

Senator KERRY, at that point, suggested—again, his words—I challenge you to go in a back room and set standards for each class.

What he pointed out, accurately, is that our amendment does not set a standard. He wants to set a standard.

My answer to that is, to do so would be to adopt in law six arbitrary standards instead of one—one arbitrary standard for each class.

I do not think we should legislate that way. I think what we ought to do is, at least for a brief period of time—have the people who are designated by law as experts look at all the criteria which are relevant to the setting of fuel economy standards, including safety, impact on jobs, cost, short-term versus long-term benefits, and the other criteria that I mentioned. Then if they do not act within 15 months, we have an expedited process to guarantee that alternatives can be considered by the Congress by under expedited procedures. If they do adopt a regulation that we do not like, under existing law, there is a process called legislative review, under which we can veto that regulation. We have that option after a rational process is pursued.

We can either arbitrarily select a standard now, based on 1 of those 13 criteria—and even that is partial—or we could do something which, it seems to me, is a lot more rational, which is to tell that regulatory agency, which has that responsibility under law: These are our policies. We want you to consider all of these criteria to adopt a rule. If we do not like it, we are going to veto it. If you do not do it, we are going to have an expedited process to consider it.

Madam President, I do not know if there is anybody else who seeks recognition. I see none.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. LEVIN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. LEVIN. Madam President, I ask unanimous consent there now be a period of morning business, with Senators permitted to speak for up to 5 minutes each.

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

#### ENERGY DERIVATIVES TRAINING

Mr. ENZI. Madam President, I rise to address the issue of derivatives. The name itself would almost put people to sleep; the details of it are very complicated. It is a process that is done by major corporations, which is what brings it to our attention at the mo-

ment. Unfortunately, the proposition that is before us is an answer looking for a problem. It is not a solution to what has happened.

Enron has raised many concerns regarding the state of our energy markets. However, as investigations into the collapse of the company are showing, the failure of Enron was likely due to unethical and possibly illegal accounting techniques used by executives at the company. We need to make one thing clear: The trading of energy derivatives had nothing to do with the collapse of Enron. In fact, Enron's trading platform was one of the most lucrative parts of the company.

Enron is not an accounting problem; it is not a business problem. It is probably a fraud problem.

During debate on the Commodities Futures and Modernization Act, we examined extensively the oversight and regulation of energy derivatives. It was done the right way. It was done with hearings, with committee markup, with floor debate. This has been brought directly to the floor. It has bypassed the other processes.

What we concluded using the correct process was the proper amount of oversight for a new and emerging business. We did the debate on the Commodities Futures and Modernization Act, and we examined extensively the oversight and regulation of the energy derivatives—the way it is supposed to be done. What we concluded was the proper amount of oversight for a new and emerging business had been put into law.

If we start to regulate an industry that is in its infancy, we run the risk of stifling competition and reducing the possibility of it reaching its full potential.

Federal Reserve Chairman Alan Greenspan testified last week before the Senate Banking Committee. I want to echo a few of his comments regarding the regulation of energy derivatives.

Chairman Greenspan said it was crucially important that we allow those types of markets to evolve amongst professionals who are most capable of protecting themselves far better than either we, the Fed, CFTC, or the OCC could conceivably do. The important issue is that there is a significant downside if we regulate where we do not have to in this area. Because one of the major—and indeed the primary—areas for regulation and protection of the system is counter-party surveillance—that the individual private parties, looking at the economic events of the status of the people with whom they are doing business. . . . We've got to allow that system to work, because if we step in as government regulators, we will remove a considerable amount of the caution that is necessary to allow those markets to evolve. And while it may appear sensible to go in and regulate, all of our experience is that there is a significant downside when you do not allow counter-party

surveillance to function in an appropriate manner.

I think we are glazing the eyes over here, but essentially Mr. Greenspan said it is too early to do anything based on the act that we already did.

Selling derivatives is a way for companies that can't afford risk to pass it on to companies that are willing. We have done that for a long time in the insurance business. This is another form of corporate insurance.

There is no indication that trading of energy derivatives contributed in any way to the collapse of Enron. However, if, in fact, Members think we need to look at legislation in this area, we should examine it in a reasonable process—not by offering on the floor amendments to a newly enacted piece of legislation. I certainly appreciate and respect Members' attention to examining the energy markets, but we should take that through the committee process so Members have a chance to hear testimony and pose questions to experts in this area.

It is a difficult area; it is a complicated area. Supporters of this amendment claim that Enron has such a large market share of this business that they were able to provide undue influence over the energy trading.

To the contrary, during and after the collapse of Enron, there were no interruptions of trading. Other market participants stepped in and assumed volume. There were no price swings or collapses of the energy market. This is a perfect example of market forces working the way they were intended.

The CFMA provided legal certainty for commercial parties not executed on futures exchanges—legal certainty, taking away some of the risk, selling some of the risk. This amendment could be interpreted to cover all transactions between commercial parties conducted either by e-mail or over the phone. The effect of this amendment would likely be decreased market liquidity because of increased legal and transactional uncertainties. Additionally, energy companies may be discouraged from using derivatives to hedge price risks. This could result in more price volatility in energy markets, which will hurt the very consumers the legislation seeks to help.

This amendment would also require electronic trading exchanges to set aside capital, even if they do not participate in trading. For instance, the Intercontinental Exchange allows buyers and sellers of energy derivatives to exchange offers through an electronic program. This exchange is already regulated by the CFTC and gives the CFTC access to its trading screens. This amendment would require the Intercontinental Exchange to set aside capital, even though it only facilitates transactions and does not trade. This requirement could force ICE to cease operations—forcing buyers and sellers of energy derivatives into the over-the-counter market. This is why CFTC Chairman Newsome has said the CFTC does not require this new authority.