Cole (OK)
Conaway
Cooper
Costa
Costello
Cox
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Olver
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—13

Abercrombie
Brown, Corrine
Clay
Conyers
Gonzalez
Hinojosa
Jones (OH)
Miller (FL)
Myrick
Obey
Ortiz
Pombo
Shadegg

□ 1403

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GONZALEZ. Mr. Speaker, on rollcall Nos. 363, 364, 365, 366, 367, and 368, had I been present, I would have voted "yes" on 363, 364, and 368, and "no" on 365, 366 and 367.

PERSONAL EXPLANATION

Mr. ORTIZ. Mr. Speaker, due to important business in my district, I was unable to vote during the following rollcall votes. Had I been present, I would have voted as indicated:

Rollcall vote No. 363—"yes"; rollcall vote No. 364—"yes"; rollcall vote No. 365—"no"; rollcall vote No. 366—"no"; rollcall vote No. 367—"no", and rollcall vote No. 368—"yes."

OCCUPATIONAL SAFETY AND HEALTH SMALL BUSINESS DAY IN COURT ACT OF 2005

Mr. BOEHNER. Madam Speaker, pursuant to House Resolution 351, I call up the bill (H.R. 739) to amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to the filing of a notice of contest by an employer following the issuance of a citation or proposed assessment of a penalty by the Occupational Safety and Health Administration, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The text of H.R. 739 is as follows:

H.R. 739

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Small Business Day in Court Act of 2005''.

SEC. 2. CONTESTING CITATIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.

Section 10 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659) is amended—

(1) in the second sentence of subsection (a), by inserting after ''assessment of penalty'' the following: ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)''; and

(2) in the second sentence of subsection (b), by inserting after ''assessment of penalty'' the following: ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to a citation or proposed assessment of penalty issued by the Occupational Safety and Health Administration that is issued on or after the date of the enactment of this Act.

The SPEAKER pro tempore (Mrs. WILSON of New Mexico). Pursuant to House Resolution 351, the gentleman from Ohio (Mr. BOEHNER) and the gentleman from New York (Mr. OWENS) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

GENERAL LEAVE

Mr. BOEHNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 739, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, today we will debate four important bills that make modest reforms to the Occupational Safety and Health Act. These measures ensure that small business owners who make good faith efforts to comply with health and safety laws are dealt with fairly and equitably by the Occupational Safety and Health Administration.

Nearly every employer recognizes that improving workplace safety is good for business, and it is good for workers. Employers are subject to fierce competition both at home and abroad and must compete in the face of high taxes, skyrocketing health costs, escalating litigation, and burdensome government regulations. These OSHA reform bills are designed to improve worker safety and enhance the competitiveness of small businesses that are the real engine of job growth in our country.

The U.S. economy continues to grow, and more and more employers are continuing to hire workers each month. Last week, the Labor Department reported that more than 3.7 million new jobs have been created since May of 2003, marking 25 consecutive months of sustained job creation. But we need to make sure that onerous government regulations do not hamstring small businesses' ability to continue to hire

new workers and compete in our economy. That is why these bills are so important.

Madam Speaker, since Republicans assumed leadership of Congress 10 years ago, we have undertaken considerable efforts to make bureaucracy more responsive and more accountable to workers and taxpayers. Let me give just a few examples:

We stopped unwarranted and invasive OSHA regulations proposed by the Clinton administration that would have held employers liable for the safety of their employees who work from home. We stopped one of the most overreaching attempts at regulation in our Nation's history by repealing an irresponsible and unworkable ergonomics regulation that would have cost employers billions of dollars and killed millions of jobs. We have dealt with the problem of costly unfunded mandates by ensuring that Congress does not pass expensive legislation and then place it onto the backs of State and local governments.

This decade of progress on regulatory reform should give every American confidence that Congress is making positive steps every year to improve government accountability. And today we want to take one more step, one more positive step to help improve workplace safety, I think a goal we all share.

OSHA, under the Bush administration, has made significant efforts to supplement traditional enforcement programs with cooperative partnerships between the agency and employers. I am pleased to report these voluntary programs have proven successful in reducing workplace injuries and illnesses. In fact, if we look at this chart, workplace injuries and fatalities have declined significantly during the Bush administration. And as this chart shows, workplace injuries and illnesses have declined significantly under the Bush administration to their lowest point in history, to a rate of just five injuries or illnesses per 100 workers.

Moreover, workplace fatalities have made similar declines. There has been a 5.8 percent reduction in workplace fatalities since the Bush administration took office, and that is significant progress.

Why has such progress been made? Because under this administration, OSHA and employers have started to work together more cooperatively and more proactively to solve workplace safety problems before injuries and fatalities occur. A GAO report released last year said voluntary partnerships between OSHA and employers ''have considerably reduced the rates of injury and illness'' and have fostered ''better working relationships with OSHA, improved productivity, and decreased workers' compensation costs.''

We strongly support OSHA targeting the bad actors that defy the law and compromise the safety of their workers, but we also need to recognize that most employers are good actors who work hard to address job safety concerns. No employer wants to deal with unnecessary OSHA-related litigation and escalating attorneys' fees that would result from that enforcement. Most employers want to comply with the law, and the offer of assistance from OSHA is enough to provide the incentive they need to make this investment. Employers will use these resources because safety pays.

The reform measures we will consider today are proposals that, while fairly modest in substance, are important to small business owners who struggle every day to comply with the complex OSHA laws and provide a safe working environment for their workers while facing an increasingly competitive worldwide economy. Employers who make good faith efforts to comply with OSHA standards deserve to be treated fairly and have their day in court, and these commonsense bills will help ensure that they receive that opportunity.

The first bill on tap today, the Occupational Safety and Health Small Business Day in Court Act gives the Occupational Safety and Health Review Commission additional flexibility to make exceptions to the arbitrary 15-day deadline for employers to file responses to OSHA citations when a small business misses the deadline by a mistake or for good reason.

This bill essentially codifies administrative action taken by the Labor Department last year and ensures appropriate disputes are resolved based on merit rather than legal technicalities. It passed the House with strong bipartisan support last year, and it deserves every Member's support.

Madam Speaker, I reserve the balance of my time.

Mr. OWENS. Madam Speaker, I yield myself such time as I may consume.

(Mr. OWENS asked and was given permission to revise and extend his remarks.)

Mr. OWENS. Madam Speaker, we are here again. We went through this marathon a year ago. We have had several sets of hearings and markups on these four bills, and one would think they are very important. They are important, but in the reverse way. They are not important to protect the health and safety of working families in America. They are important because they are trying to trivialize the whole safety component of the Department of Labor and the whole safety responsibility of the government. They want to trivialize it and make it seem insignificant and unimportant.

I understand each of the four bills amending the Occupational Safety and Health Act now on the floor will be considered individually, and I would therefore save my comments on the specifics of the other three bills until the appropriate time. When you consider these four bills as an entire package, however, it becomes very clear that they will seriously erode the enforcement of U.S. safety standards, they will undermine the ability of the Occupational Safety and Health Administration to enforce on-the-job safety standards, and will only add to more worker deaths and more serious injuries.

□ 1415

It will not only lead to the Department of Labor becoming more and more the department against laborers, the department against working people; by bringing these bills to the House floor, the Republican leadership shows yet again just how out of step it is with the American people. In this case, the House Republican leadership is backing four bills to weaken OSHA at the very time that the American public is demanding the exact opposite be done.

According to a recent poll sponsored by the Wall Street Journal, eight out of every ten Americans believe Congress should be passing legislation to ensure greater health and safety in the workplace. Let me repeat that: The Wall Street Journal, which is hardly a liberal publication, they sponsored a poll in April 2005 revealing that 84 percent of those surveyed want lawmakers to pass bills ensuring safer workplaces in America. That is 84 percent.

Parade Magazine, another mainstream publication, tells us the same story. An article published in the April 10 issue of Parade Magazine assessed our national priorities based on 2005 dollar allocations for government programs. The article juxtaposed business versus safety, pointing out that this year's funding for the Securities and Exchange Commission is $888 million and the Small Business Administration, which is $580 million, far exceeds that for OSHA, which is $464 million, and the Consumer Product Safety Commission which is $63 million. The amount dedicated to business, Parade Magazine concludes, is close to $1 billion more than that dedicated to safety in this simple comparison.

