really going to lead to a more efficient and more effective debate. We can get right down to the nitty-gritty of what our differences are between the two bills.

Both sides have discussed it this week. We would be happy to enter into a time agreement on it. I think it is just a wise thing for us to get it up and try to narrow the differences between the two bills if we can. The only way we are going to get there is if the Senator calls it up and we debate it. Does he think we can?

Mr. GLENN. We will have meeting in a little while to determine when we will be bringing it up. It will be brought up. There is no doubt about that.

Mr. HATCH. We would like to bring it up today if we can and get moving on it. So I hope that the meeting will allow us to get going. I think it will join the issue. It will do everybody a favor and a service, and we will be able to discuss the differences between the two bills, if we can narrow the differences and go from there.

Could I ask the Senator another question? We have Senator HUTCHISON here today and Senator DOMENICI. They both have amendments. I think the other side is completely aware of these. I think they are prepared to argue them. Is it possible for us to have reasonable time agreements?

Mr. GLENN. I will have to check into that. Maybe we could. I do not know yet. What time would be suggested on Hutchison?

Mr. HATCH. Would she be happy with 10 minutes equally divided?

Mrs. HUTCHISON. Yes. I am happy with 10 minutes equally divided.

Mr. GLENN. I am sure that would not be satisfactory. I think we had some people who wanted to speak on that side on that. I will see if we can come up with a time agreement.

Mr. HATCH. Could I propose a unanimous consent on it? Why do I not just propose it and see if the Senator can accept it. If he cannot, we will understand.

Mr. GLENN. I already said I cannot accept a time agreement until I talk to the people who want to speak on this subject. I will object to it. Go ahead and propound it.

Mr. HATCH. Will the Senator see if he can share with his side a time agreement with 30 minutes equally divided?

Mr. GLENN. We have people interested in speaking on this. They are on their way over now. I do not know how much time they may require. I could not commit to any time agreement at this moment.

Mr. HATCH. There is some indication that we might be able to, if we can join this issue. Some of the Senators are on their way over. We might be able to shoot for a vote sometime right after 11, shortly after 11, maybe around 11:10. Let us at least push for that. Then will the Senator also check and see if we can get a time agreement on the Domenici amendment? We would like to move on these.

We know that a lot of people want to get out of town, but we want to have some votes today, and I do not want to have them at 6 o'clock.

If we could do Hutchison and then Domenici and then Kennedy, if he wants to do his OSHA amendment, that would be great.

Mr. GLENN. We have a list of amendments we can proceed through today all right. We have about, I think there are six or seven substantive amendments, and we do not have time agreements on any of them. We have to discuss time agreements as we go along. I join my friend; I hope we can do that.

Mr. HATCH. If I can recommend something to my dear colleague and friend, what we would like to do is narrow down all the amendments if we could today so we know where we are going and everybody knows what the game plan is and we can plan on this, because I know that we are not going to give too much more time to this bill. I know the majority leader has a very important agenda, and he does not want to spend too much more time on this. So if we could get a list of all the amendments that we are going to have to decide between now and next Monday night, to hopefully finish this bill by Monday evening probably late, then we will work on this side to try to make sure we get time agreements on these amendments as well.

I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, if I could ask the Senator from Utah a question, would the Senator like for me to proceed with the amendment?

Mr. HATCH. I think the Senator should begin.

Mrs. HUTCHISON. Explain it, and then as soon as the Democrats who wish to speak on the issue come, we would work out a time agreement?

Mr. HATCH. I think we should move ahead on the amendment and hopefully we can have a vote about 11:10.

Mrs. HUTCHISON. I thank the Senator. I appreciate the Senator from Utah working on this amendment, and I appreciate the fact that he is also cosponsoring the amendment.

Mr. President, the Hutchison-Hefflin amendment is also cosponsored by Senators NICKLES, CRAIG, and LOTT. The purpose of our amendment is to prevent agencies from bringing enforcement actions seeking criminal and civil penalties when due process and fair notice are not followed. In some cases, agencies have sought to impose penalties retroactively based on a new agency interpretation of a rule or a new factual determination even where the person against whom the action is brought has reasonably relied upon a prior agency interpretation or determination.

Now, because of this, corporations are forced to spend hundreds of millions of dollars to defend civil and criminal cases brought under the various Federal statutes. These millions, of course, take from that business's ability to grow and create new jobs. It is hurting our economic vitality in this country that we have to spend so much fighting regulations that are unfairly put forward and that the company either does not have notice of or the interpretation has been changed and the company cannot reasonably be expected to know there has been a change.

Now, we in Congress bear a large share of the blame for this situation. For example, we have created open-ended environmental enforcement statutes which call for penalties of up to \$25,000 a day in civil cases, months and even years in Federal prison for criminal cases without having to provide proof of actual damage to the environment or the intention to violate a single provision of the Federal regulations. Now is the time to put common sense and justice back into the equation.

This amendment would add a new section 709 to the Administrative Procedure Act to prevent penalties from being imposed for unpublished, inconsistent and retroactive agency interpretations in civil and criminal actions. My amendment would codify into administrative law the fundamental principle that an agency must give the regulated community adequate notice of its interpretation of a statute or any rule enforcing that interpretation through civil or criminal penalties.

We are talking here about people going to prison, or we are talking about huge fines that can make a difference, especially in a small business, as to whether that company can keep on going, if it can hire new people, if it can buy that new machine. That is what we are talking about. The \$25,000 a day fine is not small potatoes and especially if you are a small business.

Such notice may be lacking where the agency's interpretation of a rule in question is not made clear to the regulated community or where the agency states that the rule does not apply to certain conduct or where the agency attempts to apply a new interpretation but does it retroactively. It is fine that there is a new interpretation, but I think the people who are responsible for dealing with these regulations certainly should know if the regulation interpretation has changed.

Section 709 would impose limitations on the ability of Federal agencies to pursue civil or criminal penalties for alleged violations of rules in circumstances where the imposition of such penalties would be inconsistent with basic principles of due process.

Now, courts routinely will uphold principles which this amendment embodies. The codification of the principles would deter agencies from pursuing these cases in the first place and save unnecessary legal expense. We know litigation is expensive and burdensome, particularly for small businesses. Many defendants are forced to settle a case and pay a reduced fine because to fight it would be more expensive.

So even if the finding is plainly unfair, a company may just pay the fine to avoid the costly litigation expenses. That is not the way the Federal Government should rule. Federal Government agencies that we delegate should be fair. We are not against the businesses of this country. We are for them. We want business to succeed because that is how we create the economic vitality and the jobs that keep our country going.

Agencies that are used to being given a considerable measure of deference when their regulatory interpretations are challenged in a nonenforcement context sometimes misunderstand that fundamental principles of due process should take precedence over the concept of deference when civil and criminal penalties are at stake in court.

Section 709 will discourage Government regulators from initiating unjustified enforcement or other actions by reminding them through clear statutory pronouncements of their obligation to provide businesses with adequate notice of their regulatory responsibilities and their duty to enforce the regulations fairly.

I urge all of my colleagues to support this amendment, to apply the same principles of due process and justice that are embodied in our Constitution and in our enforcement of civil and criminal laws to the enforcement of

agencies' rules. That is what this amendment does. This amendment says that the basic rules of fair play—notice before you are going to have a penalty assessed—would be in this code so that agencies would be on notice and so, of course, the person or business that has to comply with these regulations will know exactly what they are being required to do. That is a concept that is well settled in our Constitution, in the framework of our Government and in the laws that we pass.

Basic fairness and due process has been the foundation of our Government. My amendment today just puts those basic principles into the Administrative Procedure Act so that everyone is on notice—the Federal regulator is on notice and the regulated entity is on notice—that there will be fair and due process.

Mr. President, that is what this amendment does. I hope that we can get a fair debate on this, because I think it is a very important concept for us. But it is essential that everyone have the same book to read from, the same playing field to play on; that everyone is on notice of what the regulations are going to do, what the interpretation by the regulators will be.

We put that in the code so that everyone knows what they are required to do—the agency and the regulated. I would like to see a time in this country when we did not have an adversarial relationship between our regulators and our businesses because, after all, we want our businesses to succeed. We want our companies to export overseas. We want the jobs to be created in America. Why cannot business be a partner rather than an adversary?

That is what my amendment will try to do by putting everyone on notice that they have to have a fair and due process. But it is going to take more than that, Mr. President. It is going to take an attitude by everyone that we are going in the same direction, that we want to have good, solid, firm regulations. If a business gets out of line, we want to make sure that business gets back in line. But we want to do it in a partnership, not an adversarial relationship.

I think just putting it down on paper is the responsibility of Congress. It is our responsibility to say what the parameters are, and that is what this regulatory reform bill does. This regulatory reform bill sets the parameters. It makes Congress do what it should have done a long time ago. And that is, tell the regulators what the congressional intent is.

Why would we pass broad general guidelines, delegate our responsibility to the regulators to enforce these broad general guidelines and then be surprised when they do things that we never envisioned? It is our responsibility to make sure they know what our intent is so that when we delegate that responsibility, they stay within those limitations. It is our responsibility, Mr. President, but I think rather than

broad general guidelines, we need to be more specific.

This is a specific. This amendment does put in the Administrative Procedure Act exactly what everyone must do—the people making the regulations and the people following the regulations. It is our responsibility to make it clear. I think this will go a long way toward stopping the over litigation, the money that is wasted on lawsuits, instead of going into the bottom line so that a business can grow and prosper and export and create jobs and keep our economy able to absorb the new people that want to come into our system and the immigrants that are coming into our system. That has been a hallmark of this country, and that is what we want to continue. That is why this is such a good bill and so important that we pass it.

So, Mr. President, I am going to stop and let those who might have other views state them. Let us have a good debate, but I hope that my colleagues will realize that this is a very important amendment for fairness, for justice, for due process and for making sure that everyone is singing from the same hymnal, that we all know what is expected of us, that we know that there will not be a law in this country or a regulation in this country that a company will have to fight when they did not even know that it was on the books. That is the purpose of this amendment.

Mr. President, I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I would like to speak in behalf of the Hutchison amendment. I would like to inquire first—parliamentary inquiry—of what is the time situation. Is there any agreement on this amendment?

The PRESIDING OFFICER. There has been no agreement.

Mr. LOTT. Mr. President, I do want to speak in behalf of the Hutchison amendment and commend her efforts to develop this amendment. I know that she has been working tirelessly to develop the right language, and I know that some changes have been made.

I think this amendment goes to the heart of what this bill is all about. When I look at words that describe what she is trying to accomplish, it is words like "fairness," "understanding of what the rules are," "not being penalized by a change in the rules," or the "effects of retroactive rules."

I have seen in my own State many instances where businessmen and women, large and small, and even farmers complied with the rules that they understood were on the books, and then they had those rules retroactively changed and were told, "You are going to be penalized, you did not comply with the law" when, as a matter of fact, they did. They complied with the existing rules.

What we are asking of the small businessman and woman of America, in

some instances, is it to be mind readers of how Washington bureaucrats will interpret a rule or how a rule will be interpreted in the future.

What we are trying to do here today is to stop retroactive rulemaking, and get a clarification on what occurs when a rule is changed. Americans need to know what the rules are.

The amendment, in my opinion, will prevent unfair administrative enforcement action. It requires, as I understand it, the agencies to show the same concern for due process—due process—that Americans expect from the courts and the Congress.

The amendment prohibits the imposition of civil or criminal penalties if the agency did not give adequate notice of a prohibited conduct. Let me stop on that. Should you not at least get adequate notice? Should you not be told what you are going to have to comply with? It seems like a minimum sort of requirement.

Or if a court finds that the defendant reasonably determined it was in compliance with a rule based on the published rule or based on its summary explanation in the Federal Register; or if the defendant was told that it was in compliance by the agency.

Think about that. You are told by some agency or department—all of this alphabet soup in Washington—"OK, you're all right, you're in compliance," and then later, weeks, months, years later you are told, "Sorry about that, one of our employees gave you the wrong information. You are not in compliance. And, oh, by the way, there is this little civil or criminal penalty you might be liable for."

These are basic fundamental American rights that we have lost over the past 20 years. I think there have been overzealous interpretations of rules and maybe even laws. Although, when I talk with some of these agency representatives often I am told, "No, no, no, we can't do that, the law doesn't allow that," but when I examine it further I find it is not the law, it is the agency's interpretation of the law. This is not a little difference—this is a big problem.

This amendment would prevent an agency's rule interpretation from being enforced by a court if the agency did not publish in a timely manner the information.

This amendment would prevent courts from imposing civil penalties based on retroactive application of rule changes. I guarantee you, every Senator in this Chamber can tell you an example where a constituent complied with the rules and were faced with fines because the rules were changed and then they were told, "You have to pay."

It does not make any difference that your constituent complied with the law at the time, it does not make any difference if you took action to deal with cleaning up something and you properly transferred what you got in that cleanup process to somebody else, you

are responsible for the subsequent requirements of this rule. This is just basically wrong.

This amendment would prevent that from happening if there is a retroactive application of an agency's interpretation of a law or rule or in an agency's determination of facts.

This amendment does not—does not—prevent agencies from making changes. Sure, lots of times you find new evidence, new science, new factors come into play and changes should be made. That is fine. This is all well and good. I know lots of rules and regulations I would like to see changed. Agencies can make those changes and then apply them prospectively with adequate notice. If an agency makes a change, fine. But it should only apply henceforth, and you must tell the American people that they are going to be affected differently because there has been a change.

Some may be surprised that we even need this amendment in the first place. Most Americans do not have to deal with so many Government agencies and departments. They do not know all of this.

They would be amazed that American's are denied public notice or that they can have a rule change and then be subjected to a process where they can be put out of business because of unknown penalties or even criminal violations. In their zeal to collect more fines and increase their budgets and sometimes even make work, in my opinion, for an ever-increasing number of cases and lawyers at the Justice Department, agencies have done a number of things.

Let me share with you some examples. One aspect of the regulatory abuse is inadequate notice of an agency's interpretation. The Department of Agriculture tried to impose the continuous meat inspection requirements for meatpackers on a retail grocery store chain because it sold pizzas which were baked at a central location. USDA said the grocery stores were meatpackers because their pizzas had pepperoni, ham, and bacon on them. My son is in the pizza business. If there is any food business I know anything about, it is pizza. This is a crazy rule. USDA said the store was in the meatpacking business, but the Sixth Circuit Court of Appeals ruled that USDA failed to properly give notice that it was going to change and expand its rule interpretation. Therefore, it could not enforce the rule against the grocery store chain.

