

The Continued Evolution of the Congressional Review Act

In brief...

Previously considered largely a tool for the incoming Congress and president to overturn a departing president's midnight regulations, Congress has recently begun using the CRA in unanticipated ways.

By: Susan Dudley & Steven Balla | April 22, 2026

The 1996 Congressional Review Act (CRA), once seen as a tool for overturning “[midnight](#)” regulations issued by an outgoing administration, is in the news again. Earlier this month, both the House and Senate voted to reverse a Biden Interior Department [moratorium](#) on mining in Northern Minnesota’s [Superior National Forest](#). And last week, the Government Accountability Office (GAO) issued a [report recommending](#) that Congress “consider amending the CRA to specify when rules count as received.”

The joint CRA resolution disapproving the mining moratorium will soon be on its way to the President’s desk. If (as anticipated) he signs it, not only is the moratorium void, but the Department is prohibited from issuing another that is “[substantially the same](#)” without express authority from Congress. It marks another step in the evolution of this once obscure law.

For 20 years after its enactment, the CRA was used only once—in 2001 to disapprove a workplace regulation issued at the end of the Clinton Administration. Then, in 2017, Congress passed and President Trump signed 14 disapprovals. In all these cases a new Congress and a new president (of different parties from the outgoing president) overturned rules issued at the end of the previous administration. The key principle behind these initial uses was the CRA’s stipulation that a resolution of disapproval must be introduced [within 60 working days](#) after a rule is submitted to Congress. Because of this short timeframe, it appeared that the CRA was largely a tool for the incoming Congress and president to overturn a departing president’s midnight regulations and gain some control over the regulatory agenda.

In the last decade, however, Congress has begun using the CRA in unanticipated ways. In particular, it has evolved into a tool for disapproving agency actions not considered rules under the notice-and-comment provisions of the 1946 Administrative Procedure Act (APA). Such actions, which agencies issue as guidance documents, policy statements, memoranda, and other labels, are ordinarily not submitted to Congress. As a result, the 60-day window for introducing resolutions of disapproval never opens and, therefore, never closes either.

This feature of the CRA has led members of Congress to ask the GAO to determine if particular agency actions count as rules under the CRA. When the GAO issues affirmative opinions, windows for introducing resolutions of disapproval are opened, even if the agency action in question was taken years ago. This is the case for the Minnesota mining moratorium, which the Biden administration issued as a public land order more than three years ago. More broadly, this use of the CRA [opens up the possibility](#) that “any public land order that has been done over potentially decades could then be rescinded.”

In the midst of these developments, the GAO recently issued a [report recommending](#) that Congress “consider amending the CRA to specify when rules count as received.” The report highlights widespread misunderstanding and noncompliance with the CRA’s submission and timing requirements. GAO finds that agencies often do not know when Congress has “received” a rule (triggering the review clock) because the CRA does not define receipt and Congress does not provide consistent confirmation. GAO recommends that Congress clarify the statute to reduce this uncertainty.

As long as the CRA’s submission process remains opaque and its timing rules uncertain, the universe of unsubmitted agency actions will remain large and stretch back many years into the past. Congress, in other words, will be able to rely on GAO opinions as a mechanism for oversight of actions well outside the midnight period that originally defined use of the CRA. Absent congressional action clarifying what agencies need to submit to Congress and when (which seems unlikely at the moment), agencies wishing to protect themselves from CRA disapproval would be wise to notify Congress when issuing guidance documents, public land orders, and other actions not subject to notice-and-comment procedures under the APA. It is a watershed moment, indeed, in the continuing evolution of the CRA, one that has implications for congressional oversight of the administrative state in an era in which presidential and judicial actions have already greatly restricted agency authority.