The OSHA bills being voted on today will only serve to exacerbate this huge divide between Federal investments in business versus safety. One of the bills, H.R. 742, will even require OSHA to spend part of its meager budget rewarding certain employers who are repeat safety violators. This bill would reimburse firms that are repeat safety offenders for attorneys' fees whenever OSHA citations are downgraded on a technicality during administrative or court proceedings.

The American people are serious about seeing tougher laws enacted to improve safety on the job, and their concerns are well founded. In a hearing last month, the U.S. Chemical Safety Board underscored the fact that chemical dust explosions represent a serious industrial hazard in this country. Since 1980, 200-plus explosions and dust fires in U.S. plants caused the deaths of 100 workers and significant injuries to 600 others. Even though the Chemical Safety Board chair stresses that these

industrial explosions are clearly preventable, no comprehensive Federal effort has yet been established to address these clearly preventable explosions.

As recent headlines about worker deaths in Texas, New York and Ohio have revealed, American workers are far too often killed or severely injured as a result of safety violations by employers who have lengthy histories of similar offenses.

In March 2005, 15 workers were killed and more than a hundred injured in a massive British Petroleum refinery blast. A preliminary Chemical Safety Board investigation indicates that faulty equipment was a key factor in this terrible explosion which also destroyed buildings and cars. Yet OSHA had already fined the same British Petroleum plant $100,000 in September 2004 for safety violations that at that time had killed two workers. In fact, OSHA had previously cited and issued a fine of $63,000 in March 2004 to that British Petroleum plant for 14 safety violations.

Even though the Texas City British Petroleum Plant is clearly a repeat safety offender, OSHA routinely reduces penalties and downgrades violation findings as a means of encouraging correction of the problem. I suppose that is what is alluded to by this voluntary compliance. They are going to voluntarily comply one day, but in the meantime, many more workers will be killed.

A newly released analysis of 2,500 inspections of New York construction sites reveal similar patterns of serious and frequent violations of OSHA safety standards. Nearly two-thirds of all violations in 2003 involved faulty scaffoldings and/or the failure to provide fall protection equipment. Scaffolding collapses and falls are the most common cause of construction worker hospitalizations and deaths of three or more workers. Sponsored by the New York Committee on Safety and Health, this report recommended more vigorous OSHA enforcement and the hiring of more OSHA inspection officers, among other remedies. Under its current staffing, it would take OSHA 108 years to inspect all of the workplaces in the United States.

Yet this administration has proposed that we hire 41 new auditors to audit organized labor records. If we have the money for 41 new auditors to audit the petty cash records of labor unions, surely we ought to be able to find the money to hire more inspectors and have those inspectors be inspectors not on a voluntary compliance basis but on a serious basis to save lives and injuries.

OSHA also lacks adequate safety standards to cope with globalization. Four ironworkers killed last year by a massive crane collapse near Toledo, Ohio, were working for a contractor with a history of repeated safety violations.

Moreover, OSHA has yet to release a standard an advisory committee drafted a year ago to govern inspection of cranes manufactured in Europe, as the crane in the Ohio fatalities had been.

In closing, the American people are watching us. By an overwhelming majority, the public wants to pass bills to strengthen OSHA, not to weaken OSHA. They want safer workplaces in America. The bills before us now do just the opposite. I urge my colleagues to join me in voting ''no'' on these bills.

Madam Speaker, I include for the RECORD letters from the AFL–CIO, the Teamsters, the UAW, AFSCME, as well the United Steelworkers in opposition to these bills.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Washington, DC, July 11, 2005.

DEAR REPRESENTATIVE: I am writing to express the strong opposition of the AFL–CIO to H.R. 739, H.R. 740, H.R. 741 and H.R. 742, four bills that would erode worker protections under the Occupational Safety and Health Act. These bills, which are scheduled for a floor vote the week of July 11, 2005, would change established law and procedures to benefit employers and stifle OSHA enforcement. They would do nothing to enhance workers' safety and health protection, while weakening the OSHAct. We are particularly concerned about H.R. 742 and H.R. 741, because these two bills would significantly undermine OSHA's ability to carry out its core mission.

H.R. 742. Occupational Safety and Health Small Employer Access to Justice Act—This bill requires taxpayers to pay the legal costs of small employers who prevail in any administrative or enforcement case brought by OSHA regardless of whether the action was substantially justified.

The language expands provisions of the current Equal Access to Justice Act, which already permits small businesses to recover litigation costs where the government position was not substantially justified. H.R. 742 will have a chilling effect on both OSHA enforcement and OSHA standard setting. OSHA will be hesitant to cite employers for violations of the OSHAct unless there is absolute certainty that the enforcement action will not be challenged, will be upheld or there will be no modification in the terms of action. Similarly, unless OSHA is certain that a standard will not be challenged (which they are routinely for any number of reasons), it would not dare begin the rulemaking process on any hazard no matter how grave the threat of the hazard to workers. No rational public policy would be furthered by discouraging OSHA from issuing citations that are substantially justified, but as to which the government ultimately is unable to carry its burden of proof. Rather, the inevitable result of such a rule, which would penalize the government every time it loses, would be to chill the issuance of meritorious citations in close cases on behalf of employees exposed to unsafe working conditions. This bill would further weaken OSHA enforcement efforts and standard setting to the detriment of American workers.

Across all industries, establishments with fewer than 100 employees (which in 2000 made up 97.7 percent of all private sector establishments) have a higher rate of fatal occupational injury than do establishments with 100 or more workers. Effectively hampering OSHA's enforcement ability in these establishments would be devastating to workers, resulting in even higher rates of worker fatalities, injury and illness.

The number of OSHA enforcement actions that involve contested adjudications is fairly small, the penalties are generally modest, and the substantive and procedural standards already accommodate the interests of small-business litigants. To be clear, there is no evidence that this legislation is necessary. The result of H.R. 742 will be a skewed set of enforcement priorities and a risk of injury, illness and even death to workers.

H.R. 741. Occupational Safety and Health Independent Review of OSHA Citations Act—This bill would change the Act to give deference to the Commission regarding the interpretation of OSHA standards. The bill seeks to overturn a 1991 decision by the Supreme Court that found that deference should be given to the Secretary of Labor as the official responsible for enforcing the OSHAct.

The Secretary of Labor has much greater experience and expertise regarding the interpretation of safety and health standards and regulations than the Commission. The Secretary develops the rules and is responsible for their broad application. In contrast, the Commission only reviews the application of standards in those few cases that are contested and come before the Commission. Giving deference to the Commission would create an incentive for challenges to the Secretary's rules and interpretations, undermining the Secretary's policymaking and enforcement functions.

H.R. 740. Occupational Safety and Health Review Commission Efficiency Act—The bill requires that the number of members on the Commission be increased from three to five and that all members must be attorneys. It also seeks to allow members whose terms have expired to continue serving on the Commission for an additional 365 days in cases where no successor has been confirmed by the Senate.

The Review Commission has operated with three Commissioners since it was first formed in 1970. Increasing the size of the Commission from three to five members is not necessary and would enable the Bush Administration to stack the review commission with business-friendly appointees. The requirement that the Commissioners be lawyers would exclude a large pool of talented persons from service. Allowing members whose terms have expired to continue serving on the Commission for an additional 365 days unless a new appointee is confirmed by the Senate may mean a sitting member could have a de facto seven year term, dending on the political makeup of the Senate and White House. The current requirement that a member step down at the expiration of his or her term is appropriate and maintains pressure on all parties to work together to select a qualified person for the Commission. Under this legislation, rather than having two members for a working quorum, three will be needed. However due to the way the language is crafted a minority of the Commission and fewer than a quorum could take action. This makes no sense and opens the door to abuses of power. Moreover, there is not enough enforcement activity at OSHA to warrant five commissioners.