OSHA—one of my favorite agencies—requires that tunnel diggers have self-rescue equipment when they are near the end of a tunnel where the digging is going on. That makes sense, but then without notice OSHA tried to expand this rule to cover other workers like those building the metro system here in Washington, DC, metro. No notice—that is the key phrase. It is OK to expand a rule, but you should at least tell the folks effected?

The judge—now Supreme Court Justice Scalia—writing for the D.C. Circuit, said:

Where the imposition of penal sanctions is at issue . . . the due process clause prevents [deference to agency interpretations] from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires.

Fair warning and fair notice—this is a basic American tenet, I thought. But over the years we have lost that too.

Another OSHA example of inadequate notice. Here OSHA ruled that a railing be installed around open-sided floors, but not open-sided roofs. It could have required railings for both, but it did not. OSHA then cited a builder for failing to have a railing around an open-sided roof. Maybe it should have been there that is not the point. The Fifth Circuit Court of Appeals found that while OSHA could require rails around open-sided roofs, they clearly knew the difference between floors and roofs, and that it had not done so. But the court ruled that "an employer * * * is entitled to fair notice in dealing with his Government," and that "if a violation of a regulation subjects private parties to criminal or civil sanctions, a regulation cannot be construed to mean what an agency intended but did not express."

An agency should at least tell us what it wants. If they do not express it, why are we liable for that? Again, we are not mind readers of agency bureaucrats.

I have many, many illustrations that there are occasions when inadequate notice of prohibited conduct with retroactive application has occurred, but let me conclude with one final example from EPA. I think EPA is one of the more blatant violators of due process and fair treatment. It fined General Electric Corp. \$25,000 for violating the Toxic Substances Control Act, for distilling and reusing a freon solvent rinsing agent. EPA concluded that the distillation and reuse of this solvent posed no health risks and actually produced an environmental benefit by reducing the amount of contaminated materials—but the EPA nevertheless imposed a penalty. In this case they actually said GE had a positive effect on our environment by reusing contaminated materials. Judge Tatel—a recent appointee to the D.C. Circuit Court by President Clinton—said, "In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing a civil or criminal liability."

This is one of President Clinton's own judicial appointees on the D.C. Circuit Court that, once again, said that without proper notice, you cannot penalize. Clearly, this demonstrates that this amendment is not partisan in nature. It is about basic justice and fairness.

I support this amendment. I think its addition would greatly enhance this

regulatory reform bill. Again, I commend the Senator from Texas for her work in this effort. This amendment is so fundamental, so basic, so logical that I would think that it would be just overwhelmingly accepted. I urge its adoption.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I rise to both compliment the Senator from Texas on what she is attempting to do, if it is what I think she is attempting to do, and I would like to be able to ask her a few questions and ask her to consider whether or not she might be willing to make a few modifications.

Let me begin by saying that the idea of an individual or a corporation expending their time, energy, and money in an effort to take an action in which they operate in total good faith, and they go to a Federal agency, speak to an appropriately authorized bureaucrat, someone with authority to make a judgment, and are told that, yes, what you are proposing, based on what information you have given us, is totally appropriate, is consistent with the rules and regulations, and you should be able to go forward; and then that person goes forward and finds—after they have made their investment, after they have undertaken their action, they are told, wrong, wrong, you are violating the regulation, you are violating the rule, you are subject to a civil or criminal penalty here. And the taxpayer retorts and says, but they told me it was all right. They said it was OK to do this. I think that taxpayer should, as this amendment suggests, be exempt from civil and criminal penalties, with no civil administrative penalty, either court imposed or administratively imposed, if they violate a rule after having been told by the rulemaker that it is OK to go ahead and do this.

Now, I understand from the comments—and I was able to listen to some of the comments of the distinguished Senator from Texas in my office on the television, but I did not hear them all. As I understand it, her fundamental intention is to hold harmless people who act in good faith, rely on in good faith, and provide in good faith with the blessing of the appropriate agency.

So my question is: Is that the major thrust and purpose of the Senator's amendment?

Mrs. HUTCHISON. The Senator from Delaware is correct, as far as I can tell from what you are saying. It is a matter of fairness, notice, retroactive interpretation, change, basic due process and basic fairness.

Mr. BIDEN. May I ask the Senator another question. If, in fact, a taxpayer goes in to the regional director of the EPA or into any number of Federal "alphabet" agencies and sits down and says, I want to do the following, and then in laying out the facts of what they intend on doing does not disclose

all the facts—does not, for example, tell the regulator that where they want to lay this pipe or where they want to build this building is in the middle of a swamp. He says, "I own a piece of land that is high ground and here is my plan, this is what I want to do. Can I do it?"

If the taxpayer does not fully disclose to the agency the actual facts as the taxpayer knows them, does the Senator intend for that taxpayer to be held harmless, if it turns out the rule has been violated?

Mrs. HUTCHISON. I would say to the Senator from Delaware that becomes a fact question for the agency or for the court to determine if a penalty is put forward.

Mr. BIDEN. So, if, in fact, the agency, after the fact, the agency writes a letter, saying, "John Doe, taxpayer, go ahead and build your building on the site you asked whether you could build it on," and then finds out later that John Doe told them it was high ground, and it turns out to be a literal swamp that they filled in, I assume that John Doe would not be able to say in court, "Look, I got a letter here and it says go ahead and build."

The agency would be able to say, would they not, that, well, "We were not given all the facts, your honor, and the penalty should prevail," is that what the Senator is saying?

Mrs. HUTCHISON. I say probably that situation is covered very well in our amendment, because it says that the agency shall not be able to impose the civil or criminal penalty after disclosure of material facts at the time and appropriate review.

I think it is possibly covered very well.

Mr. BIDEN. I am not suggesting it is not. I want the record to reflect if all the material facts are not made known to the agency at the time the approval is given, I assume the taxpayer does not get the benefit of being held harmless, is that correct?

Mrs. HUTCHISON. I would say any court or any agency probably is going to be able to determine pretty carefully the difference between high ground and a swamp.

Mr. BIDEN. If the Senator reads the first section of the Senator's section 709, subsection (1):

No civil or criminal penalty shall be imposed by a court, and no civil administrative penalty shall be imposed by an agency, for the violation of a rule.

By law, we are telling a court they cannot impose a penalty.

My question is, Is the exception to that, if it is clear that on a material fact the taxpayer did not disclose all the facts, would the court be able to say as the Senator reads her own amendment, look, I understand section 709 of the amendment says we cannot impose a penalty?

But if we look forward down here, mister lawyer for the defendant, it says material facts—the material facts were not all made available here; therefore,

even though the taxpayer has a letter saying go ahead, I will fine the taxpayers.

Mrs. HUTCHISON. I think the Senator from Delaware is stating it correctly.

Reading further through the amendment, after the part that the Senator read: "No civil or criminal penalties shall be imposed" if they find that the defendant "engaged in the conduct alleged to violate the rule in reliance," and it provides all of the ability for the court or the agency to make the fact determination.

Mr. BIDEN. Where does it say that? Can the Senator show me where in the amendment it says that?

Mrs. HUTCHISON. "if the court or agency, as appropriate, finds that the defendant"—in good faith determined based on the language of the rule or "engaged in the conduct alleged to violate the rule in reliance upon a written statement issued by the appropriate official" *** stating that the action complied with, or that the defendant was exempt ***

I think that there is a lot of latitude by the court to determine. If we go on through the rest of the amendment and go over to the next section it says:

No agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon . . . a written determination of fact made . . . after disclosure of the material facts at the time and appropriate review of those or in interpretation of the statute.

Section (c), the third page is where I am reading from.

Mr. BIDEN. The Senator is reading from page 3 of her amendment where it says:

No agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon—

(1) an interpretation of the statute, rule, guidance, agency statement or policy, or license requirement or condition, or

(2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,

if such an interpretation or determination is materially different from the prior interpretation made by the agency or State official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

What that says to me, Mr. President, is not, I think, what the Senator intends.

Would the Senator object to language explicitly saying that if all the material facts are not disclosed to the agency at the time of the letter of approval then a civil and criminal penalty could apply if the law was violated. Would the Senator have any objection to clarifying it?

Mrs. HUTCHISON. I would be happy to sit down with the Senator from Delaware and go through it. I do not think it is a very good idea to write a bill on the floor. The Senator has the evening to look at it.

We can go to your desk, and if there is something we can modify that would allow the Senator to support this amendment, that I can agree to, I would love to do that.

Mr. BIDEN. Let me make another point, and I truly appreciate the Senator's consideration.

The second problem I have with the amendment as it is written is this section (a)(2)(A), it says, "no civil or criminal penalty," and then it shifts to "shall be imposed, if the court or agency as appropriate, finds that the defendant reasonably in good faith determined, based upon the language of the rule published in the Federal Register, that the defendant was in compliance with, exempt from or otherwise not subject to, the requirements of the rule."

Let me explain why that bothers me. We can make an analogy to one of the more loathed agencies in America, the IRS. I know I do not do my taxes anymore, and I have the dubious distinction two times ago as being listed as the poorest man in the U.S. Senate. Second poor only to the man in Montana sitting behind the Senator, so I do not have a very complicated tax form to fill out.

But I do not even do my own taxes anymore. I pay about 1,200 bucks a year to have somebody do my taxes when I do not have anything to declare. I do not have any money. I am not proud of that, but I do not have anything. I do not own a single stock, a single bond, a single investment. I do not own anything, except me and the bank own my house.

Having said that, if I decided I was going to try to save myself this 1,200 bucks this year—were I not a U.S. Senator, I would not have anybody do my taxes, but I am afraid I would inadvertently make a mistake and there would be a headline in the newspaper that says "BIDEN screws up his taxes" so I pay somebody to do them, even though I do not have any need to do it.

Having said that, I sat down and tried to figure out interest, on what interest is a legitimate deductible—on my mortgage. So I wrote this all out and I got it figured. I got this all down just right.

It turns out, when I sent it in, figuring if I sent in this finished tax form to the accountant, one of these big accounting firms, that I would get a break because they would not have to do all this work and maybe it would not be \$1,200 or whatever it was, maybe it would be \$300—it turns out I was wrong the way I calculated the interest.

I did it in good faith. I acted in good faith. I guess I am revealing the fact that maybe I am not as bright as I would like to think I am, but I am a relatively well educated guy. I acted in good faith. I went out and did it as best I could—fearful of the political consequences if I was wrong, so I had an incentive to get it right. And I still ended up wrong.

Nobody suggests that, even though I relied—I acted in good faith, I reasonably, in good faith, determined that I could deduct more than I was actually able to deduct on my home mortgage interest—because I did not figure out the basis correctly, but at any rate, that I was able to do that—I doubt, when the IRS came to me and said, "No, BIDEN, you owe \$220 more than you calculated," that I should go to a court and say, "I am not paying it; take it to court," and you cannot get it from me because I can prove to a court I reasonably relied on what the code said.

I just made a mistake. What worries me here is that some of these regulations are understandably complicated, like the IRS code. So, if I come along, as a guy who in my State wants to build a project or dispose of a chemical or whatever, and I act in good faith and I reasonably, in good faith, determine that this law does not apply to me—when anybody who really knows, knows if I had gone to my lawyer or if I had spoken to somebody they would make it clear that I did have the requirement to abide by a different way—I do not know why we should reward ignorance.

I can understand rewarding reliance, reliance on good faith: Going, disclosing all the facts to the agency, saying "Here is the deal, this is what I plan on doing, here are my plans." And some agency guy or woman saying, "That is OK." Then I go ahead and do that, and they come back and say, "Wrong, wrong. We are going to fine you." That person should be held harmless.

But what I do not agree with, that subsection (a) seems to allow, is, if I sit down as Joe Biden Waste Removal Co., read the regulations, and say, "You know, in good faith I think I can dump this toxin in the local landfill," and I go ahead and dump it in the local landfill, and then the EPA, or State of Delaware comes along and says, "No, you violated the law," for me to be able to go back and say, "You know, I in good faith determined that this word meant that," I do not think I should be held harmless, because the public interest is at stake here.

Mr. NICKLES. Will the Senator yield?

Mr. BIDEN. Yes, I will be delighted to yield.

Mr. NICKLES. If I might just inquire of the Senator, I have an interest in this language but also I have an interest in getting the bill moved.

If the Senator has a suggestion, we are happy to consider those suggestions.

Mr. BIDEN. I agree.

Mr. NICKLES. I know several Senators want to know—

Mr. BIDEN. I will cease and desist and negotiate with my friends. I assume we are not going to vote on this right away, correct?

Mrs. HUTCHISON. Mr. President, if I could interrupt my good friend from Oklahoma, I absolutely agree with

him. I think we need to sit down and work together if we can. But, with all due respect, the point that he is making is not even necessary, under this. We are talking about not being able to have a penalty, a fine, or put you in jail. I think that is covered now.

If you sit down with the IRS and say, "I, in good faith, thought I should have this exemption," I would expect the IRS and hope the IRS would say, "No, Senator BIDEN, you actually owe \$220 more." And I would not suggest a Senator as smart as the Senator from Delaware would think that is a fine?

Mr. BIDEN. I say to the Senator, maybe it is because I had the disadvantage of having practiced law, I can assure her the IRS does say, "By the way, there is a fine."

Fortunately, the Senator did not have to practice law. And they do that, by the way.

Mrs. HUTCHISON. The Senator from Delaware knows it is well settled in our law that there is a good-faith test. If it is not a willful violation, I would hope we would protect people who in good faith, in a fact determination, would be able to say I did not mean to do this.

If you think the IRS would, in fact, penalize someone with a fine for that, then I think we should protect them from the IRS. That is what my amendment does.

Mr. BIDEN. I do not want to be overtechnical. The Senator from Texas, I think, is confusing the difference between civil law and criminal law. Willfulness is required for criminal, not for civil. But I do not want to get into that debate.

Mrs. HUTCHISON. I think good faith is well settled in principle in civil law.

Mr. BIDEN. Mr. President, I admire the Senator but she is fundamentally wrong on the law. But I do not want to debate that.

