



## H. J. Res. 83 - Disapproving the rule submitted by the Department of Labor relating to “Clarification of Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness”

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### FLOOR SCHEDULE:

Expected to be considered on March 1, 2017, subject to a [closed rule](#). The rule also provides for consideration of H.R. 988 under a structured amendment process.

### TOPLINE SUMMARY:

H.J. Res. 83 would use the [Congressional Review Act](#) to provide for the disapproval under [chapter 8 of title 5, United States Code](#), of the rule submitted by the Department of Labor relating to “Clarification of Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness”.

### COST:

A Congressional Budget Office (CBO) estimate is not yet available.

### CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

H.J. Res. 83 would provide for the disapproval of the [rule](#) submitted by the Department of Labor relating to “Clarification of Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness” (published at 81 Fed. Reg. 91792 (December 19, 2016)).

Under the Occupational Health and Safety Act of 1970, employers must record injuries or illnesses that arise out of work situations within 7 days of an incident, must submit an annual record of such reports to the Occupational Health and Safety Administration (OSHA), and must retain copies of such records for five years. Under [29 USC 658](#), OSHA is authorized to issue citations and impose monetary penalties on employers who

violate statutory workplace safety requirements or OSHA regulations. Section 658(C) clearly indicates that no citation may be issued more than six months after a violation; however, OSHA has in the past regularly issued citations covering violations that occurred at any point during the five-year record keeping period. In 2012, the US Court of Appeals for the DC Circuit ruled in [AKM LLC v. Secretary of Labor](#) that citations issued beyond six months of the last recorded injury are untimely, and that OSHA could not issue such citations. In a concurring opinion to that ruling, Judge Merrick Garland suggested that OSHA may be able to issue such citations if it used its rulemaking authority to promulgate new regulations articulating authority to issue citation standards for ongoing record keeping violations. Commensurately, the Department of Labor issued a rule to create a continuing obligation for recordkeeping for employers and articulating OSHA's authority to issue citations for violations of such obligation.

H.J.Res. 83 would disapprove of the Department of Labor rule and ensure that the statutory prohibition on citations beyond six months of an incident is enforced.

The [Congressional Review Act](#) provides an expedited legislative process for Congress to disapprove of administrative rules through joint disapproval resolutions. Regulations issued by executive branch departments and agencies, as well as issued by independent agencies and commissions, are all subject to CRA disapproval resolutions. In [order](#) for a regulation to take effect, the issuing agency must produce a report to Congress. Generally, Congress then has 60 days to pass a resolution of disapproval under the CRA. However, this timeline is shifted in circumstances when rules are submitted to Congress within 60 legislative days of adjournment. In this case, the clock for the 60-day consideration timeline will restart 15 days into the 115<sup>th</sup> Congress, giving Congress the full window for consideration. While the parliamentarian will determine the exact cut off day after which rules may be subject to the CRA, Congress will be able to consider rules going back to roughly mid-May. Regulations that are successfully disapproved of will then either not go into effect or will be looked at as if they have not gone into effect. The CRA also prevents any new regulation that is substantially similar to a disapproved regulation from being promulgated in the future, absent action from Congress. Rules must be disapproved of on a rule-by-rule basis, and must be disapproved of in their entirety.

Under the CRA process, if a joint resolution is introduced in the Senate within the permitted time period and the resolution is not reported from committee on a timely basis, 30 Senators may petition to bring the resolution to the floor. This resolution would not be subject to the filibuster. When debate commences, the Senate must fully consider the resolution before moving on to any other business, with only 10 hours of debate. Finally, enactment of a joint resolution under the CRA would require a majority vote in each chamber and a presidential signature. Though the CRA has only been used once, in 2000 against Clinton-era ergonomic regulations, conditions today are largely the same as they were that year – with Republicans securing control of the House, Senate, and presidency.

### **COMMITTEE ACTION:**

H.J. Res. 83 was introduced on February 21, and referred to the House Committee on Education and the Workforce.

### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not yet available.

### **CONSTITUTIONAL AUTHORITY:**

Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, of the Constitution of the United States. No specific enumerating clause was cited.

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