H.R. 739. Occupational Safety and Health Small Business Day in Court Act—This bill seeks to excuse employers who miss the fifteen-day timeframe to contest citations and failure to abate notices. Its practical effect would be to make numerous excuses into legal reasons for missing the fifteen-day timeframe in which employers currently must respond to OSHA citations. This action will only encourage more litigation. The idea of the fifteen-day requirement is to give all parties a reasonable timeframe in which to take action, and to ensure that the case is moved along as quickly as possible so the

hazards cited will be addressed in as timely a manner as is possible. The Commission should be able to review any missed deadlines on a case-by-case basis, as is currently the practice. The one case being held up to demonstrate an insurmountable obstacle for employers is just that—one case. No legitimate reason has been presented as to the need for this bill.

As demonstrated above, these bills undermine the intent of the Congress when it enacted the OSHAct more than 30 years ago. Generally speaking, these policies and procedures have been serving workers well for over 30 years. American workers deserve a safe and healthy workplace and the full protection the OSHAct can offer. These bills would surely diminish the protections provided to workers by the OSHAct. For these reasons, the AFL–CIO opposes these four bills, and we strongly urge you to vote against each of them.

Sincerely,

WILLIAM SAMUEL,
Director, Department of Legislation.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO,
Washington, DC, July 11, 2005.

DEAR REPRESENTATIVE: On behalf of the more than 1.4 million members of the International Brotherhood of Teamsters, I am writing to express our strong opposition to four bills that would amend the Occupational Safety and Health Act: H.R. 739, H.R. 740, H.R. 741, and H.R. 742. These bills, which the House of Representatives will consider this week, do nothing to enhance safety and health protections for workers. Rather they would change established law and procedures to benefit employers (at the expense of workers), and they would make OSHA enforcement more difficult. Instead of weakening the intent of the OSH Act, Congress should take steps to strengthen safety and health protections for workers, and improve enforcement.

The Teamsters Union opposes H.R. 742, the Occupational Safety and Health Small Employer Access to Justice Act, which would require that OSHA (i.e. the taxpayer) pay the legal costs when it loses a case against a small business that prevails in administrative or judicial proceedings, regardless of whether the governments position was substantially justified. We view this as another effort to impede OSHA's and the Departments efforts to enforce the law and provide an avenue for workers to seek redress.

We see no justification for such an arbitrary departure from the current practice of each party paying for its own litigation costs for only one class of public prosecutions. We know of no other agency, charged by statute to enforce the law, which is impeded from fulfillng its responsibility with respect to a meritorious complaint because it cannot guarantee the outcome. In effect, H.R. 742 says that unless the agency is absolutely certain that it can prevail—that it is absolutely certain that its enforcement action will not be challenged, will be upheld, or no modification will occur in terms of action—it will be penalized (budgetarily) for fulfilling its statutory obligation to protect the safety and health of all workers (union and non-union) and to provide an avenue for redress.

Furthermore, H.R. 742 would effectively gut OSHA's statutory authority to promulgate safety and health standards. Unless certain that a standard will not be challenged (and many routinely are for a number of reasons). OSHA would not dare (or be extremely reluctant, at best) to begin a rulemaking on any hazard no matter how serious. We believe that H.R. 742 is tantamount to a stealth repeal of OSHA's statutory authority to issue workplace safety and health standards.

H.R. 739, the Occupational Safety and Health Small Business Day in Court Act, seeks to excuse employers who miss the current fifteen-day time frame to contest citations and failure to abate notices. We believe this proposal does nothing more than create ''artificial'' legal reason for failing to respond in a timely fashion. It is an ''about face'' from ensuring that an OSHA case is moved along as expeditiously as possible to ensure that workplace hazards are addressed in as timely a manner as possible, thus improving worker safety and health. The current practice of a case-by-case review is the most appropriate way to ensure that hazards are addressed as quickly as possible, and to reinforce the importance of workplace safety.

H.R. 740, the Occupational Safety and Health Review Commission Efficiency Act, would require that the number of commission members be increased from three to five, that all members be attorneys, and that members be able to serve until a successor is confirmed. We see no justification, or need, for these changes—unless one wishes to tilt the ''playing field'' against workers. First, the level of enforcement does not warrant five commissioners. And, there is no reason to limit the pool of talented people for consideration. Further, the current system helps ensure that all parties work together to select qualified people to serve, and to do so in a timely manner.

H.R. 741, the Occupational Safety and Health Independent Review of OSHA Citations Act, would, we believe, turn the OSH Act on its ear'', by giving deference to the commission. Presently, the Secretary of Labor is given deference as the official responsible for enforcing the OSH Act. The bill would take away the authority held by the Secretary in bringing cases to the Court of Appeals and the Supreme Court, an important avenue of redress to protect workers from dangerous and unhealthy workplaces.

Each of these bills will undermine, subtly in some instances and egregiously in the case of H.R. 742, workplace protections and the protection that the OSH Act was designed to provide workers. The Teamsters Union urges you to reject each of these bills.

Sincerely,

MICHAEL E. MATHIS,
Director, Government Affairs Department.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, July 11, 2005.

DEAR REPRESENTATIVE: This week the House is scheduled to take up four bills to amend the Occupational Safety and Health Act of 1070—H.R. 739, H.R 741 and H.R. 742. The UAW opposes each of these anti-worker bills and urges you to vote against them.

H.R. 742, the ''Occupational Safety and Health Small Employer Access to Justice Act,'' would require taxpayers to pay the legal costs of employers with 100 or fewer employees and worth up to 7 million who win administrative or enforcement cases brought by OSHA or any challenge to an OSHA standard, regardless of whether OSHA's actions were substantially justified.'' The UAW is deeply concerned that this legislation would have a tremendous chilling effort on the ability of OSHA to enforce workplace health and safety protections. In addition, this bill would reverse the time-honored rule of American jurisprudence that requires litigants to bear their own cost and fees. There is no need for such legislation because the Equal Access to Justice Act already protects parties from administrative overreaching by compensating them in cases where the government is not ''substantially justified'' in bringing a law enforcement action, or under other ''special circumstances.''

The other three bills, H.R. 739, H.R. 740 and H.R. 741, all relate to the Occupational Safety and Health Review Commission (Commission or OSHRC). In considering these bills, the UAW urges the House to bear in mind that OSHRC functions as an intermediate appeal for employers, between decisions of the Occupational Safety and Health Administration (OSHA) and the U.S. Courts of Appeal. During the time a case is on appeal to OSHRC, employers do not have to pay any assessed penalties, nor do they have to abate the violations for which they were cited. Thus, procedural delays at OSHRC serve only to postpone justice and to delay the correction of workplace safety and health violations.

H.R. 739, despite being mislabeled the ''Occupational Safety and Health Small Business Day in Court Act,'' is not limited to small businesses. Instead. it would effectively eliminate the statutory time period within which all employees—not just small employers—must contest an OSHA citation or assessment before it becomes a final order of the Commission. This bill would excuse employers from the fifteen-day deadline for contesting OSHA citations and lead to more litigation.

The purpose of the fifteen-day requirement is to give all parties a reasonable amount of time to take action and to move cases along as quickly as possible so that hazards can be abated in a timely manner. The bill excuses employers from missing their fifteen-day deadline but does not extend the same provisions to an employee who challenges the period for abatement in a citation. This provision is one-sided and unfair to employees. Under the statute, an employer contests by simply mailing a letter to the OSHA office. Therefore, contestation is not burdensome, and the statutory time period should be retained.

The federal courts already provide relief, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, for employers who can show that their failure to meet filing deadlines was due to mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or misconduct by an adverse party, so long as the employer can show the existence of a meritorious defense. There is a body of established case law pursuant to Rule 60(b) that would be subject to wasteful re-litigation if H.R. 739 were enacted.

H.R. 740, the ''Occupational Safety and Health Review Commission Efficiency Act,'' would expand the number of OSHRC commissioners to five from three and authorize subpanels of three members to exercise all of the powers of the Commission. It would also authorize commissioners to hold their position at the expiration of their six-year term, until a successor has been nominated by the President and confirmed by the Senate. Finally, it would add a new requirement that Commissioners must have legal training.

