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March 16, 2017

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

**RE: AGC Key Vote - Support H.J. Res. 83/S.J. Res. 27, "Volks Rule" CRA**

Dear Majority Leader McConnell:

On behalf of the Associated General Contractors of America (AGC) and its 26,000 commercial construction company members, I strongly urge you to support H.J. Res. 83/S.J. Res 27, a Congressional Review Act (CRA) joint resolution of disapproval to stop the Occupational Safety and Health Administration's (OSHA) expansion of the statute of limitations for recordkeeping violations in the "Volks Rule." AGC will score this vote as a key vote for the education of its members on its congressional candidate scorecards.

This resolution repeals a rule that was issued by OSHA as a challenge to the judicial branch and congressional authority. Section 9 of the Occupational Safety and Health Act subsection (c) says "No citation may be issued under this section after the expiration of six months following the occurrence of any violation." That seems pretty clear and the courts agreed. In 2012, the U.S. Court of Appeals for the District of Columbia Circuit held in *AKM LLC dba Volks Constructors v. Secretary of Labor*<sup>1</sup> that section 8(c) of the OSH Act (the section that requires accurate recordkeeping) does not supersede 9(c) and therefore does not permit a continuing violation for paperwork errors and that the agency is overstepping its authority. Additionally, in 2016 the Fifth Circuit endorsed the *Volks* decision in *Delek Ref., Ltd. v. Occupational Safety & Health Review Commission*.<sup>2</sup> When OSHA issued its rule, it deliberately and specifically designed the rule to counter the ruling in the *Volks* case. 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.

The rule is designed to be punitive. It is a regulatory attempt to expand opportunities to cite companies for paperwork violations. It was issued in the waning days of the Obama Administration as an attempt to get around the existing statute of limitations for recordkeeping violations and expand that limitation to sixty-six months. It creates no new recordkeeping requirements. It does not change the data required under recordkeeping requirements. It does not exempt smaller companies from this regulation or these investigations. It does not create any new, safer work practices. The rule tells OSHA inspectors and company employees to fix typos from years ago rather than walking the jobsite, providing safety training or otherwise preventing tomorrow's accidents. We take worker safety very seriously and, unfortunately, OSHA's rule would require a colossal misallocation of resources. That is why we urge you to support the Congressional Review Act resolution.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. Shoaf".

Jeffrey D. Shoaf  
Senior Executive Director, Government Affairs

<sup>1</sup> *AKM LLC dba Volks Constructors v. Secretary of Labor*, 675 F.3d 752 (D.C. Cir. 2012)

<sup>2</sup> *Delek Ref., Ltd. v. Occupational Safety & Health Review Comm'n* No. 15-60443, 2016 WL 7480236 (5th Cir. Dec. 29, 2016).