Let me just say this. If the Senators are saying that they, in fact, are not going to move to vote on this right away, then there is not a problem. I am willing to yield the floor and go ahead and see if we can negotiate this.

But if we are going to vote, if I yield the floor and we are about to vote on this issue, then I am going to speak on the issue. I do not want to speak on the issue. I would rather try to resolve it.

Would the Senator from Oklahoma or the Senator from Texas be kind enough to tell the Senator from Delaware what the plan is, relative to moving on this amendment as is, in terms of the time-frame?

Mr. NICKLES. I will be happy to respond to the Senator. I know Senator DOLE wants a couple of votes quickly. That is the reason why I thought maybe we could talk.

In listening to the Senator from Delaware I thought I heard the Senator say he has real problems with the words that were inserted, "in good faith." If he has other suggestions, I would like us to talk about them and maybe we can resolve that.

Mr. BIDEN. Good.

Mr. NICKLES. I do know Senator DOLE wants some votes. I do not want to get into protracted, extended debate. I know Senator KENNEDY has an amendment dealing with OSHA that shall be controversial. We need to dispose of it, I hope, pretty quickly. We were in hopes we could have votes on Senator HUTCHISON's amendment quickly. My thought is we might be able to resolve more with a little side discussion than we could on the floor.

Mr. BIDEN. Let me say to my friends—it will take 30 seconds to say it—I am delighted to see if we can resolve it. If we cannot, I will have a second-degree amendment to which I will wish to speak. But I thank the Chair and yield the floor, and maybe we can talk.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, while my colleagues are—

Mr. LEVIN. Mr. President, I wonder if the Senator from Idaho could yield just for 2 minutes so I can address the Senator from Delaware and Texas on this issue?

Mr. CRAIG. I will be happy to.

Mr. LEVIN. If I could have the attention of the Senator from Delaware and the Senator from Texas just for one moment? The suggestion has been made by the Senator from Delaware that we attempt to work out language on the amendment of the Senator from Texas. I hope that can be true, because I think the intent of the amendment is an important one and a laudatory one.

There are a number of things which I believe can be clarified, which will help that amendment reflect what is that laudatory purpose, where, if people act in good faith, they should be able to rely on agencies' rules and interpretations.

We do want fair warning to people. In addition to the problem which has been raised by the Senator from Delaware, there is an additional problem which is that there is a narrow reference to the word "rule," in the amendment of the Senator from Texas. I believe that the court opinion which the Senator from Mississippi, I believe, quoted—although it may have been someone else—it is not just a rule, that agencies act by. It is also interpretations, guidance. In other words agencies act in many ways.

As a matter of fact, this bill is going to permit petitions to get agencies to reconsider guidance and interpretations. So the notice which so correctly we should insist upon comes frequently from more than just a published rule, but also comes from agency guidance and interpretations. We do not want the agency to be limited to just published rules. We want people to be able to get interpretation and guidance from agencies, so that when the Senators from Texas and Delaware are sitting down to try to put the language of

(c) in (a), I hope they will also look at the use of the word "rule" and expand that to include other published guidance, correspondence and so forth.

That is the suggestion that I would make as they are reviewing this very useful amendment.

Mr. CRAIG. Mr. President, let me reclaim my time. I would be happy to yield for a comment by the Senator from Texas.

Mrs. HUTCHISON. Mr. President, I appreciate that because I would like to respond to the Senator from Michigan that we would be happy to add some language, to have "definition" and "rule." "Rule" is in section C. If you would prefer to put "rule" and "definition" in A, I think we could work something out because, as the Senator from Michigan said, what we are trying to do here is have a due process and a fair play in the Administrative Procedure Act. We want to have that goal. Then perhaps with some word changes and better definitions, we could work something out.

Mr. LEVIN. I thank the Senator from Texas. I thank the Senator from Idaho.

Mr. CRAIG. Mr. President, I am a cosponsor of the amendment of the Senator from Texas. I hope that she and the Senators from Michigan and Delaware can work out the differences because I think it is an extremely important amendment.

When I look at what has gone out there in the past and is currently going on, I pose this question to you, Mr. President: Can you imagine living in a country where the laws are not posted or published—anywhere, in some instances—but you can still get in trouble for violating them? That is kind of the feeling of a lot of our people out in the private sector trying to make a living, especially those in the business community and especially the small business community that does not have the hundreds of thousands of dollars of resources to keep a stable of attorneys around telling them what to do and how to do it. Sometimes they find themselves exactly in that situation. They find themselves in a world where those who enforce the laws tell you it is OK to do something and then turn around and punish you for doing it.

That is some of what the Senator from Delaware just spoke to. But in the same instance, if you have invested a lot of money and time and you thought in good faith you were doing it only to be told you are not and then to be fined, I think in most instances the average citizen in our country who has reacted very openly about these issues would say that is just wrong. Most Americans, I believe, would find that kind of system to be intolerable, outrageous, and in all fairness I agree with them. That is why I am a cosponsor of this amendment.

Yet, as unbelievable as that description may be—Mr. President, we find today that that is in part the regulatory system we have—it is a mystery to me how anyone could most possibly

defend that status quo. Yet, we find Senators on the floor saying, Wait, everything is OK. Well, everything is not OK if we spend \$600 billion nonproductive dollars in our economy every year in this situation, and yet good-faith citizens find themselves subject to penalties and subject to fine.

It is inconceivable that the current system actually would allow agencies to decide after the fact that an action or a failure to act should be penalized. If we were talking about criminal law—and that became a brief discussion a moment ago—it would be considered flat-out unconstitutional. Well, if it is unconstitutional in criminal law, why should not it be unconstitutional here? That is because for three decades we have been caught up in the attitude that the regulatory agencies of our Government know better how the world out beyond the beltway ought to be instead of the private citizen who is trying to provide the goods and services for society and operate in good faith, who has the right to choose and make reasonable and sound decisions.

So I think if it is unconstitutional in criminal law, it ought to be unconstitutional here, and that is why we ought to fix it. And I think that is why the Senator from Texas is clearly headed in the right direction.

I compliment her for her energies and her effort in her amendment. Her amendment is nothing more than I think, as I mentioned a moment ago, common sense and fair play. It just says that people should be put on notice as to what actions are required or prohibited of them. That ought to be clear and straightforward. Those who get approval before they act from an agency authorized to regulate or speak on policy in a particular area should not be punished for relying on that advice.

The simple question then is, Well, then, where do we go? If I have heard that once, I have heard it a hundred times, Mr. President, in my town meetings from small business people saying, What do we do then? Do we just simply go out of business because we cannot get the right direction, or we cannot find a way to be in compliance with some obscure rule or regulation, that a Federal regulator now comes in and says, Here is the \$10,000 fine for doing something wrong, when they in fact may have been advised that the way they were going to do it and then did it was right? That is an intolerable world.

This amendment does not interfere with an agency's ability to revise its rules or to interpret those rules. It just requires penalties to be imposed for future violations as opposed to past violations.

Mr. President, regulations are not supposed to be a goal in themselves. They are supposed to be a way of reaching important goals. Let me repeat that because that is exactly where the small business community, the backbone of the American economy, finds themselves. They find themselves

always moving toward the regulation. That is the goal. It ought not to be the goal. It should be the way you get to a productive economy, in the right and proper, socially acceptable level of performance.

If we make the laws and regulatory process a trap for the unwary, nobody is served, and the tragedy of nobody being served is that then nobody wants to play. And in this instance, what we are talking about is the creation of jobs, the strengthening and the building of an economy. When nobody wants to play because they find themselves prohibited or the very limited failure to perform is so violent that it could put them out of business, then something is substantially wrong.

It does not get us to our goals because people do not even know what is required of them. It discourages them from even trying to find a way to work with the law, to work with the enforcing agency. One of those important concepts is embodied in our law and our Constitution, a concept that we all fight to adhere to here. That is called due process. Really, what the Hutchison amendment talks about is the simple concept of due process. That is just another way of defining fairness.

Mr. President, we need this reform. Let us send a strong message of support for fairness and due process with what I hope is an amendment that we could accept unanimously, and that the Senators now involved in it might work out their differences so we can as a Senate say to the American people and to the producers out there, We have heard you, we are responding to you, we are going to create a government that is a good deal more friendly, which respects your right as the producer and the taxpayer, and will work with you in good faith as a partner instead of a cop that comes through the front door and says, Here is the fine, pay up, you are in violation for something we told you to do because now we have decided you did it wrong.

Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, negotiations are underway right now to see if we cannot come to a closure on Senator HUTCHISON's amendment. I think there is general agreement that her amendment is needed. I happen to share that concern. I am happy to be a cosponsor of it. I hope maybe we can alleviate some of the concerns that were raised legitimately by Senator BIDEN and Senator LEVIN and pass that amendment. Those negotiations may be going on for a few more minutes.

So I would hope that we could move ahead on a couple of other things. I know Senator KENNEDY mentioned yesterday that he has an OSHA amendment, that he would like to exempt OSHA. I hope he will bring that to the floor. I hope we can have a vote very quickly on Senator DOMENICI's amend-

ment which he raised, and it was debated last night.

So I would let people know that hopefully we will have soon a vote on the Domenici amendment. I hope Senator KENNEDY will bring his amendment to the floor very soon and that we can begin debate on it and hopefully have a vote on it after a short discussion. Maybe a time limit with be necessary on that. Possibly by that time we will have the negotiations completed on the amendment offered by Senator HUTCHISON. I think her amendment is needed. I also think it is well drafted. Maybe we can solve some of the ambiguities on it.

But it is important to let people know that, if they rely on an agency ruling, that ruling made sense and there will not be a retroactive application of a fine or a penalty. If they are given a letter, if they are told by administrative agency, this is OK, this is right, this is in the CONGRESSIONAL RECORD, you should not have retroactive application and fine or some type of other civil penalty. That would be a mistake. That is not fair. That is unjust.

I believe there would be bipartisan support for that. I agree that there should be overwhelming support for this amendment. Hopefully that will be adopted.

I see my friend and colleague from Massachusetts. I mention to him maybe we could move forward on his amendment very quickly and try to solve that. I know Senator DOLE has real concerns about moving this legislation forward.

I want to compliment the managers. I saw Senator GLENN just a moment ago, and Senator ROTH and Senator HATCH, because they worked very, very hard to try to make some progress. It was very frustrating the first 2 or 3 days.

I think yesterday we made a lot of progress. I compliment Senator JOHNSTON for helping make that happen. So yesterday evening we started making real progress. I might mention for those on the other side of the aisle that had raised a lot of concerns about this bill, I think a lot of those concerns were alleviated.

So maybe, again, that will help promote this and make it more possible to pass this bill. I know the majority leader said he would like to have this bill passed no later than Tuesday. I think he is being patient. We started on this bill actually on Thursday before the recess. So we have had a lot of debate.

This bill is needed, Mr. President. In my opinion, it is one of the most important pieces of legislation we will consider this year. It is needed for a lot of reasons. One of the primary reasons is because we have a lot of unnecessary regulation in this country. We have a lot of regulations that do not make sense, a lot of regulations that cost too much. So people do feel like they are overregulated, overburdened. When you

have regulations coming in that do not make sense or cost an inordinate amount for marginal improvements, we are saying, wait a minute; let us do something different. And that is what this legislation is all about.

So I compliment the sponsors of this legislation. The idea of saying that we should have a policy to make sure that the benefits justify the costs, I think makes eminent good sense. We have had past Presidents who have put that in Executive orders, but we never had it in the law. Why not put it into law? That is what we are trying to do. We are saying that we should use risk analysis so we can actually prioritize those areas that need a scientific analysis so we will determine where we can focus and concentrate our efforts to make sure that we take the limited resources we have from the regulatory agencies, from the Government, from the taxpayers to concentrate on those that will do the most good.

Some people have characterized this bill and said this will be harmful to their health. I do not think so. I think it will be just the opposite. We only have so many dollars in the agencies; we only have so many dollars from the taxpayers. Let us concentrate those dollars where we can get basically the maximum amount of safety, the maximum amount of health from the dollars that are expended.

Mr. President, again, if there are additional amendments, I urge our colleagues to bring those amendments forward because I know the majority leader wants to draw this bill to a close. At least one cloture motion has been filed. There may be another one filed. I hope that is not necessary. I hope that everyone in good faith will offer their amendments, bring them to the floor, debate them, debate them today, debate them all day Monday if necessary, maybe very late Monday night if necessary, and come to an agreement where we can have final passage on Tuesday.

I also know the majority leader wants to go to a Bosnia resolution on Tuesday. We also have appropriations bills that we must begin consideration of.

I think we are making good progress on the Hutchison amendment, and if we could resolve it and have a vote or pass the Domenici amendment, I think that would be progress, and hopefully dispose of Senator KENNEDY's amendment. That would be excellent progress as well.

So I thank my friends. Again, I compliment Senator HATCH and Senator ROTH and Senator JOHNSTON for their leadership on this bill. I would like to see some greater momentum and movement on the amendments pending today. I encourage all Republicans who have amendments to bring them to the floor as well and maybe we can dispose of those today.

I yield the floor.

Mr. HATCH. Mr. President, the Hutchison amendment that is currently pending, which restores a modified version of section 709 to the Judiciary Committee version of S. 343, is intended to deal with the problem that is appearing with more frequency of agencies bringing enforcement actions and seeking civil and criminal penalties for the alleged violations of rules that are increasingly complex, convoluted, and often unclear.

In their zeal to compile enforcement statistics, some Government agencies have, on occasion, initiated cases based upon novel interpretations of their own rules, interpretations that have never been communicated to the regulated community, or the community they are regulating. In some cases, the actions have been brought to retroactively impose requirements based on some new—some new—agency interpretation of a rule or some new factual determination even where the person against whom the action is brought has reasonably relied upon a prior agency interpretation or determination.

Moreover, there are situations in which agencies develop complicated and ambiguous rules and then seek to punish individuals or companies if they guess wrong as to what those rules mean. At stake in these cases are penalties worth millions of dollars, and even Federal imprisonment is at stake for some of our citizens.

Against this backdrop, I believe the Hutchison amendment contains an appropriate and necessary restraint on the authority of agencies to pursue civil or criminal penalties for the alleged violation of rules and circumstances where the imposition of such penalties would plainly be unfair. In large measure, the amendment simply makes explicit or clarifies requirements that already exist under the Administrative Procedure Act.