The UAW submits that the only good to come from adding two commissioners to OSHRC would be the creation of two more jobs to an economy that has already lost millions of industrial jobs. Otherwise, it is wasteful and unnecessary to expand OSHRC, which has been composed of three members since it was established in 1970. Indeed, the UAW believes that Congress should give consideration to abolishing all of the OSHRC commissioners' positions, allowing appeals to go directly from the decision of the Commission's Administrative Law Judges to the Courts of Appeals, as is done with Social Security Administration appeals. The UAW also objects to the legal training requirement because it would work against persons with workplace health and safety expertise.

Furthermore, we object to the provision allowing commissioners to retain their position after the expiration of their term because it deprives the Senate of its Constitutional advice and consent role.

H.R. 741, the ''Occupational Safety and Health Independent Review of OSHA Citations Act,'' would overturn a 1991 Supreme Court decision holding that OSHRC's interpretation of a health or safety standard may not be substituted for the interpretation of the Secretary of Labor. The bill explicitly provides, ''The conclusions of the Commission with respect to all questions of law shall be given deference if reasonable.'' Because it is for all practical purposes only employers who appeal cases to OSHRC, there is never an instance when the Commission would be expanding workers' rights by substituting its interpretation for the Secretary's. In other words, H.R. 741 would give unprecedented and unwarranted authority to the OSHRC to take away workers' workplace health and safety protections.

For all of the reasons set forth above, the UAW strongly opposes H.R. 739, H.R. 740, H.R. 741 and H.R. 742. We urge you to vote against these anti-worker bills that would undermine workplace health and safety.

Sincerely,

ALAN REUTHER,
Legislative Director.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO,
Washington, DC, July 11, 2005.

DEAR REPRESENTATIVE: On behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to urge you to reject H.R. 739, H.R 740, H.R 741 and H.R. 742. These bills would weaken important worker safety and health protections that are guaranteed under the Occupational Safety and Health Act (OSHAct).

Collectively, these bills would erode important OSHA policies that have served to protect the health and safety of workers all across this country. H.R. 739 would allow employers to avoid current law's fifteen-day deadline to contest OSHA citations. Such a change would result in a delay in correcting dangerous work place hazards in a timely manner. H.R. 740 is simply an unnecessary move to stack the Occupational Safety and Health Review Commission with new members while requiring that they have legal training. H.R. 741 would remove policymaking and the interpretation of OSHA's policies from the Secretary of Labor and give that responsibility to the OSHA Review Commission. Such a move would be an extreme departure from the original intent of the OSHAct and make it difficult for the Secretary of Labor to enforce and implement the Act. Finally, H.R. 742 would require OSHA to pay attorneys' fees for small employers when they prevail in administrative or enforcement proceedings, placing yet another financial burden on an already underfunded agency.

We urge you to reject all four of the measures. These bills will erode a law that has served American workers well.

Sincerely,

CHARLES M. LOVELESS,
Director of Legislation.

UNITED STEELWORKERS,
July 11, 2005.

U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: The United Steelworkers (USW), a union which represents industrial workers in virtually every sector of the economy, strongly opposes the four bills amending the Occupational Safety and Health Act (OSHA) which the House is scheduled to take up tomorrow. HR 741, HR 740 and HR 739 all relate to the Occupational Safety and Health Review Commission (OSHRC) while HR 742 adds new rules under which small employers can receive compensation for attorney's fees.

Proponents of these bills paint them as simply eliminating bureaucratic ''red tape'' with a ''common-sense fix,'' but workers' safety and the protections established under the 1970 OSH Act and the rights of claimants to a timely response to OSHA citations cannot be equated to red tape.

Perhaps most onerous is HR 742, the ''Occupational Safety and Health Small Employer Access to Justice Act,'' which requires taxpayers to cover the legal costs of small employers who prevail—or partially prevail—in any administrative or enforcement case by OSHA, or in any challenge to an OSHA standard, regardless of whether the action was ''substantially justified''. In other words, this bill will go beyond the protection already provided to litigating parties in the Equal Access to Justice Act which currently protects a party in cases where the government is not ''substantially justified'' in bringing about a law enforcement action.

HR 742 will effectively act as a deterrent to OSHA enforcement and standard setting. Statistics show that small employers (those with fewer than 100 employees) have a higher rate of fatal occupational injuries than those with more than 100 workers. Since small employers account for over 97% of all private sector employers, USW vigorously opposes any bill that could further weaken OSHA enforcement efforts and standard setting for this proportionally large group of private sector small employers.

HR 741 the ''Occupational Safety and Health Independent Review of OSHA Citations Act'' overturns a 1991 Supreme Court decision and undercuts the Secretary of Labor's authority to interpret and enforce the law. HR 741 would order judges in cases appealed to the courts to give deference to the OSHRC, giving the Commission unprecedented authority to interpret OSHA standards. The USW strongly urges you to vote against HR 741 and keep policymaking and the interpretation of OSHA policy with the Secretary of Labor.

HR 740 the ''Occupational Safety and Health Review Commission Efficiency Act'' proposes to expand the number of commissioners from three to five, require commissioners to have a legal training and allow commissioners to hold their position after their six year term expires until their successor has been appointed by the President and confirmed by the Senate. Since 1970 the OSHRC has been composed of three members and there is no need to expand the Commission while excluding from the Commission persons with workplace health and safety expertise, but no law degree. The USW also urges you to vote against this bill.

Finally, HR 739 or the ''Occupational Safety and Health Small Business Day in Court Act'' would excuse all employers—not just small employers—that miss the fifteen-day deadline for contesting OSHA citations. In other words, this bill will effectively eliminate the 15-day deadline, further delaying the timeframe for moving a case through the process and further delaying actions to correct the possible hazard. The USW opposes this bill as redundant, since employers already have recourse for missed deadlines in the federal courts under Rule 60(b) of the Federal Rules of Civil Procedure if the failure to contest meets certain requirements.

Sincerely,

WILLIAM J. KLINEFELTER,
Assistant to the President, Legislative and Political Director.

Mr. OWENS. Madam Speaker, I reserve the balance of my time.

Mr. BOEHNER. Madam Speaker, I yield such time as he may consume to the gentleman from Georgia (Mr. NORWOOD), the chairman of the Subcommittee on Workforce Protections.

(Mr. NORWOOD asked and was given permission to revise and extend his remarks.)

Mr. NORWOOD. Madam Speaker, I thank the gentleman for yielding me this time.

Madam Speaker, I cannot help but think that all has been said that needs to be said about all four of these bills during the rules debate; the problem is just not everybody has said it.

If we can perhaps confine our thinking and remarks to the bills before us, we could probably get through this pretty nicely. And those who want to talk about things that are not germane to these bills have a great opportunity to do so during special orders. Maybe for once we could simply talk about the four bills that we have.

We are starting out with H.R. 739, the Occupational Safety and Health Small Business Day in Court Act of 2005. At the outset, I would like to stress that this legislation in no way diminishes the worker safety protections of the Occupational Safety and Health Act. I believe that. I think most members of our committee believe that. It is not our intention and I do not believe it will be the outcome of any of these bills that we consider today, most especially the one we are discussing now, H.R. 739.

The Occupational Safety and Health Small Business Day in Court Act amends the OSH Act to resolve a conflict between section 10 of the act and the Federal rule of civil procedure 60(b). The bill is designed to make sure that an employer who fails to respond to an OSHA citation in a timely fashion is allowed to do so and have his or her day in court, and how reasonable of us to allow that, if the reason for missing the deadline was excusable neglect, a mistake or inadvertence. That is what rule 60(b) allows, and that is frankly all this bill does.

Until recently, if an employer filed a late notice of contest to an OSHA citation, OSHA had limited flexibility in accepting the notice because of a conflict in the law that was written 34 years ago. OSHA would not accept late notices of contest even if the employer could prove an excusable neglect. The Occupational Safety and Health Review Commission, however, would allow a late notice of contest to be filed under rule 60(b). This makes no sense.

