

United States Senate
WASHINGTON, DC 20510

November 10, 2021

Vice President Kamala Harris
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, D.C. 20501

Dear Madam Vice President,

The Constitution provides the Vice President of the United States an official role in both the Executive and Legislative branches of our government. In your role as President of the Senate, you are entrusted to preside over the Senate, vote in the case of a tie, and perform a number of administrative functions. One of these administrative functions is to receive administrative rules submitted to the Senate by federal agencies in accordance with the Congressional Review Act.¹

The Congressional Review Act (CRA) was enacted by Congress in 1996 as a tool to increase Congressional oversight of the federal rulemaking process. This statute provides Congress with the opportunity to “review” each regulation to determine if Congress approves of the agency’s action. If Congress does not approve, the CRA contains special provisions that would allow Congress to eliminate the regulation.

Under the CRA, before a federal regulation may take effect, the federal agency issuing the rule must submit the rule to each House of Congress, the Comptroller General of the United States, and be published in the *Federal Register*.² This step gives Congress the opportunity to fully review the regulation. Until those requirements are met, the rule is not legally binding.

In the Senate, once the rule is received by your office any Senator may file a resolution of disapproval that, if passed by both chambers and signed by the President, would repeal that specific regulation and prevent the agency from issuing a substantially similar regulation in the future. After the resolution of disapproval is introduced it is referred to committee and may be automatically discharged from committee after 20 days if 30 Senators sign and file a discharge petition. If the resolution of disapproval is discharged it goes directly to the floor where any Senator may make a motion to bring it up for a vote. The motion to proceed may not be filibustered and only a simple majority is needed for it to pass.³

On Friday, November 5, 2021, the Occupational Safety and Health Administration (OSHA) published the long expected Emergency Temporary Standard outlining vaccination and testing requirement for businesses with 100 employees or more.⁴ As the President declared the need for vaccination requirements on private businesses nearly two months ago and explained that the need was so dire that OSHA would be using their Emergency Temporary Standard authority to quickly issue the emergency regulation,

¹ 5 U.S.C. 801, et. Seq.

² 5 U.S.C. 801(a).

³ 5 U.S.C. 802.

⁴ COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61402 (Nov. 5, 2021).

Congress has been waiting since September 9th to read the emergency rule which was published last Friday.

In an attempt to determine if OSHA had complied with the CRA and successfully submitted this rule to Congress for review, our staff attempted to contact your office to ask if the rule had been received. The phones in your Capitol Hill office directed our staff to voicemail on Friday and then this week, to a generic comment line. This is unacceptable.

The administration has repeatedly emphasized the need for OSHA to issue this emergency regulation, but delayed it for two months. The administration has a legal obligation to follow the CRA requirement that the rule must be submitted to Congress before it may take effect. Any further delay will be seen as an attempt by this Administration to prevent Congress from acting.

To ensure all legal requirements are followed, please notify our offices immediately upon receipt of the OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Lankford".

James Lankford
United States Senator

A handwritten signature in blue ink, appearing to read "Mike Braun".

Mike Braun
United States Senator