Moreover, nothing in this amendment prevents an agency from changing its interpretation of a rule consistent with the requirements of sections 552 and 553 of the Administrative Procedure Act and subject to the protections provided by this section, enforcing the new interpretation prospectively.

The Hutchison amendment does, however, prevent the Government from extracting civil or criminal penalties or retroactively imposing regulatory requirements in cases where the defendant can demonstrate that prior to the alleged violation the responsible agency or State authority told the defendant, either directly or through an interpretation duly published in the Federal Register, that the defendant was in compliance with or was not subject to the rule at issue. The ultimate result of this legislation will be, in my view, better enforcement leading to better compliance, better protection of health, safety, and the environment and greater respect by the regulated community for the enforcement practices of the Federal Government.

So this is an important amendment, and I really hope we can work out the language to the satisfaction of our colleagues on the other side and get this amendment passed as soon as we can.

I agree with the distinguished Senator from Oklahoma that we need to move ahead on this bill. We need to have a number of votes today and, hopefully, get rid of some of the amendments that we have today and move on.

While we have this lull, let me just give my 6th of the top 10 list of silly regulations. And I will start with No. 10.

Silly regulation No. 10: Prohibiting a person from developing his land because it will become a habitat for the endangered salt marsh harvest mouse after—get this—after the polar ice caps melt and the sea rises. That is No. 10 on my list of silly regulations.

Silly regulation No. 9: The owner of a van was in an accident and as a result 2 gallons of gas leaked out of the van's gas tank. The fire department flushed it into a drainage ditch. As a result, the Coast Guard attempted to fine the owner of the van \$5,000 for "polluting the waters of the United States." That is silly regulation No. 9.

Silly regulation No. 8: Prohibiting the sale of a children's toy for 8 months, sending the company into financial reorganization only to admit the toy should not have been banned at all. Yet, it admitted that it was an editorial error.

Silly regulation No. 7: Attempting to dismantle private homes at a cost of \$8 million due to lead-contaminated soil, except there was no evidence of any lead contamination.

Silly regulation No. 6: The General Accounting Office estimated that in 1990, the IRS imposed over 50,000 incorrect or unjustified levies on citizens and businesses per year. That makes today's list a list of the top 50,000 silly regulations.

Silly regulation No. 5: FDA, which has a legendary bias against dietary supplements, tried to assert that the product, black currant oil—the oil of the fruit, black currants—was not a supplement, but rather an unsafe food additive. The FDA's logic was that the oil was the additive added to the food—the gelatin capsule containing the oil. Two different U.S. courts of appeal rejected this.

Two different U.S. courts of appeal rejected this unanimously, one saying it was "nonsensical," the other saying it was "Alice in Wonderland." Those are actual quotes from the courts.

Silly regulation No. 4: FDA also banned dietary supplement manufacturers from telling women of childbearing age that folic acid could prevent birth defects in their babies, even though the FDA's mother agency, the Public Health Service, and its sister agency, the Centers for Disease Control, had publicly issued this recommendation.

Let us just talk about lives for a minute. Had the FDA allowed the die-

tary supplement manufacturers to make the absolutely accurate claim—which they, of course, do now—over the last 11 years since they have known about folic acid's 0.4 milligrams of folic acid benefit in helping to prevent neurotube defects, we would have prevented 1,250 neurotube defective babies every year for the last 11 years, babies born with spina bifida. That could have been completely prevented had those claims been permitted. The agency, according to some, has known about it for the last 11 or 12 years. To be fair to the FDA, they knew about it for 3 years before they finally conceded that their bias to the dietary supplement was not valid and 0.4 milligrams of folic acid would prevent 1,250 babies a year from having spina bifida.

Silly regulation No. 3: FDA has a regulation, the so-called food standard of identity, specifying in great detail the Government-mandated ingredients characteristics of French dressing. I might add, they issued no such requirements for any other dressing—Italian, ranch, or honey-mustard to mention a few—but I am sure they are working on it.

Silly regulation No. 2: Seizing \$2,000 of a business' bank account only to concede the case against it was baseless, but they still did not return the money because of "computer difficulties."

Finally, silly regulation No. 1: I want to thank my good friend from Texas, Senator HUTCHISON, for bringing today's No. 1 silly regulation to my attention. Requiring a woman's clothing store to hire male salesmen and place them in the fitting rooms.

Now who in America does not know of some of these silly regulations and interpretations of regulations? Who in America doubts that we are inundated with this kind of crap? Who in America is not upset about it? Who in America does not realize that that is what this bill is all about? We are trying to stop this type of stuff and get regulators to be more responsible. And that is recognizing the fact that many of them are and most regulations are, but it is the ones that are not that is driving this country crazy, making us uncompetitive, making it more difficult for this country, in many respects, to be the greatest country in the world. Frankly, it will be the end of us if we keep going the way we are going.

That is why this bill is so important. That is why we simply have to do a better job about regulating in our society. The Hutchison amendment, just to end with that, I think, makes a lot of sense. It protects people against silly interpretations of regulations.

Mr. President, I ask unanimous consent that amendment No. 1539 be temporarily laid aside and that Senator KENNEDY be recognized to offer his amendment on OSHA.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Let me suggest the absence of a quorum. Did the Chair rule on that?

The PRESIDING OFFICER. Yes.

Mr. NICKLES. Will the Senator withhold?

Mr. HATCH. I withhold.

Mr. NICKLES. Mr. President, for the information of our colleagues, I think we are making good progress on the Hutchison amendment. Hopefully, that will be resolved very quickly.

The unanimous-consent request just agreed to says we now go to the amendment of the Senator from Massachusetts dealing with OSHA exemption. Hopefully, we can come to a quick time agreement on that and dispose of that amendment.

RESCISSIONS BILL

I make one other plea. It is Friday morning, and we still have not passed the so-called rescissions package. Mr. President, I believe about 90-some percent of the Senate agrees with passing the rescissions package. I was at the White House earlier this week and President Clinton said he hoped the Senate would pass it very quickly.

I believe there is one or maybe two colleagues that still have some opposition to that package. But I urge that they come forward and agree so we can save the taxpayers \$9 billion and we can get some much-needed relief to victims of disasters in California, Oklahoma, and other places. I think it is vitally important.

It is also important for us in the appropriations process so we can have those amounts. It would make a big difference on the appropriations levels for 1996.

I certainly hope we can pass the rescissions package before we leave today.

I see the majority leader on the floor. I also see my friend and colleague from Massachusetts on the floor. I appreciate his cooperation, as well. I hope that we can enter into a time agreement on his amendment very soon.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I just hope we can get some votes. We have had a lot of speeches. We have not had any votes. It is now 11:30. Many of our colleagues have plans this afternoon. But if we are going to speak all morning, we are going to have to vote all afternoon. It is all right with me, as long as everybody understands that. I hope we can get time agreements so we can make more progress on this bill today.

Our attendance is good. I think most people planned on being here all day today, and we will be here all day today and, hopefully, we will be voting all day today. If we can get time agreements, as suggested by the Senator from Oklahoma, it certainly would be helpful.

Mr. LEVIN. If the majority leader will yield, I think there is good attendance and there was some progress made. The Senator from Texas offered an amendment this morning—

Mr. DOLE. I think Senator BIDEN has been negotiating.

Mr. LEVIN. Yes. I think progress has been made. It is an amendment that has purpose which I think is shared widely and broadly, and there is progress being made on that language. I believe Senator KENNEDY is on the floor ready with his amendment, as well.

Mr. HATCH. Can we agree to a time agreement?

Mr. DOLE. Will the Senator agree to a time agreement? Great.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, let me comment, too, that I hope we can complete our work on a couple of additional amendments this morning and work well into the afternoon. I have talked to a number of our colleagues, and we are prepared to stay late into the afternoon to work on these amendments. So I encourage the leader to continue to hold us here and continue our work.

RESCISSIONS BILL

I did not have the opportunity to listen to my friend, our colleague from Oklahoma, about the rescissions bill. But I hope we can resolve that matter at some point as well. We have made an offer that, in my view, is a good-faith offer. We have laid down three amendments, and we are prepared to work under very tight time agreements there. We could have that bill on the President's desk by the end of the week. We can do it today.

I hope that we can accommodate the Senators who have expressed an interest simply in being heard on some very important issues. They have agreed to limit their amendments. They have agreed to a limited amount of time. We have had a number of other colleagues that have expressed an interest in modifying the bill, who have said in the interest of moving the bill, they will withhold doing that at this time.

So we are really at a point where a couple of Senators simply want to have the right to offer an amendment. I do not think that is too much to ask. Hopefully, we can resolve that and move on with rescissions. We are here to work, and we will be here this afternoon. I encourage everybody who wants to participate in the debate to do so and come to the floor.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Is the bill open for amendment at this time?

Mr. HATCH. If the Senator will yield, is he willing to agree to a time agreement?

Mr. KENNEDY. I will be glad to.

Mr. HATCH. I suggest one-half hour equally divided.

Mr. KENNEDY. No, we would need at least 45 minutes to be able to make our presentation. I do not know what will be necessary on the other side. Why do we not get started, and we can try and work that out.

Mr. LEVIN. Will the Senator yield for a unanimous-consent request?

Mr. KENNEDY. Yes.

PRIVILEGE OF THE FLOOR

Mr. LEVIN. I ask unanimous consent that Scott Garrison, a legislative fellow with the Oversight Subcommittee staff, have floor privileges during consideration of S. 343.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I wonder if the Senator from Massachusetts—he said he would need 45 minutes. Why do we not get an hour and a half time agreement, and we can yield back time if we do not need all of that.

Mr. HATCH. Let us just move ahead and see where we are.

Mr. JOHNSTON. I think we would do well to get a time agreement.

Mr. KENNEDY. Why do we not get started on it. It is not my intention to take a great deal of time. We would like to get moving and start on it.

AMENDMENT NO. 1543 TO AMENDMENT NO. 1487

(Purpose: To provide that certain cost-benefit analysis and risk assessment requirements shall not apply to occupational safety and health and mine safety and health regulations, and for other purposes)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1543 to amendment No. 1487.

Mr. KENNEDY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 46, insert between lines 4 and 5 the following:

“§ 629A. Inapplicability to occupational safety and health and mine safety and health regulations

“This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

“(1) occupational safety and health; or

“(2) mine safety and health.

On page 50, insert between lines 15 and 16 the following new paragraph:

“(4) This subchapter shall not apply to any standard, regulation, interpretive rule, guidance, or general statement of policy relating to—

“(A) occupational safety and health; or

“(B) mine safety and health.

On page 96, insert between lines 20 and 21 the following new sections:

SEC. . OCCUPATIONAL SAFETY AND HEALTH REGULATIONS.

(a) PRIORITY FOR ESTABLISHING STANDARDS.—Section 6(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(g)) is amended—

(1) by striking “(g) In” and inserting “(g)(1) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of 1995, in”; and

(2) by adding at the end the following new paragraph:

“(2) Notwithstanding any provision of the Comprehensive Regulatory Reform Act of

1995, in determining the priority for establishing standards relating to toxic materials or harmful physical agents, the Secretary shall consider the number of workers exposed to such materials or agents, the nature and severity of potential impairment, and the likelihood of such impairment."

(b) **RISK ASSESSMENTS FOR FINAL STANDARDS.**—Section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) is amended by adding at the end the following new subsection:

"(h)(1) In promulgating any final occupational safety and health regulation or standard, the Secretary shall publish in the Federal Register—

"(A) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

"(B) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

"(C) a certification that—

"(i) the estimate under subparagraph (A) and the analysis under subparagraph (B) are—

"(I) based upon a scientific evaluation of the risk to the health and safety of employees and to human health or the environment; and

"(II) supported by the best available scientific data;

"(ii) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

"(iii) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

"(2) If the Secretary cannot make the certification required under paragraph (1)(C), the Secretary shall—

"(A) notify the Congress concerning the reasons why such certification cannot be made; and

"(B) publish a statement of such reasons with the final regulation or standard.

"(3) Nothing in this subsection shall be construed to grant a cause of action to any person."

SEC. . MINE SAFETY AND HEALTH REGULATIONS.

The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) is amended by inserting after section 101 the following new section:

"RISK ASSESSMENTS FOR FINAL STANDARDS

"SEC. 101a. (a) In promulgating any final mine safety and health regulation or standard, the Secretary shall publish in the Federal Register—

"(1) an estimate, calculated with as much specificity as practicable, of the risk to the health and safety of employees addressed by such regulation or standard, the affect of such regulation or standard on human health or the environment, and the costs associated with the implementation of, and compliance with, such regulation or standard;

"(2) a comparative analysis of the risk addressed by such regulation or standard relative to other risks to which employees are exposed; and

"(3) a certification that—

"(A) the estimate under paragraph (1) and the analysis under paragraph (2) are—

"(i) based upon a scientific evaluation of the risk to the health and safety of employ-

ees and to human health or the environment; and

"(ii) supported by the best available scientific data;

"(B) such regulation or standard will substantially advance the purpose of protecting employee health and safety or the environment against the specified identified risk; and

"(C) such regulation or standard will produce benefits to employee health and safety or the environment that will justify the cost to the Federal Government and the public of the implementation of and compliance with such regulation or standard.

"(b) If the Secretary cannot make the certification required under subsection (a)(3), the Secretary shall—

"(1) notify the Congress concerning the reasons why such certification cannot be made; and

"(2) publish a statement of such reasons with the final regulation or standard.

"(c) Nothing in this section shall be construed to grant a cause of action to any person."

Mr. KENNEDY. Mr. President, the purpose and effect of this amendment is simple and straightforward; that is, to exempt the rulemaking by the Mine Safety and Health Administration and Occupational Safety and Health Administration from the cost-benefit analysis and risk assessment provisions of S. 343 and to substitute in their place the more sensible provisions of the Gregg-Bond OSHA reform bill.

Mr. DOLE. Will the Senator from Massachusetts take 40 minutes, and we will take 20 minutes?

Mr. KENNEDY. We would like 45, if we could. It is my understanding it will be without a second-degree amendment.

Mr. DOLE. There will be a motion to table.

Mr. HATCH. A total time of 1 hour is fine.