On December 13, 2004, the Solicitor of Labor issued a memorandum to regional solicitors announcing a change in the Department's legal interpretation. This change will allow the Department's attorneys to excuse late notices of citation if it can be determined

that the lateness was due to an inadvertence or excusable neglect. The solicitor cites case law, OSHRC's longtime interpretation, and rule 60(b) as the reasons for this change. This is the right policy in my view, and I include for the RECORD the aforementioned memorandum.

DEPARTMENT OF LABOR,
Washington, DC, December 13, 2004.

MEMORANDUM

To: Regional Solicitors, Joseph M. Woodward, Associate Solicitor for Occupational Safety and Health.

From: Howard M. Radzely, Solicitor of Labor.

Subject: Late Notices of Contest to OSHA Citations.

This memorandum announces a change in the Department's legal interpretation of Section 10(a) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §659(a). The Department previously interpreted that provision to preclude the Occupational Safety and Health Review Commission from considering an employer's contest of an OSHA citation that is filed after expiration of the statutory fifteen working-day contest period, except in the unusual situation in which the limitations period has been equitably tolled. The Commission's position has long been that it can consider late contests if the employer establishes that its failure to meet the deadline was due to ''excusable neglect'' as that phrase is used in Fed. R. Civ. P. 60(b), which provides criteria for granting relief from final judgments or orders.

Despite our best efforts, our legal argument has met with only limited success. Although the Second Circuit agreed with our view in Chao v. Russell P. LeFrois Builder, Inc., 291 F.3d 219 (2d Cir. 2002), the Commission has repeatedly rejected it, and this past June the Third Circuit ruled against us in two cases. George Harms Constr. Co. v. Chao, 371 F.3d 156, 160–65 (3d Cir. 2004); Avon Contractors, 372 F.3d 171, 174–75 (3d Cir. 2004).

After studying the statute and relevant case law, the Department has concluded that late filed notices of contest may be considered under the conditions specified in Rule 60(b). This change is not only consistent with the Commission's interpretation, but it is also consistent with MSHA's and the Federal Mine Safety and Health Review Commission's interpretation of identical language in the Mine Act. 30 U.S.C. §815(a). Moreover, the previous interpretation had a disproportionate impact on small businesses in that these entities are more likely than larger companies to file untimely notices of contest. Our new position avoids further needless and often futile litigation on an issue that is collateral to OSHA's primary safety and health mission.

Accordingly, I am directing that all Regions implement this new interpretation by no longer making the argument that the Commission lacks authority to consider late notices of contest under Rule 60(b). However, the Regions should continue to argue aggressively, as they have previously and usually successfully done in the alternative, that Rule 60(b) relief can only be granted to employers that establish all elements of the excusable neglect standard. In this way, we can focus our limited resources on protecting worker safety and health rather than on litigating a collateral procedural issue. Specific implementation guidance follows. If there are additional questions, please contact Daniel Mick, Counsel for Regional Trial Litigation, in the OSH Division.

GUIDANCE

1. No attorney in the Office of the Solicitor shall argue on behalf of the Secretary that the Commission lacks the authority to apply Rule 60(b)'s excusable neglect standard to consider late notices of contest. Instead, SOL shall implement OSHA's current view that the Commission has such authority. Attorneys handling OSHA cases arising in New York, Connecticut, or Vermont, or when otherwise appropriate, shall note that the Second Circuit Court of Appeals has held to the contrary, but point out that the Le Frois decision made clear that the Secretary's reasonable interpretations of the OSH Act are entitled to judicial deference, and was rendered before OSHA adopted its current view.

2. Where appropriate, SOL attorneys shall protect the Department's interests by opposing late notices of contests on the grounds that the employer has not established ''excusable neglect'' for the late filing. Consistent with existing law, SOL attorneys shall argue that, in addition to the employer establishing that the neglect was excusable, relief cannot be granted unless the employer also asserts a meritorious defense to the citation. See Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co., 953 F.2d 17, 20 (1st Cir. 1992) (citing cases). In addition, because Rule 60(b) relief is only available ''upon such terms as are just,'' in appropriate cases, such as where the employer contests only the penalty or the characterization of the violation, or its knowledge of a violative condition, SOL may ask that the employer be required to establish that employees are no longer exposed to the cited hazard as a condition of going forward with a hearing on the merits.

Madam Speaker, all H.R. 739 would do is simply codify the solicitors' new directive, permanently cementing this change in the OSH Act and ending the conflict between the OSH Act and rule 60(b).

Last year, the House approved this measure with bipartisan support of 251–177, and I again urge my colleagues to vote ''yes'' on this measure.

I know many of my Democrat friends think that the labor bosses are against this, and they are right. The labor bosses are against something this simple, which is simply an indication to me they may not like small businesses. They may not want anything to occur that helps small businesses.

The gentleman from New York (Mr. OWENS) says this bill is not important. I tell Members what, if you are a mom and pop in this country running a small business with three or four employees, I promise this is important to them. The 12 percent of the labor union members in this country, I guarantee it is important to many of them because many of them are also in small businesses. Many of them who have spouses are in small businesses. This is just a decent thing to do, allow a little flexibility. Why beat up on small businesses? If you have a small business in your district, you certainly should vote ''yes'' for this one bill.

Mr. OWENS. Madam Speaker, I yield such time as she may consume to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Madam Speaker, I rise in opposition to H.R. 739 because it appears to be just another way for this administration to distract from the real priorities of our Nation's workers: fair wages, open labor negotiations, secure pensions, U.S. jobs over the outsourcing of our jobs and, of course, a safe working environment that protects workers from harm and allows their families peace of mind. Yet with this legislation, we put the company's bottom line above the safety of American workers.

With the narrowing definition of willful violations, we make it easier for employers to avoid responsibility after disregarding a safety standard requirement. This bill would allow a company to receive a filing extension no matter why the paperwork was lost, whether they lost track of it in the first place or if they even put it aside because of their very own negligence.

□ 1430

Why should any worker be forced to suffer in unhealthy or unsafe working conditions or, worse, lose their life or be maimed for their life because of inefficiencies within a company's system? That is why I support real workforce reform that strengthens worker protections and insists that employers face real consequences when their poor safety standards cause a wrongful death, no excuses, no added waivers, no way to help an employer miss their deadlines and then get away with it.

You cannot put a price tag on life, Madam Speaker, and you cannot put a price tag on serious injury. We can all agree that every worker's life is more precious than a profit. That is why I encourage my colleagues to join me and join the gentleman from New York (Mr. OWENS) in opposing H.R. 739.

Mr. BOEHNER. Madam Speaker, I am pleased to yield 3 minutes to the gentleman from Georgia (Mr. WESTMORELAND).

Mr. WESTMORELAND. Madam Speaker, I want to thank the gentleman from Ohio (Mr. BOEHNER) for his leadership in the Committee on Education and the Workforce and the fact that he has been able to pass reasonable legislation that not only helps the employee but the employer and gives us a better business atmosphere in this country. I would also like to thank my friend and fellow Georgian (Mr. NORWOOD) for his leadership in fine-tuning our occupational safety and health laws. The gentleman from Georgia has waged a years-long effort to improve the relationship between small businesses and the Federal Government's regulatory agencies, and for that I thank him.

Madam Speaker, I am a small businessman. I started my own construction business 25 years ago, and that is how I supported my family until my recent election this year to Congress. OSHA regulations are not just an interesting debate topic for Washington dinner parties. For me and the millions of other small business owners, they are tough rules with real consequences. No one wants to regress to the days when workers had few rights and worked in ridiculously dangerous situations with little or no regard for their safety.

In the end, good precautions are good for workers, good for businesses, and good for the economy as a whole. We are not keeping OSHA from enforcing Federal safety regulations with this legislation. We are just ensuring that regulators are fair and reasonable when enforcing regulations.

In the construction business, I worked closely with subcontractors who were small business owners themselves. One of them, a good friend of mine, ran into trouble with OSHA over this very rule that we are debating today in the Small Business Day in Court Act. He and an employee were digging a hole for a septic tank. They made a mistake during the process, and it was a mistake with horrible consequences. The walls of the hole caved in, killing the employee. While my friend was recuperating from and dealing with all the painful consequences that come with the death of an employee when you are a three-or four-man business, OSHA gave him a summons. I think everyone would agree that during those 15 days after the accident, responding to an OSHA summons should not and could not be at the top of his priority list. He missed the deadline; and, of course, under OSHA rules he was not given another chance to defend himself.

