



February 17, 2017

The Honorable Paul Ryan  
Speaker  
U.S. House of Representatives  
Washington, D.C.

The Honorable Kevin McCarthy  
Majority Leader  
U.S. House of Representatives  
Washington, D.C.

The Honorable Steve Scalise  
Majority Whip  
U.S. House of Representatives  
Washington, DC

The Honorable Virginia Foxx  
Chairwoman  
U.S. House Committee on Education & the Workforce  
Washington, D.C.

The Honorable Bradley Byrne  
Chairman  
U.S. House Subcommittee on Workforce Protections  
Washington, D.C.

Dear Speaker Ryan, Majority Leader McCarthy, Majority Whip Scalise, Chairwoman Foxx, and Chairman Byrne:

The undersigned groups strongly urge you to introduce and move a Congressional Review Act (CRA) joint resolution of disapproval to invalidate the Obama Administration's OSHA regulation overturning the decision in *Volks*<sup>1</sup> regarding the statute of limitations for recordkeeping violations.

At its core, the Volks Rule<sup>2</sup> is an extreme abuse of authority by a federal agency that will subject millions of American businesses to citations for paperwork violations, while doing nothing to improve worker health and safety. Finalized on December 19, 2016, the rule attempts to extend to five years the explicit six month statute of limitations on recordkeeping violations in the Occupational Safety and Health (OSH) Act of 1970.<sup>3</sup> This regulation simultaneously represents one of the most egregious end runs around Congress' power to write the laws and a

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<sup>1</sup> *AKM LLC v. Sec'y of Labor*, 675 F.3d 752 (D.C. Cir. 2012).

<sup>2</sup> *Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness*, Occupational Safety and Health Administration, 81 Fed. Reg. 91,792 (Dec. 19, 2016).

<sup>3</sup> 29 U.S.C. 658 (c).

clear challenge to the judicial branch's authority to prevent an agency from exceeding its authority to interpret the law.

In 2012, citing the unambiguous language in the OSH Act, the U.S. Court of Appeals for the District of Columbia held that OSHA could not sustain citations against an employer for alleged recordkeeping violations that occurred more than six months before the issuance of the citation because, as the employer asserted, they were outside the six month statute of limitations set forth in the OSH Act. The court was unequivocal in its rebuke of OSHA. Judge Janice Rogers Brown expressed particular concern on the issue of the agency's overstepping its authority: "we were rightly troubled by the notion of being asked by an agency to expand that agency's enforcement authority when Congress had evidently not seen fit to do so." Judge Merrick Garland, in his concurrence, plainly rejected OSHA's rationale for issuing the fines, "the Secretary's contention -- that the regulations that *Volks* was cited for violating support a 'continuing violation' theory -- is not reasonable." The *Volks* decision has since been endorsed by the Fifth Circuit in the *Delek*<sup>4</sup> decision, issued in December 2016, where the court found "its reasoning persuasive."

In response to the Court of Appeals ruling, OSHA promulgated this regulation specifically to negate the *Volks* case ruling and extend liability for paperwork violations beyond the six month window permitted under the Act. OSHA issued the final rule in the waning days of President Obama's Administration with an effective date of January 19, 2017. Although the regulation was issued in December, it was not submitted to Congress until January 4, meaning that the window for CRA consideration is for a regulation that has just been issued, and is therefore shorter than if it was being considered under the "reset" provisions of the CRA.

We urge you to help put a stop to OSHA's abuse of its authority and support swift passage of a joint resolution of disapproval for this burdensome, unlawful rule. Because the final rule directly contradicts both clear statutory language and two U.S. Courts of Appeals rulings, it must not be allowed to stand.

Thank you for your consideration of this request and for your continued efforts to rein in agency overreach and reduce the regulatory burden on America's job creators.

Sincerely,

Air Conditioning Contractors of America  
American Bakers Association  
American Coke and Coal Chemicals Institute  
American Composites Manufacturers Association  
American Farm Bureau Federation  
American Feed Industry Association  
American Foundry Society  
American Fuel and Petrochemical Manufacturers  
American Health Care Association

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<sup>4</sup> *Delek Refining, Ltd. V. Occupational Safety and Health Review Comm'n*, 845 F.3d 170 (5<sup>th</sup> Cir. Dec. 29, 2016).

American Iron and Steel Institute  
American Road and Transportation Builders Association  
American Society of Concrete Contractors  
American Subcontractors Association, Inc.  
American Supply Association  
American Trucking Associations  
Asphalt Roofing Manufacturers Association  
Associated Builders and Contractors  
Associated General Contractors  
Associated Wire Rope Fabricators  
Copper & Brass Fabricators Council, Inc.  
Corn Refiners Association  
Distribution Contractors Association  
Flexible Packaging Association  
Global Cold Chain Alliance  
Independent Electrical Contractors  
Industrial Minerals Association – North America  
Institute of Makers of Explosives  
International Dairy Foods Association  
International Foodservice Distributors Association  
International Franchise Association  
International Warehouse Logistics Association  
IPC-Association Connecting Electronics Industries  
Leading Builders of America  
Mason Contractors Association of America  
Mechanical Contractors Association of America  
Mike Ray  
Motor & Equipment Manufacturers Association  
National Association for Surface Finishing  
National Association of Home Builders  
National Association of Manufacturers  
National Association of Professional Employer Organizations  
National Association of the Remodeling Industry  
National Association of Wholesaler-Distributors  
National Automobile Dealers Association  
National Center for Assisted Living  
National Chicken Council  
National Cotton Ginners' Association  
National Demolition Association  
National Electrical Contractors Association  
National Federation of Independent Business  
National Grain and Feed Association  
National Lumber and Building Material Dealers Association  
National Oilseed Processors Association  
National Restaurant Association

National Retail Federation  
National Roofing Contractors Association  
National School Transportation Association  
National Tooling and Machining Association  
National Turkey Federation  
National Utility Contractors Association  
Non-Ferrous Founders' Society  
North American Die Casting Association  
North American Meat Institute  
Plastics Industry Association (PLASTICS)  
Power and Communication Contractors Association  
Precision Machined Products Association  
Precision Metalforming Association  
Printing Industries of America  
Retail Industry Leaders Association  
Sheet Metal and Air Conditioning Contractors National Association  
Shipbuilders Council of America  
Southeastern Cotton Ginners Association, Inc.  
Texas Cotton Ginners' Association  
The Association of Union Constructors (TAUC)  
Thomas W. Lawrence, Jr. -- Safety and Compliance Management  
Tile Roofing Institute  
Tree Care Industry Association  
TRSA – The Linen, Uniform and Facility Services Association  
U.S. Chamber of Commerce  
U.S. Poultry & Egg Association