Mr. KENNEDY. As I understand it, we have 45 minutes, and the Senator has 15; is that correct?

Mr. DOLE. That is fair.

Mr. HATCH. I ask unanimous consent that the Kennedy amendment be subject to an hour time agreement, with 45 minutes devoted to Senator KENNEDY, and 15 minutes under my control, and that there be no second-degree amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, the Kennedy amendment takes the exact language from the Gregg-Bond OSHA reform bill, S. 562, and applies it to OSHA and MSHA, as well. Rather than imposing a duplicative new layer of rulemaking procedures, the amendment requires that, along with the publication of a final rule, the Secretary of Labor publish a certification that the rule was developed using good science and that its benefits justify its costs. That is basically what has been the recommendation of those that are supporting S. 343, that we are going to use the best in science and we are going to make sure that the benefits are going to justify the costs.

It is that test, that criteria, that was introduced by the Senator from New

Hampshire, Senator GREGG, and Senator BOND, and five other Republicans, to be the test that would be applied in terms of the OSHA legislation. We are accepting that as an additional requirement on the existing cost-benefit ratio, so that we will be complying with the spirit of the legislation and doing it in an effective way, particularly with regard to these two agencies that make such a difference in terms of the protections of the health and safety of the workers.

The purpose of this amendment is simple and straightforward: To exempt the rulemaking by the Mine Safety and Health Administration and OSHA from the cost-benefit analysis and risk assessment provisions of S. 343, and to substitute in their place these more reasonable provisions.

The Mine Safety and Health Act has been a tremendous success—an example of sensible regulation that has saved lives without compromising, in any way, the productivity of the industry. For 25 years, the act has contributed to a steady decline in deaths and disease among mine workers, while productivity has improved dramatically. Mine explosions were once common; today they are rare. Black lung disease was once a fact of life in the coal fields. Now it is much less prevalent—cut by two-thirds.

The charts I have behind me demonstrate what has been the record over the period since 1969 when the MSHA was actually put into effect, in terms of mine safety. If you look here, coal mine fatalities are represented by this falling line here, and coal mining productivity is represented by the rising blue line here. We have seen a dramatic decline in terms of fatalities since the time MSHA was actually put into place, and what we have seen is a dramatic increase in productivity.

This legislation is working. This legislation is working, providing for the protection of workers, and also, as I indicated, productivity for the mine operators. This is another example of the coal mining fatality rate, where we have seen a dramatic decline in terms of the fatalities in the mines of this country.

In 1968, a coal miner was five times more likely to be killed while working than he would be today. Since 1968, coal mining productivity has increased 80 percent. With that kind of record, it is clear that MSHA has provided the kind of commonsense regulation that every mining family and every American are looking for.

Mining and its hazards create the kind of risk that must be regulated. MSHA's concerns are cave-ins, where tons of rock crush miners to death, underground fires that burn miners to death or asphyxiate them, and methane gas explosions. These are dangers that have been present for decades.

These are the tragic mine accidents that occurred in recent years:

The Wilberg Mine fire, 1984, that killed 27 Utah miners.

Magma Copper Mine (1993), where an underground mine structure collapsed and killed four Arizona miners.

The Grundy Mine explosion (1982) that killed 13 Tennessee coal miners.

Golden Eagle Mine (1991) where a methane explosion injured 11 Colorado miners.

Solvay Trona Mine (1995) in Wyoming, where a collapse trapped two miners for days and one died of a heart attack.

Marianna Mine fire (1990), where an explosion and fire injured 11 Pennsylvania firefighters.

We do not have to elaborate on the risk assessment and peer review panels like those required by the bill to tell us that excessive coal dust levels cause black lung disease. Congress, based on unquestioned science, made that judgment in the Mine Act of 1969. We debated it and discussed it. We had hearing after hearing after hearing. All the medical science indicates it.

Why put that particular regulation at risk? Why would we waste taxpayer dollars, forcing the labor Department to respond to petitions questioning whether proper risk assessment and cost-benefit analyses were done for the law's ventilation and dust standards? Who complains to the Congress about these standards? It is not the mining industry. Richard Lawson, who is president of the National Mining Association, regards those rules as in large part responsible for the amazing progress of the last quarter century.

In March, at an event celebrating the Mine Act's success, this is what Lawson said. This is Richard Lawson, the president of the National Mining Association.

There is no question in my mind, and I don't know of anybody in the entire mining industry that would argue with this statement, that we wouldn't have achieved the results that we have in the past 25 years if we hadn't had a Federal regulatory program and a State regulatory program.

Now, here we have the miners that are supporting it. And Mr. Lawson's statement represents the mine operators' view of the record of what has been achieved in terms of increasing productivity and the success of this program. To my knowledge, there is no welling up from around this country, particularly from mining States, that says that we ought to abandon this or change this in a dramatic way and build in all these other kinds of additional steps into this to make it effective. Yet, we are being asked to do it.

Mr. President, if it ain't broke, why fix it? Why would we waste agency resources and tax dollars by forcing MSHA to respond to petitions by fly-by-night mine operators? They are the ones that are going to make the petitions. Make no mistake about it. They are the ones that are going to be asking for the petitions in terms of rules and regulations. They will be able to do it. They will be qualified and be able to do that under this proposed legislation.

They will seek exemptions from roof support standards or methane gas

standards—standards that have saved scores of lives. 1979 to 1983, before MSHA issued its automated temporary roof support system, 64 miners were killed by roof falls while installing temporary support. Since the regulation went into effect, no miners have been killed in this way.

Who can say how many lives have been saved by MSHA's methane gas regulations? The burden is on those who want to change the way the Mine Safety and Health Administration goes about its work. The burden is on them to prove that any change would not impede the agency's performance, let alone that the changes are somehow an improvement.

Mr. President, no one has even attempted to make that case. Why? Because no one but lawyers and lobbyists, and some mining companies, who want to escape the law that would benefit from the changes made by S. 343.

Mr. President, the \$100 million threshold amendment that the Senate adopted will do nothing to help MSHA because regulations that cost less than \$100 million have a significant impact on small businesses, and are still treated as major rules under the small business impact amendment which was adopted. Ninety-nine percent of the mines are classified by SBA as small businesses. Virtually every MSHA regulation will be classified as a major rule.

Thus, the new MSHA rules have to go through the complex procedures of the bill, and existing rules would be subject to sunset through the bill's petition process. Will MSHA standards be repealed under the lookback provisions? There is a real reason to worry. Mine operators who want to avoid penalties for noncompliance can be expected to petition to have as many rules added to the lookback schedule as possible.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. KENNEDY. I would, for a brief question.

Mr. JOHNSTON. I thank the Senator. On page 4, line 15 of his amendment, it says if the Secretary cannot make the certification required under section 1(C), he shall notify the Congress and publish his statement.

1(C) says, the main part there, that the benefits must justify the cost.

Now, my question is, when the Senator says he cannot make the certification, does that mean he cannot in good conscience make it, or he cannot because he disagrees with it?

In other words, is there any limitation on why he cannot make the certification?

Mr. KENNEDY. Senator, I will come back to that. I would like to make the presentation with regard to what this section provided. Then I will come back to how this proposal, S. 343, undermines the kinds of protections for miners, even with the Levin amendment, which deals with health standards, but would not apply in terms of the safety standards. I will be glad to come back.

I want to make the point and the case, which is the obvious case, and that is, if the MSHA program is working, and protecting the lives of workers, and if under the S. 343 we are going to be opening up safety and health standards that are working and protecting lives today, the burden ought to be on those who say why the present standards are not working.

The important question is not whether the various new other provisions are going to be adequate or sufficient or insufficient to permit the Secretary, under certain circumstances, to make certain certifications, based upon scientific information.

When a person is out there in the mine and has lost a brother in those mines, lost loved ones in the mines, and we see the dramatic change that has taken place in the mines in productivity, that is what is before the Senate, not some extraneous provisions about certification based upon other scientific information that is going to alter and change.

If the Senator has specific recommendations, the specific issuance of safety regulations that he believes under MSHA have been so bureaucratic, have been so outrageous, have been so intolerable, those are legitimate matters we should debate.

What we will debate and show is that because of the steps that have been taken by MSHA, the mines of this country have become a great deal safer.

That is the basic point. It is the basic point of this amendment, to say, look, it ain't broke, why alter it? Why change it? Why risk it? It is working and working effectively.

I dare say that with regard to occupational health and safety provisions that we have a similar kind of a result as well.

If we take, for example, on the OSHA—and as I mentioned earlier in the course of the debate, we find some 100,000 inspections that are conducted a year—if we have 99.9 percent good ones, we have done extremely well but 100 businesses are still unhappy. And I must say that under the leadership of Joe Dear, the head of OSHA, OSHA has done an extraordinary job in bringing that agency into a sensible, responsible position.

It always amuses me that when examples are raised about the abuses of OSHA, by and large it is under the administration of the previous administration—not of this one.

No one can tolerate that it is the previous administration or this one. We ought to free ourselves. When we have rules coming out and we have 99.9 percent accuracy, solid and sensible and responsible issuance, we still will have some that do not make any sense.

This is not a bad batting average, particularly when looking at what has happened in the annual occupational fatalities declining under OSHA from 1947, 1970 and 1993. These are the figures: 17,000, 13,000 and 9,000.

We can look back and we can either take the time of the Senate or not take the time of the Senate. If we looked at the decline in terms of fatalities prior to OSHA, even based upon the alterations and change in terms of the industrial direction of this country, we still see the dramatic, dramatic, dramatic results which I have mentioned. That is, the very significant decline in terms of fatalities.

That has to be worth something. We listened to our friends and colleagues talk about the person that issued some citation because the failure of publication of some safety standard say, "Well, therefore, we ought to abandon this kind of process." What we have to do is look at the results.

If you look at what is happening in terms of the current timeframe, under OSHA, for the issuance of various standard settings, the standard settings which have direct relationship to the killing of workers in the workplace and also occupationally hazardous conditions in it, you see a picture of delay.

At the present time the number of years, right here on the bottom of this chart, the number of years to complete the rules—take, for example, the cadmium standards. It has taken 3 years to issue these standards—17 deaths a year. Every year we fail to issue it, 17 deaths, plus 78 additional workers developing kidney disease each year.

We look at the confined spaces—17 years to issue these regulations. It took 17 years to do it; 54 deaths a year, 5,000 serious injuries a year.

The lockout/tagout standards—it took 9 years to get these regulations. It has taken 9 years. There were 122 fatal electrocutions a year. Mr. President, 122 electrocutions a year and 85,000 injuries per year that are going to be remedied with the issuance of those lockout standards.

The process safety management standards, that is to prevent chemical explosions—it has taken 5 years. It has taken 5 years for those. There are 26 deaths a year and 150 serious injuries per year. This is the time just on these matters. This is the amount of time it has taken just in these areas. Why? Because of hearings, because of peer review, because of open hearings about re-review, advisory committees, all of the rest of the process that goes on. That takes years and years and years.

If my colleagues want to extend all of those right out here and right across this, then you go ahead and implement S. 343. That is the basic result. Because of the series of petitions, the lookback provisions, the ability for various companies and corporations who are going to be affected by these standards to petition, we will undermine safety standards.

Who is out there to say that these kinds of factors, that we have demonstrated have a direct impact on the safety of working conditions for Americans, should not be addressed? Of course they should be addressed.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I see others who wish to address this issue on the floor. I yield myself 2 more minutes and then I will be glad to yield to the Senator from Illinois and then I will be glad to answer some questions on this.

But what we are basically saying is that we have a challenge as a country and a society to ensure that the workplace is going to be as safe as we can make it. There are always going to be accidents. But we ought to have, as a society, the sense that we are not going to be just producing widgets more efficiently and effectively and more dangerously than any other industrial country in the world. We should make every single attempt to try to make sure that the workplace is going to be safe and secure.

By and a large, the employers of this country are desirous to do it. And many of the States have moved ahead in very creative and imaginative ways, like the State of Washington, Oregon, other States as well, in terms of developing systems to be able to do that. And we are encouraging it and want to work and try to find more effective ways.

But the fact of the matter is, at the same time that we are seeing this wholesale assault that we are seeing on MSHA, reducing their budget by a half, we are also complicating their lives with limited resources to be even more dilatory in the publications of rules and regulations that have a direct correlation to the safety and security of those that work in the mines and those that work in other hazardous occupations.

All we are saying at the present time is, first of all, we have OSHA reform regulation that is before the Labor and Human Resources Committee that is being considered at the present time and on which we have had hearings. We have recommendations that have been made by our Republican friends on that committee—I yield myself 2 more minutes—by Republican friends on that committee, to try to work out ways to address, in a very important and significant way, some of the abuses that have been there. We are trying to work together to do that.

But what is happening now here on the floor of the U.S. Senate, S. 343, is, under the guise of regulatory reform, putting in danger the working conditions of workers in the mines of this country, in the most hazardous industry. Make no mistake about it, in the most hazardous industry in this country we are affecting, in an adverse way, protecting the health and safety of those workers without a single hearing and without any kind of due consideration. That is wrong. That is wrong.

For that reason I hope our amendment will be accepted.

To reiterate, if their petitions are granted, the rules will all be scheduled for review in the first 3 years.

This is particularly troubling because MSHA's budget is not growing;

the Agency will have fewer people to perform these reviews, not more.

The House Appropriations Committee is in the process of slashing MSHA's budget, and the congressional budget resolution called for a 50 percent cut in MSHA's budget.

There is every reason to fear that even a supportive administration will be so overloaded and hamstrung that it will not be able to complete reviews of all scheduled rules, and they will be repealed, despite their proven effectiveness in savings miners' lives. But there is another problem.

The bill allows a hostile Secretary of Labor to put every safety and health standard up for review—and no one could challenge his action.

The bill provides: "The head of the agency may, at the sole discretion of the head of the agency, add to the schedule any other rule suggested by a commentator during the rulemaking under subsection (a)."

This is an invitation for real mischief. It is no wonder that mineworkers and others fear this bill and suspect that its real purpose is to roll back the regulations that have helped improve their lives.

And what about the future? What is the hope of making further progress in mine safety through sensible regulation, if this bill is enacted? If MSHA is forced to respond to a multitude of petitions and devote additional resources to the lookback process, there will be fewer resources available to develop new standards to deal with emerging threats to miners' lives. And because this bill adds so many new requirements to every rulemaking, each rule will take longer to complete and will be more expensive to develop.