This legislation will help small business owners such as this, who run small shops but who employ the vast majority of American workers. They cannot employ full-time OSHA compliance officers and most owners are not going to be experts on the fine print of Federal regulations. When it comes to our Nation's job producers, we should not be tying their hands. We should be giving them a hand up.

I urge my colleagues to support this legislation, H.R. 739.

Mr. OWENS. Madam Speaker, I yield myself such time as I may consume.

H.R. 739 specifically creates a legal loophole for bypassing the obligation on an employer's part to meet a 15-day deadline for contesting OSHA citations. As such, the bill promotes increased litigation. Given that the OSHA commission already has the authority to review any missed deadlines on a case-by-case basis, such litigation is completely unnecessary. That bears repeating. At present, the OSHA commission relies on its longstanding practice of reviewing, on a case-by-case basis, any missed deadlines. So what is the rationale for this bill?

H.R. 739 is not only superfluous and offers nothing productive that is positive and new; it also negatively serves to delay the timely correction of workplace safety violations and hazards. The 15-business-day timeline for an employer's response was set to encourage speedy removal of work site hazards as well as the expeditious handling of cases. It establishes a reasonable time frame for protecting all the parties. It protects the employers as well as the workers. By contrast, H.R. 739 will needlessly place some workers at greater risk of on-the-job injuries or fatalities.

Let me give you a few concrete examples to illustrate the risk. In March 2003, OSHA began an inspection of Strack, Incorporated, a pipeline company in Atlanta, Georgia. OSHA inspectors had seen Strack employees working in a trench that was up to 12 feet deep. Yet a trench box, designed to protect workers, had been left on higher ground and more than 100 feet away from the site. In May 2003, OSHA issued Strack, Inc. a willful citation with a proposed fine of $44,000 for failure to use a trench box. Fortunately in this case, the hazards were corrected before anyone was killed. As an OSHA inspector put it, cave-ins occur quickly and without warning; and then it is too late to protect workers.

When it comes to trenching, failure to correct hazards in the 15-day required period can have fatal consequences. As Jeffrey Walters of Cincinnati, Ohio, testified before me last year, his only son Patrick died in a cave-in on June 14, 2002, only weeks after OSHA cited the firm Patrick worked for, which is Moeves Plumbing, for willful trenching violations. In fact, Moeves Plumbing had been inspected by OSHA 13 times before Patrick's death. Moreover, another worker had died while digging trenches for the same plumbing company several years before Patrick died in the same way.

All of this is to say that speedy correction of work site hazards cited by OSHA can often mean the difference between life and death. Thus, when OSHA finds a safety violation, it clearly merits immediate attention. I urge my colleagues to vote ''no'' on this bill again.

Madam Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Madam Speaker, I rise in opposition to this bill. What sounds like a very small change in the rules could have very large and unwelcome consequences. The way the law works now, if an OSHA inspector noticed the trench that the gentleman from New York just made reference to and gave that employer a notice that the trench needed to be properly put together so it would not cave in, under present law the employer has more than 2 weeks, 15 days, to decide whether to contest that citation. And if the employer fails to contest the citation, the law presumes that the violation ought to stand and there is corrective action taken to try to protect the worker.

Now, sometimes employers do have surprises or accidents or situations beyond their control and they mean to object to the citation, but they fail to do so. They fail to file the paper on time, or they have some other surprise or circumstance. The law, as the gentleman from New York said, already provides for that circumstance. On a case-by-case basis, OSHA is able to say there are special circumstances which justify missing the 15-day deadline. In the law, he or she who has the burden of proof loses.

What this bill does is to shift the burden of proof to OSHA to prove that the 15-day deadline was somehow unreasonable, instead of properly vesting the burden on the employer to show that there was an accident or a surprise that made them fail to hit the 15-day deadline. There is a reason that this deadline is so short. It is because the circumstances that give rise to the violations put people's lives and health at risk. We should not shift this burden. We should not approve this bill. I would urge a ''no'' vote.

Mr. BOEHNER. Madam Speaker, I am pleased to yield 4 minutes to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Madam Speaker, I am proud to support and cosponsor all four of these important pieces of legislation on OSHA reform. Each is an integral step to come to the aid of our small businesses. Not only are our small businesses increasingly faced with greater competition from the bigger competitors in the U.S. but also are they faced with greater competition from across the globe. The last thing they need are unnecessary and burdensome regulations from their own government.

According to a study discussed in the Office of Management and Budget's ''Draft Report to Congress on the Costs and Benefits of Federal Regulations for 2005,'' it is estimated that the, quote, total cost of Federal regulation, environmental, workplace, economic and tax compliance regulation, was 60 percent greater per employee for firms with under 20 employees compared to firms with over 500 employees.

In another recent study, these costs translate to approximately $7,000 in regulatory costs per employee per year. We need to aid our small businesses in being more competitive, not help force them out of business. Certainly the goals of the Occupational Safety and Health Agency to ensure workplace safety and health are laudable and protecting our workers is and must remain paramount. But oftentimes good intentions do not result in the best practices. Our small businesses and our workers deserve better.

H.R. 739, the first of four bills that we are considering today, promotes fairness for small businesses while improving competition and worker safety. It allows the Occupational Safety and Health Review Commission more flexibility to make exceptions to the 15-day deadline when employers must file appeals to OSHA citations. Many of our small businesses unintentionally and innocently miss this arbitrary deadline and can be denied their day in court as a result. While many of our small businesses are struggling to provide their employees with the safest work environments and access to the best health

care and other benefits, they must comply with inflexible regulations such as these. Many small businesses that have unintentionally missed this deadline are simply not able to navigate the complex regulations in order to appeal the OSHA citation.

In January of this year, even the Department of Labor agreed that this deadline is too burdensome and decided it would allow the Occupational Safety and Health Review Commission to have discretion over the 15-day deadline for filing appeals. This was welcome news for small businesses. Now, all we need to do is codify this provision. We are certainly not advocating that every small business be given a pass on this deadline to respond to a citation, but let us be reasonable here and give them the benefit of the doubt by instilling just a little bit more flexibility into these regulations.

Let me also mention these three other bills, H.R. 740, H.R. 741 and H.R. 742, that we are debating this afternoon. Expanding the review board for appeals cases to OSHA from three to five commissioners would speed up the appeals process so small businesses will have their cases reviewed in a timely manner.

H.R. 741 will restore the original practice and congressional intent to ensure that the Occupational Safety and Health Review Commission, or the court, will be the party to interpret OSHA regulations, not OSHA itself. And finally, H.R. 742 will allow small businesses to recover the costly attorney fees incurred if they successfully challenge an OSHA citation. Each of these will help alleviate overbearing regulations that thwart the creativity and entrepreneurial spirit of small businesses.

In past years, each of these four bills has passed the House by good margins. Let us send these provisions once again to the other side of the Capitol and encourage them to act this year to help our small businesses. Jobs are at stake and a vital economy lies in the balance. We must keep our small businesses vital, healthy, and competitive.

Mr. OWENS. Madam Speaker, I yield 3 minutes to the gentleman from New York (Mr. BISHOP).

Mr. BISHOP of New York. Madam Speaker, I rise to oppose this bill which would give a pass to employers who do not meet workplace safety conditions. We could have taken this opportunity to help hardworking Americans feel a little safer in the workplace, or we could have made today's priority giving some relief to middle-class families who are struggling to keep up with record-breaking gas prices, tuition increases, and health care costs.

Instead, this administration has once again chosen in favor of the corporate sector and the special interests. Their reward in this bill comes at the expense of hardworking employees who depend on OSHA to keep an eye on their working conditions. But when former executives win appointments to regulate the same industries in which they used to work, sound science and smart public policy usually tack a back seat to political favoritism and ideology. This bill creates a new loophole around the 15-day deadline for contesting OSHA citations. It is yet one more corporate handout that could have been better spent on job training, reversing the tide of outsourcing, or raising the minimum wage.

