The Congressional Review Act (CRA) creates a streamlined process by which Congress can disapprove rules issued by federal agencies – it is one of the few legislative actions that are exempt from the filibuster in Congress, along with reconciliation legislation. This Congress has been aggressive in using the CRA, perhaps because polarization in Congress has made any high-profile legislation impossible as the minority party regularly resorts to the filibuster in the Senate to defeat the legislation. As we discussed last year, Congress opened the Pandora's box in 2025 by using the CRA to wipe out EPA waivers to California for auto emissions regulatory standards.

Now Congress has taken the CRA to land management plans – the documents that federal land management agencies such as the Forest Service and the Bureau of Land Management (BLM) are required by federal law to prepare. Land management plans provide overarching guidance for agencies in terms of how they manage their lands, goals for management actions, and perhaps most importantly guidelines and constraints on actions that the agencies can take on their lands. Land management plans are generally for one or a few National Forests, and for specific areas of BLM lands (such as portions of a state). In theory they are to be reviewed and updated every 10 years or so, though in practice updates may be less frequent. Plans will cover everything from the maximum amount of timber production that a National Forest can produce every year to what BLM lands will be open for oil and gas leasing and on what terms to where off-road vehicle usage will be allowed on public lands. Importantly, agencies can only undertake actions consistent with land-use plans.

Given their importance, one can understand that different administrations have used land management plan revisions to try and shape public lands policy to their preferences – particularly with the ping-pong governance we have had at the federal level for the past couple of decades for federal public lands management.

So I guess it's no surprise that this Congress – which has been one of the least legislatively productive in history, in part because of the deep polarization of the second Trump Administration – would turn to the CRA to eke out some sort of legislative action that doesn't require bipartisanship. In particular, Congress in October used the CRA to wipeout Biden Administration resource management plans for BLM lands in eastern Montana that would have constrained additional coal mining. And in December, Congress used the CRA to override land-use plans that restricted oil and gas leasing in Alaska. Now there is talk of trying to use the CRA to override the management plan for Grand Staircase-Escalante National Monument

(though it is unclear what the substantive impact of that action would be, since the underlying Presidential proclamation for the monument would remain in place, and that itself constrains agency decisions in significant ways).

But there is a lot of potential collateral damage here. That's because, until this moment, Congress had never thought of these land management plans as subject to the CRA. Nor did agencies. And that matters because it means that none of the land management plans promulgated by agencies since 1996, when the CRA was first enacted, were ever sent to Congress for its review pursuant to the CRA. And that means that all of them – every single land management plan for the past thirty years – is now potentially up for repeal by Congress with a party-line majority vote.

That alone is destabilizing – because if Congress does wipe out those plans, it also potentially wipes out any permits or authorization granted pursuant to those plans, and also potentially opens the door for significant future development activities on those lands. Much of the current management of off-road vehicles, for instance, is done through those plans – all of that could be nullified going forward.

And not just by this Congress. Until the plans are submitted to Congress, starting the relevant time clock, any future Congress could strike down the plans as well. For instance, if the plans are not submitted, nothing stops a future Democratic President and Congress from striking down land-use plans that authorize oil and gas leases – terminating those leases (perhaps without any compensation requirement).

It is potentially worse than that. Once the CRA has been used to strike down a rule, the law prohibits an agency from enacting a rule in "substantially the same form" in the future. There has been little development of that point in the courts so far, in part because the CRA has been used sparingly over the past thirty years. The one case I have found interpreted this prohibition narrowly, allowing an agency to adopt a portion of a rule that was previously overturned by the CRA (Ohio Telecom Ass'n v. FCC, 150 F.4th 694 (6th Cir. 2025). (Dan Farber noted another case narrowly interpreting the CRA, in a slightly different context, in 2022.)

The destabilizing impact of this approach was highlighted by a letter by law professors last year, a letter that called for not using the CRA in this way.

All that being said, there are concerns about this use of the CRA that are probably overblown. For instance, some commentators have argued that anyone who does not like a current land management plan that has not been submitted to Congress

could sue to overturn it – the rationale is that the CRA provides that a rule subject to the CRA does not take effect until submitted to Congress for its review. But the CRA also prohibits judicial review of any actions under the CRA, and the courts have generally held that bar on judicial review prohibits a court from considering CRA-based challenges to whether an agency action is in effect. That limitation on judicial review may also constrain the ability of outside actors to sue over whether subsequent agency actions are "substantially the same form" as the prior rule (though the court in Ohio Telecom Ass'n did not believe the judicial review limitation applied to those kinds of claims).

Still the impact here is potentially quite large – and I think we may only be seeing the beginning.