MSHA has an important regulatory agenda, which includes updating 22-year-old air quality standards and addressing the hazards of diesel-powered equipment in underground coal mines. Diesel emissions at the levels commonly found underground have been linked to cancer and chronic lung disease, and diesel equipment poses the risk of fire or explosion. Rules to address these issues should not be delayed.

The same kind of considerations apply to the Occupational Safety and Health Administration, which—like MSHA—has had tremendous success in making America's workplaces safer and healthier.

We hear anecdotes repeatedly about OSHA's overzealous or misguided enforcement, and a small number of those stories are true.

But the plain, unvarnished fact is that OSHA and its State partners conduct 100,000 inspections a year. The handful of stories we hear about overzealous inspectors involve less than one-tenth of 1 percent of OSHA's annual inspections. Yet these anecdotes take on a political importance totally out of proportion to their true impact.

What we hear too little about is the tremendous positive impact of OSHA

on the lives of America's working men and women.

Since the creation of OSHA in 1970, the fatality rate from on-the-job accidents has fallen 57 percent. This is an accomplishment we should celebrate, but almost no one in the Senate or in America ever hears this good news.

OSHA has worked. It has saved lives and it continues to save lives.

If Congress does not get in the way, I have no doubt that OSHA will be even more successful in the years to come, thanks to the groundwork laid by its current Assistant Secretary, Joe Dear, and Secretary of Labor, Bob Reich.

Some people have suggested that things improved on their own, that industry was getting safer before OSHA was created, and that OSHA has had no real impact. That is bunk.

As the charts I have with me show, it is true that workplace fatalities were falling before the act's passage in 1970, but the rate of improvement is far greater post-OSHA than pre-OSHA. In the 23 years before OSHA, death rates fell 43 percent. In the 23 years after OSHA, death rates fell 57 percent.

The real impact of OSHA has been even greater than these rates indicate, since such a large number of on-the-job deaths today are caused by murders and homicides which are risks that OSHA has never regulated.

These are impressive numbers, but they deal with only a small part of OSHA's mission. The act's greatest impact is on occupational health, not on accidental, traumatic deaths. And that impact is directly attributable to OSHA's regulations and standards, the subject of my amendment.

OSHA's regulations have been enormously successful in reducing the harm they were designed to address. Let me mention just a few of them:

Cotton dust. In 1978, OSHA issued a standard to protect the Nation's textile workers from brown lung, a crippling and sometimes fatal disease that destroys the lungs, effectively strangling its victims. At that time, there were 40,000 cases of brown lung among textile workers.

Seven years later, after OSHA's standard had greatly reduced the level of cotton dust in the plants, the prevalence of the disease had declined to about 900 cases, a 98-percent reduction in the disease.

Industry fought the issuance of the cotton dust standard and predicted dire consequences. But the industry's cost estimates for compliance turned out to be wildly exaggerated, and it ignored the economic benefits of the standard.

As it turned out, the new machines installed to reduce dust exposure were so much more efficient that the industry's productivity and profits increased significantly.

The Economist magazine reported that the dust standards unexpectedly gave America's textile industry a leg up on the rest of the world.

Lead poisoning.—In 1978, OSHA issued a standard to protect workers

from excessive exposure to lead, which accumulates in the blood, organs, and bones, causing anemia, brain and nerve disorders, high blood pressure, and reproductive illnesses.

Within 5 years, the number of workers in lead smelting and battery manufacturing plants with dangerously high levels of lead in their blood dropped by 66 percent, from 19,000 to 6,500—12,500 workers saved in those two industries, from the disabling and deadly effects of lead poisoning.

HIV and hepatitis B.—In December 1991, pursuant to legislation sponsored by Senator DOLE, Senator HATCH, Senator Mitchell, and myself, OSHA issued a rule to protect workers routinely exposed to blood or other infectious material from HIV, hepatitis B, and other bloodborne diseases. Some people have forgotten the urgency of that standard, now that it has done its job and workers are better protected.

But in 1990 there were 65 reported cases of health care workers becoming infected with HIV from on-the-job exposures, and in 1987, 3,100 health care workers contracted hepatitis B. In 1993, the first full year of employer compliance with the standard, hepatitis B cases among health care workers dropped 77 percent.

OSHA's job safety standards have also been highly effective.

Since OSHA revised its trench standard, which protects workers against cave-ins, the number of deaths in trench and excavation accidents has fallen 35 percent.

In a single month in 1977, 59 people were killed, and another 49 were seriously injured in grain dust explosions. Since OSHA's grain handling rule was issued in 1988, grain dust explosions have fallen by 58 percent.

No one denies that OSHA's fire protection and fall protection standards save lives, though we tend to forget it until something dramatic happens.

The Hamlet, NC, poultry plant fire where 25 employees died and 55 were injured, was a tragic reminder of what noncompliance with OSHA standards can mean for workers.

The Cleveland, OH, construction site where an OSHA inspector ordered compliance with fall protection just 2 days before a scaffold collapsed, and the two workers' lives were saved because of it, was a more positive reminder of the value of these standards.

Few Members of Congress know the facts about these agencies and the laws they administer, let alone the potential adverse effects of applying the Dole-Johnston bill to their standards-setting processes.

There have been no hearings in the Labor and Human Resources Committee on this bill's application to these agencies. The Department of Labor has never been given an opportunity to testify about S. 343 or regulatory reform by any Senate committee.

But one thing is clear, Mr. President, this bill will mean the addition of numerous new steps and months and

years of delay in rulemaking at OSHA and MSHA.

OSHA has analyzed the effect the bill would have had on its recent issuance of a standard regulating worker exposure to cadmium, a chemical that causes cancer and kidney ailments. It estimates that S. 343 would have delayed the standard by at least 4 years.

Is delay somehow a good thing? Has OSHA been too hasty over the years in its standard setting? Has it rushed to judgment? Not at all. In fact, just the opposite is true.

OSHA's rules have been issued at a glacial pace that has constantly frustrated worker safety, regardless of which party controlled the executive branch. As the charts I have with me show, OSHA's rules often take many years to complete—17 years in the case of the confined space standard.

Will the bill's requirements lead to better standards?

No. OSHA and MSHA standards are governed by statutes that prohibit the use of cost-benefit analysis as a decisional criterion. And as has been made abundantly clear, the Dole-Johnston decisional criteria do not override the underlying statutory criteria. Because OSHA must set its standards to reduce significant risks of harm "to the maximum extent feasible," cost-benefit analysis cannot change the outcome of the rulemaking.

What sense does it make, therefore, to require OSHA to do elaborate analyses of the regional effects of a rule or to analyze the costs and benefits of numerous alternatives, when it is compelled by statute to choose the level of protection that reduces the risk to the maximum extent feasible?

Many Senators apparently believe that OSHA's rules have been too onerous and costly. In fact, they have not.

As a study recently reported in Scientific American makes clear, health and safety regulation has been a negligible cause of layoffs. The Bureau of Labor Statistics has for many years asked business owners and managers what they perceive to be the cause of layoffs they have ordered. According to the managers themselves, who are the people in the best position to know, environmental and safety regulations combined only cause one-tenth of 1 percent of layoffs.

In fact, OSHA's regulations often cost far less than industry predicts. I mentioned the case of cotton dust earlier, where the industry over-estimated the cost of the rule by 400 percent and failed to anticipate its benefits.

As Business Week magazine pointed out in its July 17 issue, other OSHA rules have also had positive economic effects.

The vinyl chloride standard, for example, succeeded in wiping out the cancer it was designed to prevent, but it also boosted industry employment, productivity, and profits by inducing investments in automated technology.

Will the risk assessment provisions lead to better decisionmaking? No.

OSHA and MSHA deal with recognized hazards of so great a magnitude that the bill can add nothing useful to their risk identification. Following Supreme Court cases, OSHA does not attempt to regulate risks less than one in a thousand, unlike other agencies that sometimes address risks as small as one in a billion.

Will OSHA benefit from the bill's peer review procedures? No. OSHA already employs the most robust peer review procedure of any agency in the Government.

Public hearings are held, on the record, on all proposed OSHA standards. Scientists, lawyers, and technical staff from academia or industry can cross-examine OSHA's staff and experts, submit comments for the record, and critique every document on which the agency relies. Every significant question is answered on the record and in the preamble to the final rule.

Because the bill's provisions will add nothing but expense and delay to worker safety and health rulemaking, my amendment adopts a different approach to this subject—an approach endorsed by seven Republican Senators and suggested by two of them, Senator BOND and Senator GREGG, both of whom were or are members of the Senate Republican Task Force on Regulatory Reform.

My amendment takes the language from the Gregg-Bond OSHA reform bill, S. 562, and applies it to OSHA and MSHA.

Rather than imposing a duplicative new layer of rulemaking procedures, the amendment requires that along with the publication of a final rule, the Secretary of Labor publish a certification that the rule was developed using good science and that its benefits justify its costs. An estimate of the costs and a comparative analysis of the risk addressed by the rule would also have to be published.

This is the sort of commonsense approach to regulatory reform that the American people want—a guarantee that top government officials will not publish rules without examining their costs and benefits, and assurance that they have employed good data and sound science.

The people do not want—and Congress should not impose—a rigid, one-size-fits-all bureaucratic maze that will complicate regulation without making it better.

OSHA and MSHA rules have worked. We should not attempt to fix something that is not broken.

I yield 7 minutes to the Senator from Illinois and then we will answer some questions.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 7 minutes.

Mr. SIMON. Mr. President, I strongly support the Kennedy amendment. This bill, as it stands, is a bureaucracy builder, not a bureaucracy buster. I would just point out that Business Week has an article in the July 15 issue

which suggests this is adversely going to affect business as well as working men and women.

But very specifically, the Kennedy amendment protects MSHA and OSHA, and protects working men and women. The Presiding Officer is from the Commonwealth of Pennsylvania, where there is a lot of coal mining. I am down in southern Illinois. From our home, a little community of 402 population, Makanda, the biggest big city, if I can call it that, is Carbondale, IL, which, as its name suggests, used to be a coal mining city. There are a lot of coal mines around there.

I talked to too many people who have lost husbands, fathers, grandfathers in coal mine disasters. I have been at too many entrances to coal mines while people wait. I have been to eastern Kentucky. Congressman Carl Perkins asked me to go there with him after a coal mine disaster in eastern Kentucky. We are not just talking about statistics, those statistics that Senator KENNEDY—if I could ask Senator KENNEDY's staff to put those coal mine statistics up there again?

Mr. KENNEDY. I will be glad to put them up there.

Mr. SIMON. You do an excellent job at that.

Mr. KENNEDY. I appreciate that.

Mr. SIMON. Take a look at what happens there. Those are not just statistics. We are talking about the lives of people. That has been a dramatic change for coal miners in southern Illinois, in Pennsylvania and elsewhere. Why change this when both the industry and the coal miners say this makes sense?

Let me give it from the viewpoint of OSHA. First of all, OSHA has just recently reviewed 33,000 pages of regulations and targeted more than 1,000 of those for elimination. Has OSHA been excessive, had too much minutiae in what they have been doing? No question about it. We have had too much regulation. But they are dealing with it and I am impressed by Joe Dear, who now heads OSHA, and what he is doing.

We had a witness who testified about problems with OSHA. I asked that witness to come that afternoon and asked the head of OSHA to come to my office. He was there. They are moving.

Trenches? 1990, trench deaths have fallen by 35 percent, since they put in their regulation on trenches.

Grain dust, a major problem in Midwest States, deaths from explosions in grain elevators. The grain dust—since 1988, according to the grain industry, the fatality rate in the industry has dropped by 58 percent. And the injury rate has dropped by 41 percent.

I would add here, even with the changes that we have made in OSHA, we still have, among the Western industrialized countries, the highest fatality and injury rate in manufacturing and in construction of any Western industrialized nation. If you adopt this legislation without the Kennedy amendment, let me tell you, the fig-

ures that you see right there on coal mine fatalities are going to go up. Just as certain as I am standing here, that is going to be the result.

Brown lung: In 1978, there were an estimated 40,000 cases affecting 20 percent of the industry's work force. I visited with these workers in southern Illinois and talked about this problem. By 1985 only 1 percent of the textile industry work force was affected by the disease.

Here we have OSHA—which, unquestionably, as we all know, has been excessive—getting hold of their situation. They are eliminating over one-third of the regulations they have. They are doing the job. Let us not interfere with the job that is being done well.

The coal miners of Pennsylvania, the coal miners of Illinois, and of every State that has coal mines, would plead with us, if they knew the details of this, they would plead with us to adopt the Kennedy amendment. And the same on OSHA.

I think it is extremely important that we protect our working men and women. OSHA is doing an improved job. OSHA is performing. There have been abuses, like in any good thing. Religion can be abused, education can be abused, affirmative action can be abused, anything can be abused. But OSHA basically has been doing a good job and improving the job. Let us not risk the future of our workers.

I strongly urge the adoption of the Kennedy amendment.

I yield the remainder of my time to Senator KENNEDY.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to take a few moments that we have at this time to go through at least some of the types of changes that have taken place in recent times which have made important differences in terms of the health and safety of workers in this country.

In 1978, cotton dust standards: OSHA issued a standard to protect the Nation's textile workers from brown lung, a crippling and sometimes fatal disease that destroys the lungs and effectively strangles its victims. At that time there were 40,000 cases of brown lung among textile workers. Seven years later, after OSHA, the standard had greatly reduced the level of cotton dust in the plants, the prevalence of the disease had declined to about 900 cases, a 98-percent reduction in the disease.

Those cotton dust standards were brought. The question was about the issuance of these standards, whether OSHA was complying with the existing law. That was the statute that had been approved by Congress. It went all the way up to the Supreme Court. The Supreme Court of the United States affirmed that it did. Effectively, that law was being challenged by the major textile companies, and the major textile

companies had a different standard. The difference standard effectively is the kind of standard that is included in this legislation. That is a very practical way of describing and understanding what is at risk.

The industry fought the issuance of the cotton dust standards and predicted dire consequences. But the industry's cost estimates for compliance turned out to be widely exaggerated, and it ignored the economic benefits of the standard. As it turned out, the new machines installed to reduce the dust exposure were so much more efficient than the industry's, productivity and profits increased significantly.