□ 1445

Meanwhile, hard-working Americans are increasingly faced with workplace conditions in which critically important safeguards are watered down, emerging problems are ignored, and enforcement is scaled back.

If OSHA already has the authority to review missed deadlines on a case-by-case basis, why would we need a bill that changes this process in a one-sided way that could further disadvantage workers, encourage litigation, and undermine health and safety protections?

Madam Speaker, I believe the Senate got it right last year when it declined to consider this or any of the other three proposed rollbacks of OSHA's responsibility to hard-working Americans.

I encourage my colleagues to vote against all four of these bills.

Mr. BOEHNER. Madam Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. PRICE), a member of our committee.

Mr. PRICE of Georgia. Madam Speaker, I appreciate the opportunity to talk on this bill. I want to commend the chairman for his work in this area and commend the gentleman from Georgia (Mr. NORWOOD), who has labored long and hard on these issues.

Let me make a few points initially before I talk about the merits of the bill. I think it is important for people to appreciate that no one, no one, is interested in trivializing the issue of safety in the workplace. We are interested in improving workplace safety and in holding businesses accountable when they are at fault, not just because. No one is interested in trivializing this issue.

No one is putting a price tag on life. That has been mentioned. No one is putting a price tag on life here, and no one is interested in giving employers a pass.

They also talked about a legal loophole. This is not a legal loophole. What this does is simply put faith in small business, and it shifts the burden of proof to the accuser, where it should be. There was some analogy drawn to a court of law. What this does is shift the burden of proof to the accuser, that is, OSHA, where it should be.

The bill will not weaken OSHA either. It will simply allow small business a fair opportunity for a fair hearing when it is cited, and that is it.

I rise in support of H.R. 739. The magnitude of this bill is huge: 99.7 percent of all businesses are small businesses, 99.7 percent. Seventy-five percent of all new jobs come from small business, three out of every four jobs.

In talking about this before and in researching this, I went back and looked at the original OSHA Act. The original OSHA Act in 1970 said that it was to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the act. The mission today as described by OSHA on their Web site is to ensure the safety and health of America's workers by setting and enforcing standards. Do the Members notice the difference? We have shifted who is setting the standards from Congress to a nonelected body. I think this is a lot of power. A lot of power.

The OSHA budget is $468 million, 1,100 inspectors out of 2,200 employees. A lot of power.

As has been mentioned, currently if a citation is given, the employer is given 15 days to respond. This is an arbitrary time frame. Nobody can argue that. There really is no rationale for those 15 days. Why not 5? Why not 35? Why not make it fair to small business? This is a simple commonsense amendment. Eleven words is all the amendment is, 11 words. It would add that ''unless such failure results from mistake, inadvertence, surprise, or excusable neglect,'' 11 little words. A commonsense amendment, which I am sorry to say is oftentimes all too uncommon around here. It does not mean that any citation is null and void. It does not mean that at all. It simply means that small business has an opportunity to get its fair day in court.

So in closing, Madam Speaker, I want to commend once again the gentleman from Georgia (Mr. NORWOOD) for the hard work he has done and the gentleman from Ohio (Chairman BOEHNER) for bringing this issue to the floor.

I urge all of my colleagues to support H.R. 739 and do it for small business and for the employees and jobs in our Nation.

Mr. OWENS. Madam Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. HOLT).

(Mr. HOLT asked and was given permission to revise and extend his remarks.)

Mr. HOLT. Madam Speaker, I rise in opposition to H.R. 739. It is part of a package of bills that we have before us today that serve no purpose that I can see but to gut the occupational health legislation record before this Congress.

Current law requires that employers challenge a citation or notice of a failure to abate a hazard within a 15-day time period. There is a reason that this is a short time period. It is because these are serious matters. The short deadline was enacted to encourage expeditious handling of cases and to ensure that the workplace hazards are corrected in a timely manner. The commission already has the ability to review specific cases of missed deadlines in a manner that protects the

rights of employers. In fact, my colleagues defending this legislation said what about unintentional missed deadlines or deadlines that are missed innocently. The commission can deal with that. What we are concerned about are the ones that are missed disingenuously: oh, I forgot; oh, I did not quite get around to taking care of that.

It is clear that H.R. 739 is designed to ease the burden on employers at the expense of the health and safety of workers. This is the dramatic change in policy. My colleague from Georgia said the dramatic change in policy is somehow OSHA has gained regulatory authority. No. OSHA has always had regulatory authority for the last 35 years. The real change is this dramatic change in policy that would delay the employers' responsiveness to the health hazards and increase the time that workers have to work in unsafe conditions.

These measures would make it more difficult for employees to seek redress and would impede the enforcement of worksite safety and health provisions.

Again, this is one of a set of bills that would serve to gut OSHA. It puts aside, really, the seriousness of the matter here. We do not want OSHA to become just an annoyance or a minor delay or an inconvenience or just the cost of doing business. No. OSHA should have teeth.

There are hundreds of thousands, if not millions, of Americans, I do not know who they are, they do not know who they are, who today have their arms, their eyes, their health, even their lives because of OSHA; and they do not know who they are. But they can thank people like Senator Pete Williams from New Jersey and others, who 35 years ago realized that it is the appropriate role of the Federal Government to be involved.

I know there are those who think that it would be better if the Federal Government had never gotten involved in this. I suppose they would say, well, the employee could sit down with the employer and the employee could point out the unsafe working conditions and the employer will surely take care of it because no employer wants his employees harmed. It just does not work that way. It did not work that way for the century before OSHA was passed.

Let me repeat: there are hundreds of thousands of Americans who have their eyesight, who have their arms, who have their health, who have their lives because OSHA has teeth, because OSHA requires prompt remedy to unsafe conditions.

Mr. BOEHNER. Madam Speaker, I reserve the balance of my time.

Mr. OWENS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I would like to just say that when we say the Republican majority is trying to trivialize the role of OSHA and the role of safety in the workplace, there is good foundation for this. When this administration took power, the present administration in the White House, one of the first acts that they perpetrated was the repeal of ergonomic standards at the urging of, of course, Republican Members of Congress. They repealed the ergonomic standards that had been in process with a lot of bipartisan development and support over a long period of years.

When the Secretary of Labor was Elizabeth Dole, great steps were made; and slowly we reached a point where we had ergonomic standards to pass. The current Bush Administration's first act was to repeal ergonomic standards, to toss them aside and to send a message that workers in the workplace are not that important, working families are really not important, working conditions in America are not important. The history of OSHA is that step by step they have saved thousands and thousands of lives.

One of the worst industries for safety before OSHA came into existence was the construction industry. The construction industry is still one of the most unsafe industries, but it has made tremendous strides in terms of saving lives as a result of being forced to follow certain kinds of standards by OSHA.

I think we need more light thrown on this subject, and for that reason we have prepared some information for each member of the committee by district, and they can get familiar with the problem in their district with this information that we have compiled.

For example, according to the Bureau of Labor Statistics in 2003, there were 200 worker deaths in the State of Illinois. But in the 13th Congressional District of Illinois, 69.5 percent of all the state's deaths took place. I think the Member of Congress from the 13th district ought to know that and take a look at what has happened in that district.

This packet that we want to prepare for each Member includes a chart detailing the statistics. The chart also lists the worker deaths according to the industry the person worked in and also the type of incident that was responsible for their death: was it a fall, contact with equipment, et cetera. The information is also broken down between government workers and those working in the private industry. This packet also includes a census report for each one of the districts showing how it relates to the surrounding areas, et cetera.

We will prepare this for each Member to just let them know how serious a matter this is in terms of their own immediate districts. We think working families in America should not be treated as if they lived in a Third World country, and a lot of Third World countries mores are being attempted by certain U.S. industries.

Particularly the construction industry, the construction industry looks for the most vulnerable people, immigrants. Illegal immigrants are employed in large numbers in the construction industry. And I come from a city where 40 percent of all male blacks are unemployed, according to two studies, two studies that confirm that 40 percent of all male blacks are unemployed. Yet there is a tremendous amount of construction going on, and if we go around the construction sites, we will find that the workers doing the manual labor, unskilled labor, are immigrants; and in many cases there are tremendous accidents, and these people are shuffled off and frightened and intimidated to the point where they never even report it. They do not have any workman's compensation, let alone feel that they have the right to be protected under the OSHA laws.

