

# The Washington Post

**Just because the GOP can doesn't mean it should**

February 9, 2017

WHILE THE country has been focused on President Trump's rocky first weeks, the new GOP Congress has been busy. Among other things, Republicans have been putting the Congressional Review Act, a law that [allows them](#) to expeditiously dispose of new federal regulations lawmakers do not like, to unprecedented use. They have already passed several "resolutions of disapproval" that, if Mr. Trump signs them, as expected, would overturn rules pushed through at the twilight of President Barack Obama's second term.

Though critics have noted that its use is rare, the [Congressional Review Act](#) is a wholly legitimate expression of congressional prerogatives. Over the course of decades, Congress delegated various policymaking powers, which the Constitution grants to the legislative branch, to executive agencies such as the Environmental Protection Agency. The act checks the executive branch's use of those delegated authorities by specifying that Congress can overturn agency rules by a simple majority vote within 60 legislative days of their promulgation.

But that does not mean Republican lawmakers are using their powers wisely. A large part of the reason Congress delegated policymaking authorities to executive branch experts in the first place was to ensure that science and data, rather than politics, drove regulation.

Over the past several years, for example, studies have increased alarm about what coal-mining operations have done to streams and other waterways that underpin aquatic food chains in states such as West Virginia, a problem that the advent of so-called mountaintop-removal mining has not helped. The Interior Department created [a rule](#) demanding that mining companies contain their harm to waterways during operations and restore "the physical form, hydrologic function, and ecological function of the segment of a perennial or intermittent stream that a permittee mines through." Lawmakers have now voted to revoke this sensible rule.

Similarly, the House voted to rescind another Interior Department rule that would cut down on methane emissions emerging from oil and gas drilling on federal lands. Allowing methane, the main component of natural gas, to waft into the air during drilling operations is pure resource waste, and it is bad for the environment too. Among other things, the oil and gas industry argues that Interior's rules are redundant, given that the EPA also has methane emissions rules in place. It is true that the EPA has its own rules, and we hope their invocation in this debate is a sign the Trump administration will refrain from ripping them up too. But [the EPA rules](#) do not apply to existing oil and gas infrastructure — only to new and substantially changed facilities. Courts, meanwhile, will review related accusations that Interior acted outside its legal lane. The Interior rules, in fact, were written carefully to complement state and other federal regulatory efforts, and they deserve to stay in place.

Congress's moves would be less concerning except for one of the most powerful provisions in the Congressional Review Act: a stipulation that, once lawmakers have rescinded a rule, federal agencies

cannot issue a new one “substantially” like it. This legal standard has not been tested in court. But it means that Congress may be essentially barring agencies such as the Interior Department from revisiting issues such as methane pollution on federal lands in a rigorous way. That is not a legacy the 115th Congress should be seeking.