Here was a major health standard resisted by the industry but saving thousands and thousands of workers who were working 40 hours a week, 52 weeks of the year, trying to bring up a family, working in the kind of conditions in which their lungs were effectively closed down. There are ways of dealing with it—by establishing limitations on the amount of cotton dust in the workplace. OSHA issued those regulations. As a result of it, thousands of workers are alive today.

That was resisted by the industry, the same industry that supports S. 343. They did not want those kind of standards then and they do not want future standards to protect the workers in those workplaces now.

That is what this thing is all about. You can talk about other things, such as trying to bring the most important and significant new scientific data. We are all for it; that is, the provisions to make sure there is an adequate review of the risk benefits and the bringing of the best in terms of the certification.

But when you have to wait months and years and years for the issuance of standards that can make a difference in terms of the lives of workers, why are we so willing to throw those out? Who on the floor of the Senate could say that there is an uproar across this country, by industries all across this Nation, or by workers that we are being closed down, that we are being put out of business? It is to the contrary, Mr. President.

A recent publication of Business Week talks about how industry in a number of different areas resisted the kind of health and safety standards for their industry, made wild claims about the cost and about what it was going to mean in unemployment and all the rest. And after they implemented these various health and safety standards, they increased their profitability and productivity because the workers were able to work and work effectively and work harder.

Take another example: lead poisoning. In 1978, OSHA issued a standard to protect workers from excessive exposure to lead which accumulates in the blood, organs and bones causing anemia, brain and nerve disorders, high blood pressure and reproductive illness. Within 5 years the number of workers in lead smelting and battery manufac-

turing plants with dangerously high levels of lead in their blood dropped 66 percent—from 19,000 to 6,500—12,000 workers saved in those two industries from the disabling and deadly effects of lead poisoning—12,000 workers.

All of us here in the Senate want to work to find ways of eliminating irrational, irresponsible bureaucratic rules and regulations. But when you are talking about saving 12,000 workers from either death or serious injury, and you want to change the process, you want to change the way it is done, you want to open up the door for a lot more industries that are being directly required to implement those health and safety standards, you are putting at risk the lives and the well-being of those workers. Where is the outcry? Where is the outcry from our colleagues in terms of safety?

As I mentioned earlier in the presentations, the statements that are made by the organizations of miners have indicated that the kind of work that has been done in mine safety has been consistent with the increasing productivity.

Mr. BOND. Mr. President, as chairman of the Small Business Committee and chairman of the Regulatory Relief Task Force, I am looking forward to the opportunity to discuss the problems at OSHA and some potential solutions. I believe we will have this debate in earnest after next January 1, when Congress will finally have to comply with the Congressional Accountability Act. For the first time, thanks to the new Republican Congress, we will ourselves get a feel for what we have foisted upon the private sector for a generation, through OSHA regulations and the Fair Labor Standards Act and many others from which we have until now exempted ourselves. This amendment focuses attention on the Gregg-Bond OSHA reform bill sooner than I expected.

When the Senator from New Hampshire and I introduced the OSHA reform bill in April, we tried to address many of the problems we had heard about from our constituents. And believe me, we have had complaints. We have had complaints of OSHA overreach and OSHA overzealousness from virtually every sector of employment: from bakeries to construction companies to restaurants and retailers to roofers to colleges and universities—we have heard about problems.

Now, I don't for 1 minute advocate abolition of the agency. I believe they are charged with an important public purpose: that is, protecting the health and safety of the American worker. No one disputes the importance of the purpose of the agency. But in this case, enforcement has been a problem.

Yesterday I outlined some of the examples of OSHA silliness: material safety data sheets for common household products, material safety data sheets which are required at every worksite but never looked at by the people they are supposedly protecting,

and fines without purpose and without merit.

I hate to tell some of the inside-the-beltway, stuck-in-the-past crowd this, but safe business is good business. I have always believed that most employers have the best interests of their employees at heart. In many cases, employer and employee are neighbors, or members of the same church or parish, or have kids that attend school together. Employers want the best for their employees, and vice versa. But even those few employers who do not care are concerned about the bottom line. With the rising costs of worker's compensation, most employers want to do everything in their power to promote safety and health.

But OSHA still lives in the past, and takes an adversarial role to business. Instead of helping businesses comply with the many rules and regulations they set forth, they send an inspector—who may or may not know anything about the type of business they are inspecting—to a worksite to try to find as many violations as possible. The Gregg bill would codify OSHA's little used onsite consultation program, through which Federal funds are used to provide technical assistance to employers to assist them in complying with OSHA standards. That way, a hospital administrator who is uncertain about specific steps her nurses should take to comply with the bloodborne pathogen standard or the foreman at a construction site uncertain about how many ladders and rails should go up to meet the fall protection standard could call the regional OSHA office and have someone come out to help them come into compliance with the law. Consultation is a part of our bill, but the Senator from Massachusetts has left that, and other good provisions, out of his amendment.

I would like to devote a few moments to discussion of the cost benefit and risk assessment provisions the Senator from Massachusetts has included in his amendment. As he indicated, he has taken language directly from the Gregg bill. I am delighted that he agrees we should examine all OSHA rules, and not just those over \$100 million. Perhaps it would not be too big a step to support the rest of the Gregg OSHA reform bill as well. But I must say, frankly, the cost benefit and risk assessment provisions in S. 343 are an improvement over what we envisioned in this bill. I think the Senator from New Hampshire would agree that we did not envision S. 526 as the "be all and end all" of OSHA reform. We are open to new ideas and improvements. And many of us—Senators DOLE, JOHNSTON, ROTH, NICKELS, and others—have spent the last several months working on the fine points of what is needed to achieve a fair regulatory system.

There are several important elements of S. 343 that Senator KENNEDY has left

out of his amendment, including judicial review, the requirement that agencies use the least costly option to implement a proposed rule, and the opportunity for affected businesses to petition the agency for permission to implement an alternative method of compliance.

To carve out a special exemption for OSHA from the regulatory process we have laid out in S. 343 is just plain silly. S. 343 clearly permits rules affecting the health and safety of the American people to go into effect without delay. But if the Kennedy amendment were adopted, we would not have the opportunity to get rid of some of the silly OSHA regulations already on the books, that we have heard about over and over during the last few days. Businesses would not have the opportunity to petition for a review of material safety data sheets for Joy detergent, for instance.

So the Senator from Massachusetts has suggested that he will take our old language on the cost benefit and risk assessment verbatim, knowing that we prefer the new language. So I must ask my colleague from Massachusetts, why not take the whole bill?

Why not release the small business men and women of this country, including those in Massachusetts, from the burden of excessive paperwork and the threat of recordkeeping fines, as the Gregg bill does.

Why not release the small business men and women of Massachusetts, Missouri, and every other State from the threat of an OSHA citation—that is, fine—in each and every circumstance where a violation is found—even those that do not put workers at risk or where the employer acts immediately to correct the program. Our bill would give OSHA inspectors the discretion to issue a warning in lieu of a citation in those cases where either there is no danger to the workers or the employer has acted in good faith to correct a violation quickly.

Further, why not release the small business men and women of this country, who create the new jobs that provide paychecks to families, from the burden of large fines for paperwork, recordkeeping, or other relatively minor violations, as the Gregg bill does.

Those are the reforms we need in OSHA; we do not need to change the good language we have agreed on regarding reform of the regulatory process to accommodate the bureaucrats at OSHA.

I urge my colleagues to reject the Kennedy amendment.

Mr. KENNEDY. Mr. President, how much time remains? I know there are others who want to speak on this and are also interested in shortening the period.

The PRESIDING OFFICER. The Senator has approximately 10½ minutes of his time.

Mr. NICKLES. Mr. President, I wonder if my friend from Massachusetts

will agree to a unanimous consent to reduce both sides by 5 minutes.

Mr. KENNEDY. How much time does that leave us?

The PRESIDING OFFICER. That would leave the Senator from Massachusetts approximately 5 to 6 minutes.

Mr. KENNEDY. Fine.

Mr. NICKLES. Mr. President, I will put the question. I ask unanimous consent to reduce the time allotted to both sides by 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oklahoma.

Mr. NICKLES. Mr. President, I yield myself 2 minutes.

I rise in strong, strong opposition to the amendment proposed by our friend, Senator KENNEDY. This amendment exempts OSHA. It exempts it from cost-benefit or risk assessment under this bill. If we are going to do that, why have a bill?

I heard my colleague say we are interested in safety and if you are not—almost imply that if you want this bill, you are not interested in safety, and that is totally incorrect.

Mr. President, I happened to be an employer before coming to the Senate. I wish I had all the OSHA volumes that are required for a small manufacturer. I wish I had those. They would not fit on this desk. And if you have 60-some-odd employees, you have reams and reams and reams of volumes, mostly written by unnamed bureaucrats that know very little about business telling you what to do, subjecting you to fines and penalties if you do not subscribe. To say that they should be exempt from cost-benefit or risk assessment is totally wrong—totally, completely wrong. I happen to care about public safety and the safety of our workers and any workers in America as anybody on this floor, but we need to rein in unnecessary regulations. That is what this bill is about. They should not be exempt.

So I would urge my colleagues to support our motion to table the Kennedy amendment.

Mr. JOHNSTON. Mr. President, will the Senator yield me 2 minutes?

The PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana.

Who yields time?

Mr. NICKLES. Mr. President, I yield the Senator 2 minutes.

Mr. JOHNSTON. Mr. President, as I listened to the Senator from Massachusetts, you would have thought we were repealing OSHA and MSHA, repealing the underlying law that protects workers and miners.

Mr. President, this bill, the Dole-Johnston amendment, specifically takes into consideration that all of the standards of existing law remain in effect and are not overridden or changed.

Now, the Kennedy amendment is based on two false premises. First, that

good science is somehow an enemy of health and safety. It is exactly the opposite. And second, that somehow the Dole-Johnston amendment does not allow you to take into consideration the value of life, health and safety. And the amendment specifically states that administrators, or agency heads may take into consideration and increase the cost of regulation in order for benefits, nonquantifiable benefits to health, safety, or the environment.

Moreover, Mr. President, the Kennedy amendment, while on the one hand seeming to suggest that you have to have benefits justifying the costs, in another provision about which I asked him, all the administrator has to do, if he does not want to comply with the fact that the benefits have to justify costs, is say he cannot do it. Why can he not do it? Well, he might not in good conscience be able to do it. He might not be able to do it because he disagrees. He might not be able to do it because he wants not to.

And what does he do if he does not make this certification that the benefits justify the costs? All he has to do is publish it and send a copy to the Congress and no problem. In other words, Mr. President, this permits the administrator to waste the taxpayers' money because admittedly the benefits do not justify the costs and no problem; we will continue to do business as usual and waste the taxpayers' money without helping health and safety.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the issue is are we going to put at risk a set of procedures which have worked and which we want to perfect and which the committee is considering and on which we are prepared to work with our Republican colleagues by accepting a standard of using good scientific information and good cost-benefit analysis as was in the Gregg-Bond bill.

This is not something that was dreamed up by this side. It is a standard which has been included by seven Republicans to require a certification that there will be sound cost-benefit relations and the best in terms of scientific information will be available. We are prepared and urge that that be added to the existing criteria. But to say, well, we are prepared to use a complete new kind of way of regulating the health and safety of workers in the workplace as suggested in this bill I think is a great disservice and puts at serious risk the health and well-being of workers in this country.

How much time remains, Mr. President?

The PRESIDING OFFICER (Mr. COVERDELL). The Senator from Massachusetts has just over 4 minutes; the majority has 5½.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would like to yield myself 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. I would just like to say as chairman of the Labor and Human Resources Committee, that there is no way that either the committee or this body would ever put at risk the lives of American workers. That is not what is in question here. And I find it very troubling that that is the message being conveyed on the floor of the Senate.

We would all agree that health and safety standards are enormously important. That is why there has been support over the years for OSHA. OSHA addresses workplace hazards by issuing safety and health standards. That has not been the question. But OSHA has also become one of the most intrusive of all Federal agencies, and that is one of the primary reasons why we need regulatory reform.

I do not understand, as the Senator from Illinois mentioned, why coal mining fatalities would increase simply because we would do a stronger cost-benefit analysis of regulations promulgated since April.

There has been much made about Senator GREGG's legislation which was, of course, drafted and introduced without knowing whether there would be a significant regulatory reform effort. Since we are now dealing with regulatory reform in this Chamber, Mr. President, OSHA must be considered as part of that process. And I think Senator GREGG's legislation, as he would acknowledge himself at this point, has been overtaken by events.

It is really very sad to me that somehow, some in this Chamber would say that workers' lives were being placed at risk when all we are trying to do is to make the regulatory process work in a positive and constructive way.

The Senator from Illinois acknowledged that OSHA itself is working to eliminate about one-third of their regulations. They are recognizing that changes need to be made. We have held two hearings in the Labor and Human Resources Committee, and we heard from many witnesses that changes must be made. But I think in no way does this regulatory reform legislation undermine that positive effort.

I do not know how much time I have remaining, Mr. President.

The PRESIDING OFFICER. The Senator has 30 seconds.

Mrs. KASSEBAUM. If I may yield myself another minute or two, I would ask the Senator from Delaware.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Let me just give you an example. For instance, OSHA is currently working on its indoor air quality regulation that it estimates may cost the business community about \$8 billion to implement. This in-

door air standard, according to OSHA, will prevent some respiratory diseases such as sick building syndrome, which can cause asthma, lung irritation, and other congestion.

Yes, that surely is a problem in some workplaces, but we are not talking about putting a price tag on human life necessarily in this instance. We are talking about congestion and irritation, and we are talking about a process that may become so regulatory and burdensome that we might lose the opportunity to have an effectively functioning work force. And we threaten our workers' job security when the burden becomes so onerous to both the business side and the work force side. To its credit, OSHA is now carefully examining that proposed regulation.

There has to be a balance. It has to be a positive one. There has to be worker protection through health and safety standards that operate to the benefit of both employer and employee. I would just suggest that this is not the time or the place to undermine the efforts that are in this legislation.

I urge my colleagues to defeat the amendment of the Senator from Massachusetts.