A review of more than 2,500 OSHA construction site inspection records in New York State from the year 2003 found that nearly one third of all OSHA construction violations in the State were of scaffolding or fall protection requirement violations, more than any other standard. The organizations involved in the analysis also said the results of this study as well as a separate review reveal troubling data about the plight of immigrant workers in the construction industry.

Their analysis, titled ''Lives in the Balance—Immigrants and Workers at Elevated Heights at Greatest Risk in Construction,'' was prepared by the New York State Trial Lawyers Association and issued by the New York Committee for Occupational Safety and Health and the Association of Community Organizations for Reform Now, called ACORN. Two other organizations Make the Road by Walking, and the New York Immigration Coalition, also sponsored the study.

□ 1500

The study reviewed all construction site OSHA inspections conducted in the State during 2003. Now, personally, I know and I have related on this floor, the total accidents that have taken place since then in New York City. Five immigrant workers lost their lives in a trench that was being constructed without proper safeguards.

I want to repeat that there is a class problem developing in America. There is a class problem. Those in power are insensitive to the needs of those who are out there working on the front lines, whether it is in domestic service or in dangerous jobs like construction, trucking and a number of chemical plants. These are dangerous jobs, but they have to be done. Our industries cannot survive without people who work in those dangerous jobs. They deserve all the protection we can give them. Just as the soldiers on the front lines in Iraq, Afghanistan or anywhere else always deserve the best that we can give them. Every soldier is automatically a hero when he goes out to fight for his country, because for every one who goes out to fight, there are a few hundred thousand left behind who will never be called. We should recognize and honor those who go out to fight. Therefore, the best armor protection, the best bullet-proof vests, all of

the things that are available to protect an individual's life should be available to those who go out to fight.

What we have found in this present war in Iraq is that people on the top, with their class-conscious sentiments at work, did not provide at first the kind of protection that should have been provided to the soldiers on the front lines out there. The soldiers come from the same working families. I cannot stress enough the need for all Americans to recognize that we are all in this together.

We have a governor of New York State now whose son was in the National Guard in a program that required that, once he came out, he had certain duties and obligations. This governor's son now is asking for a waiver. He does not want to go to Iraq; he wants a waiver. What kind of a message is that sending to all of the mothers and fathers of young men and women who have gone off to fight in Iraq in terms of our society? The person with the power does not want to make a sacrifice of his son.

Mr. BOEHNER. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, let me remind my colleagues what this small, innocuous bill does. It says to the Secretary of Labor and to OSHA that the arbitrary, 15-day deadline that is in the statute for complying with an OSHA citation or to respond to OSHA can, in fact, be waived under special circumstances, if OSHA believes that the employer missed it by accident or had other extenuating circumstances, they have the option of extending the 15-day deadline. That is all this bill does.

Now, some of my colleagues on the other side have suggested, well, no, they already have this authority. But the fact is, they do not. The ability of the commission to waive a deadline on a case-by-case basis when circumstances warrant it have been drawn into increased legal uncertainty by the recent decision of the U.S. Circuit Court of Appeals for the Second Circuit in Chao v. LeFrois Builder, Incorporated, and indeed, as recently as 2003, OSHA has argued that OSHRC does not have the authority to apply this rule.

So we think that voluntary cooperation between OSHA and the employer community will, in fact, lead to a safer workplace. And as the chart showed that I displayed earlier, workplace injuries and fatalities have continued to decrease in each year of the Bush administration.

Let us make this commonsense change to help employers and their workers achieve a safer workplace.

Mr. GENE GREEN of Texas. Madam Speaker, I rise today in opposition to these measures. This legislation moves in the wrong direction for worker safety.

We are spending valuable time changing small portions of OSHA to overturn court decisions and tweak the law to benefit industry.

I'm not sure we should be spending time addressing all these small issues when we know that reporting requirements are a problem and we could be doing something about it.

It doesn't matter in which facility these accidents occurred. The fact is people should know if an accident has occurred and the company managing the site should report it whether contract workers were involved or not.

If someone is seriously injured at my home, regardless if I'm at fault, there will be a report by the paramedics or the police and it will list my residence.

In March, fifteen people were killed in a refinery accident in Texas City. None of them will be on the injury site log because the law doesn't require them to list contract workers.

Since 1991 we've known reporting requirements should be changed to include contract workers. The report recommending this was sanctioned by OSHA under the first George Bush's administration.

There is no reason the Republican leadership couldn't allow at least some discussion on the reporting issue today. People have the right to know if they are applying for a job at a facility that has a poor safety record.

We should be talking about real issues instead of making things just a little better for industry. We've known about this problem for 14 years. That's too long to avoid making a simple change to the law to require site-based reporting of injuries.

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise today to speak in opposition to H.R. 739, a bill to amend the Occupational Safety and Health Act of 1970 to provide for adjudication flexibility with regard to the filing of a notice of contest by an employer following the issuance of a citation or proposed assessment of a penalty by the Occupational Safety and Health Administration. In essence, this bill would amend current law to authorize the Occupational Safety and Health Review Commission (OSHRC) to make exceptions to the 15-day deadline for employers to challenge OSHA citations if the employer's failure to meet this deadline is due to a ''mistake, inadvertence, surprise, or excusable neglect.''

This would weaken the ability of the Occupational Safety and Health Review Commission to enforce the current deadline and would encourage increased litigation and disrupt OSHA's ability to address workplace hazards in a timely manner. OSHA is already ''astonishingly ineffectual'' in protecting workers' lives. In the past 20 years OSHA has failed to seek criminal prosecutions in 93 percent of the cases where employers' willful and flagrant safety violations ended up killing workers. (New York Times/December 2003). Furthermore, according to a recent GAO report, since 1996, OSHA has cut resources dedicated to enforcement by 6 percent.

The U.S. lags behind other western nations in protecting workers' lives. A U.S. construction worker is 4 times more likely to be killed on the job than one in Denmark. (Center for Worker Rights 2004). As a New York State Supreme Court Judge observed: ''Why Congress has adopted such a spineless response to industrial malfeasance is best left to voters to assess.'' (Newsday, 1/15/04).

As responsible Members of congress, we cannot afford to vote for this bill. I urge my colleagues to oppose H.R. 739.

Mr. BOEHNER. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. WILSON of New Mexico). All time for debate has expired.

Pursuant to House Resolution 351, the bill is considered read for amendment and the previous question is ordered.

The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BOEHNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION EFFICIENCY ACT OF 2005

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 351, I call up the bill (H.R. 740) to amend the Occupational Safety and Health Act of 1970 to provide for greater efficiency at the Occupational Safety and Health Review Commission, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. TERRY). Pursuant to House Resolution 351, the bill is considered read for amendment.

The text of H.R. 740 is as follows:

H.R. 740

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Review Commission Efficiency Act of 2005''.

SEC. 2. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) INCREASE IN NUMBER OF MEMBERS AND REQUIREMENT FOR MEMBERSHIP.—Section 12 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 661) is amended—

(1) in the second sentence of subsection (a)—

(A) by striking ''three members'' and inserting ''five members''; and

(B) by inserting ''legal'' before ''training'';

(2) in the first sentence of subsection (b), by striking ''except that'' and all that follows through the period and inserting the following: ''except that the President may extend the term of a member for no more than 365 consecutive days to allow a continuation in service at the pleasure of the President after the expiration of the term of that member until a successor nominated by the President has been confirmed to serve. Any vacancy caused by the death, resignation, or removal of a member before the expiration of a term for which a member was appointed shall be filled only for the remainder of such term.''; and

(3) in subsection (f), by striking ''two members'' each place it appears and inserting ''three members''.

(b) NEW POSITIONS.—Of the two vacancies for membership on the Occupational Safety and Health Review Commission created by subsection (a)(1)(A), one shall be appointed by the President for a term expiring on April