I yield the floor, Mr. President.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. I yield myself 15 seconds. Because of the failure of occupational health and lung and respiratory standards, the Department of Registry of Motor Vehicles in my State of Massachusetts just closed down. So I think it is something that is serious, at least in my State.

I yield 1 minute to the Senator from Illinois and the remaining time to the Senator from West Virginia.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

Mr. SIMON. Mr. President, in response to my friend from Kansas, the reality is what we are doing is we are putting in effect a procedure that will lengthen the time in which MSHA and OSHA can respond to problems.

She mentioned indoor air quality. I do not know very much about it. I know I have been in some factories and it has been great. I have been in others where there clearly is a problem. We want balance, but why lengthen this procedure that is already one that takes years?

It just looks like a blip on the chart when you see the coal mine fatalities go up in 1984. I remember when we cut back on the number of coal mine inspectors and that went up, and then we put more back in and you see the line go down.

What we are doing is making it harder to get standards that make sense. I want balance. The Senator from Kansas wants balance. We will have that with the Kennedy amendment.

The PRESIDING OFFICER. The Chair advises the Senator from Illinois

that his 1 minute has expired. The Senator from Massachusetts yielded the remaining time to the Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Massachusetts.

I rise in support of the amendment offered by the Senator from Massachusetts, which will clarify our Nation's policy toward protecting the American worker by exempting the mine safety and health regulations from the subjective cost-benefit analysis and risk assessment requirements in this proposed bill.

Recently, the Mine Safety and Health Administration, MSHA, recognized the 25th anniversary of the Coal Mine Health and Safety Act of 1969, which has led to a quarter-century of effective life-saving health and safety regulations in mining. On this anniversary, mine workers, managers, and owners all praised MSHA's achievements.

I believe Members of the Senate need to pause and consider the hazardous conditions and the risks to which hard-working miners are exposed.

During the 3-year period prior to passage of the act, an average of more than 250 workers died annually in coal mining accidents. Conversely, between 1992 and 1994, the average number of annual coal mining deaths totaled fewer than 50.

In addition, cases of black-lung disease, caused by inhalation of coal dust in the mines, have been reduced in the last 25 years by an average of 75 percent, and the prevalence of black lung disease among miners has declined by more than two-thirds.

I strongly support MSHA's efforts in improving mining safety conditions, and I am thankful for the lives saved because of the passage of the Coal Mine Health and Safety Act 25 years ago.

I urge all Members to support the amendment offered by the Senator from Massachusetts to assure all American miners that our Nation's prosperity will not come at the price of their health and well-being.

Mr. President, I yield back any time.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I yield back all time remaining on our side and move to table the amendment of the Senator from Massachusetts. I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair will note that the Senator from Massachusetts still has 17 seconds remaining.

Mr. KENNEDY. I yield back that time.

The PRESIDING OFFICER. The Senator from Massachusetts yields back his time.

Mrs. KASSEBAUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 1543. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Indiana [Mr. LUGAR] is necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Ohio [Mr. GLENN] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—58

Abraham	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Nunn
Breaux	Grassley	Packwood
Brown	Gregg	Pressler
Burns	Hatch	Roth
Campbell	Hatfield	Santorum
Chafee	Heflin	Shelby
Coats	Helms	Simpson
Cochran	Hollings	Smith
Cohen	Hutchison	Snowe
Coverdell	Inhofe	Stevens
Craig	Johnston	Thomas
D'Amato	Kassebaum	Thompson
DeWine	Kempthorne	Thurmond
Dole	Kyl	Warner
Domenici	Lott	
Faircloth	Mack	

NAYS—39

Akaka	Feinstein	Mikulski
Biden	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Inouye	Murray
Bryan	Jeffords	Pell
Bumpers	Kennedy	Pryor
Byrd	Kerrey	Reid
Conrad	Kerry	Robb
Daschle	Kohl	Rockefeller
Dodd	Lautenberg	Sarbanes
Dorgan	Leahy	Simon
Exon	Levin	Specter
Feingold	Lieberman	Wellstone

NOT VOTING—3

Bingaman	Glenn	Lugar
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So the motion to lay on the table the amendment (No. 1543) was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to respond to some unfortunate remarks that were made by my friend from Ohio, Senator GLENN, regarding some of the constituents of mine who have been mistreated by Federal agencies. These are examples, over each of the last 4 days, that my colleagues have heard me speak about on the floor of the Senate. And I used these examples of my constituents being mistreated by the bureaucracy as evidence of the need for the regulatory reform bill.

It is very interesting that my colleague from Ohio was interested enough in my constituents to go to those Federal agencies that had abused them and to get some talking points for their defense. I can understand

wanting to get the story straight. We should all want to do that. But as most of us know, relying on an agency for the truth can be a big mistake. I say that to say the very least, because, after all, we are not—

Mr. WELLSTONE. Mr. President, can we have order in the Chamber so the Senator from Iowa can be heard?

The PRESIDING OFFICER. The Senator from Minnesota is correct. Will the Senate please come to order and Senators take their conversations to the cloakroom so that we might have order.

Mr. GRASSLEY. Mr. President, really the only person I care who hears this is Senator GLENN. But if everybody else wants to listen and see how what I said these last few days is accurate, I am going to go into those points. But, as I said, Senator GLENN went to the agency and got their side of the story. There is nothing wrong with that, as long as they get the truth. But as most of us know, relying on an agency for the truth can be a big mistake, and I say that at the very least. After all, we are not having hearings on Waco and Ruby Ridge and Whitewater because Federal agencies and officials always tell the truth.

Now, in regard to the incident I related on Monday, about Mr. Higman of Akron, IA—that is in northwest Iowa, not Ohio—Akron, IA, northwest Iowa. Mr. Higman's was the gravel company that some of you may have heard me use as an example.

Senator GLENN stated that a Federal magistrate and a U.S. attorney approved the search warrant. That is all very true. But, as I said in my remarks on Monday, the Federal agencies, including even the magistrate and U.S. attorney, were relying on a phony informant who, by the way, was a disgruntled employee. And, by the way, Mr. Higman was acquitted. As I said, he, in the process, has lost \$200,000 in either legal fees or lost business.

There were supposed to be firearms and machine guns on the property. What did they find? They found a loaded .22 used for rats and varmints, not a shotgun as was alleged by my friend from Ohio. And it is not a crime to have a loaded .22 rifle on your property. Of course, if the ATF and some of my colleagues had their way, there would be millions of people in hot water for having a loaded .22 on their property.

As for the so-called toxic waste that was on the property, the Senator from Ohio made an unfortunate insinuation that it could have been cyanide or something deadly. So, what was it? It was some drums of paint thinner. Maybe paint thinner should not have been on the property. But at least the Senator from Ohio acknowledged that Mr. Higman was acquitted. But then the Senator said that he found that Mr. Higman did not do it knowingly. The fact is, Mr. Higman did not do it knowingly because he did not do it at all. He did not do it at all. Who did store the

waste on Mr. Higman's 300-acre property without Mr. Higman's knowledge? It was the paid informant that the EPA used. This paid informant, who, by the way, was offered \$24,000 by EPA, was actually paid only \$2,000. This paid informant had taken this waste, hid it on the property, and tried to sell it to people. And who did the Federal agencies go after? They went after the innocent small business owner, Mr. Higman, who was set up by this disgruntled employee.

The fact remains that innocent people were subjected to very harsh treatment by a large force of Federal agents, with guns brandished, because the owner had a .22 rifle.

Remember, this is a story where I said a shotgun was pointed in the face of an accountant sitting at her desk doing accounting. Where is the rationality of all of this? You know the story of Federal law enforcement agencies out of control. These are all getting too commonplace. And to defend these actions only makes things worse. We will have a lot about Waco and about Ruby Ridge to consider in this process.

There is one other instance that the Senator from Ohio used, and it will take me a couple of minutes and I will yield the floor. This is in regard to the grain elevator problem I talked about, the grain elevator problem where EPA made a rule that assumed that every grain elevator in my State was going to operate 365 days a year, 24 hours a day, emitting pollution into the air when, if one little elevator operated that long, that would be able to process all of the 10.3-billion-bushel corn crop of the entire United States. How ridiculous can the regulation be?

The Senator from Ohio said that the EPA is aware of this problem and that the EPA is working on this problem. The only reason the EPA is aware of this problem, and supposedly is working on this problem, is because I have introduced a bill to solve this problem and because I grilled Carol Browner, the EPA Administrator, on this problem before a committee. Ms. Browner has been so-called working on it now for 9 months and the problem is still there. The regulation is still on the books. And we are not getting very far.

As a matter of fact, the EPA has refused to communicate with the Feed and Grain Association since May, despite the statement of the Senator from Ohio that the EPA is working with the grain elevator operators and owners.

My question is, why was the EPA not aware of the problem before initiating such a stupid rule in the first place, and hence the need for this legislation? And even Ms. Browner acknowledges that this rule does not make sense. But do we see any changes yet? No. Because this is another example of Federal bungling and Federal inertia, and, hence, the need for this legislation.

So I want Senator GLENN to know, I want EPA to know, that I stand by my constituents and, regardless of whether

U.S. Senators or Federal agencies bring their reputations into question, these people were and are still innocent small business people, trying to get by without being strangled by an out-of-control Federal bureaucracy.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

Mr. SIMON. Mr. President, I offer an amendment in behalf of Senator WELLSTONE and myself.

The PRESIDING OFFICER. The Chair advises the Senator from Illinois that amendment No. 1539, offered by the Senator from Texas, is pending.

Mr. SIMON. I ask unanimous consent that be set aside so this amendment can be considered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1547 TO AMENDMENT NO. 1487

(Purpose: To exempt rules and agency actions designed to protect children from poisoning)

Mr. SIMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself and Mr. WELLSTONE, proposes an amendment numbered 1547 to amendment No. 1487.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, between lines 22 and 23, insert the following:

“(g) EXEMPTION FOR THE PROTECTION OF CHILDREN.—None of the provisions of this subchapter shall apply to agency rules or actions intended to protect children against poisoning, including a rule—

“(1) relating to iron toxicity poisoning;

“(2) relating to lead poisoning from food products; or

“(3) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

On page 49, line 21, strike “or”.

On page 50, line 2, strike the period at the end and insert “; or”.

On page 50, between lines 2 and 3, insert the following:

“(F) a rule or agency action a purpose of which is to protect children from poisoning, including a rule—

“(i) relating to iron toxicity poisoning;

“(ii) relating to lead poisoning from food products; or

“(iii) promulgated under the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

Mr. SIMON. Mr. President, I am pleased to say that I think we have an amendment that will be agreed to. It is very simple. It says: None of the provisions of this subchapter shall apply to agency rules or actions intended to protect children against poisoning; including a rule, and it specifies three:

Iron toxicity poisoning. We had 28 children die of iron poisoning and those kinds of injuries in the last 3 years;

Relating to lead poisoning from food products. That is, cans that come in from other countries that use lead soldering in the top of the cans;

Third, promulgated under the Poison Prevention Packaging Act to protect children.

I believe my colleagues, Senator HATCH and Senator LEVIN, find the amendment acceptable. I do not want to speak for them.

Mr. HATCH. Mr. President, we are prepared to accept this amendment. I have to say there are some who are concerned about any exemption at this point in the bill. But I am prepared to accept it on behalf of the majority. I presume that the minority is prepared to accept the amendment.

Mr. LEVIN. Mr. President, we are not only prepared to accept the amendment, but we commend our friends from Illinois and Minnesota for offering this amendment and for pointing out the importance of so many of our regulations on health and safety and the risk that we take if we proceed down a road which might jeopardize some of those regulations unnecessarily or needlessly.

We certainly accept the amendment.

The PRESIDING OFFICER (Mr. GRAMS). Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Illinois.

The amendment (No. 1547) was agreed to.

Mr. SIMON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we still want to have a few more votes today. It is my understanding that the Domenici amendment is being worked on, and the Hutchison amendment is being negotiated. We are hopeful that we can resolve both. If we cannot, in the case of Hutchison, I just suggest we get it up and vote on it, and do it as soon as we can. So that our colleagues need to understand what is going on. If there are any other amendments that should be brought to the floor at this time, I would sure like to have them so we can move ahead.

Mr. LEVIN. There will indeed be other amendments available should we want to proceed on additional votes. We are working currently on the Hutchison amendment, I understand, and on the Domenici amendment as well. They may be ready soon.

Mr. HATCH. Mr. President, I wonder if it would not be a wise thing for the interim periods like this when we do not have anything else to do, when we are waiting for people to come with their amendment, if we laid down amendments, such as the Glenn amendment, and debated them. There are a lot of differences between the two bills.

That would be the best way for people to become informed on what is going on and what the differences are. It is also a methodology for us to get together and see if we can resolve some of the difficulties between the two bills. And then we will have a vote on the Glenn amendment as soon as we can, so everybody knows.

I think that also would help diminish the total number of amendments that we have. We would like to finish this bill and finish it as soon as we can. I think everybody is starting to feel that way. There is no reason for the delays.

In the meantime, I do not see any reason why those who have amendments should not be here right now presenting their amendments. We will set aside temporarily the Domenici and Hutchison amendments and allow any amendment to be presented.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, it is our intention to lay down the Glenn substitute today. Senator GLENN is not here because of an illness in the family. Even in his absence, we intend to lay that down. I think it is important that the differences between the Glenn-Chafee amendment and the Dole-Johnston approach be laid out clearly. There are many remaining differences. There are many remaining issues to be resolved in the Dole-Johnston substitute for which amendments will be offered.

So even though Senator GLENN cannot be here, the Glenn-Chafee amendment will be laid down a little bit later on this afternoon. In the meantime, we are trying to resolve these other two amendments. There are other amendments available.

Mr. HATCH. Could I also ask the minority, since we have been accepting amendments over here and I understand there is really no logical or real objection to the Snowe bottled water amendment, I think we ought to get that accepted and move it through.

Mr. LEVIN. I am not familiar with the Snowe amendment. I am happy to become familiar with it.

Mr. HATCH. I think the Thomas amendment is one that can be accepted on your side. I think we could move those out of the way. We could certainly be moving forward on those. As soon as you give approval on that, we will go ahead.

Mr. LEVIN. I am not familiar with them. I assume our staff is.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, my remarks are not related to this legislation, if the managers need to interrupt my remarks. My remarks will not last long. But I do want to make them today in person.