



## Decision

**Matter of:** U.S. Army Corps of Engineers—Applicability of the Congressional Review Act to the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region (Version 2.0)

**File:** B-337895

**Date:** March 24, 2026

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### DIGEST

In September 2007, the Department of Defense, U.S. Army Corps of Engineers (USACE) issued the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region (Version 2.0)* (Regional Supplement). It provides technical guidance on identifying wetlands in Alaska.

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as the Comptroller General. CRA adopts the definition of a rule under the Administrative Procedure Act (APA) but excludes certain categories of rules from coverage. We conclude the Regional Supplement meets the APA definition of a rule but falls under CRA's exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. The Regional Supplement provides localized indicators for use by USACE to improve the accuracy and efficiency of USACE's wetland assessments but does not seek to alter the underlying substantive criteria for either wetland evaluations or regulatory jurisdiction determinations. Nor does the Regional Supplement compel specific legal or policy determinations, or restrict land or resource use in Alaska, such that it imposes new burdens on non-agency parties. Therefore, the Regional Supplement is not a rule subject to CRA's submission requirements.

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### DECISION

In September 2007, the Department of Defense (DOD), U.S. Army Corps of Engineers (USACE) issued the *Regional Supplement to the Corps of Engineers*

*Wetland Delineation Manual: Alaska Region (Version 2.0)* (Regional Supplement).<sup>1</sup> We received a request for a decision as to whether the Regional Supplement is a rule for purposes of the Congressional Review Act (CRA).<sup>2</sup> As discussed below, we conclude that the Regional Supplement falls within the exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of nonagency parties, and, therefore is not a rule subject to CRA's submission requirements

Our practice when issuing decisions is to obtain the legal views of the relevant agency on the subject of the request.<sup>3</sup> Accordingly, we reached out to DOD to obtain the agency's views.<sup>4</sup> We received DOD's response on January 8, 2026.<sup>5</sup>

## BACKGROUND

The Clean Water Act aims to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”<sup>6</sup> It prohibits the discharge of any pollutant into “navigable waters,” which it defines as “the waters of the United States.”<sup>7</sup> Relevant here, the “waters of the United States” can include certain wetlands.<sup>8</sup>

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<sup>1</sup> ERDC/EL TR-07-24 (Sept. 2007), available at <https://usace.contentdm.oclc.org/utils/getfile/collection/p266001coll1/id/7608> (last visited Mar. 17, 2026).

<sup>2</sup> Pub. L. No. 104-121, title II, subtitle E, § 251, 110 Stat. 847, 868 (Mar. 29, 1996). Letter from Representative Nicholas J. Begich, III, to Comptroller General, GAO (Nov. 4, 2025).

<sup>3</sup> GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>.

<sup>4</sup> Letter from Acting Assistant General Counsel for Appropriations Law, GAO, to General Counsel, DOD (Nov. 20, 2025).

<sup>5</sup> Letter from Acting Deputy General Counsel for Environment, Energy, & Installations, DOD, to Acting Assistant General Counsel for Appropriations Law, GAO (Jan. 8, 2026) (Response Letter).

<sup>6</sup> Pub. L. No. 92-500, 86 Stat. 816 (Oct. 18, 1972); 33 U.S.C. § 1251(a).

<sup>7</sup> 33 U.S.C. §§ 1311(a), 1362(7), (12); *Sackett v. EPA*, 598 U.S. 651, 661 (2023).

<sup>8</sup> 33 C.F.R. § 328.3(a)(4); Regional Supplement, at 2. Accord 40 C.F.R. §§ 120.2(a)(4) and 230.3(o) (parallel EPA regulations). Wetlands are areas “inundated or saturated by surface or ground water at a frequency and duration sufficient to  
(continued...)

USACE and the Environmental Protection Agency (EPA) jointly enforce the Clean Water Act and may issue permits for certain activities.<sup>9</sup> USACE administers permits for discharging dredged or fill material into navigable waters under section 404 of the Act.<sup>10</sup> USACE also oversees permits for building structures in waters of the United States under section 10 of the Rivers and Harbors Act.<sup>11</sup>

In 1987, USACE issued the *Corps of Engineers Wetland Delineation Manual* (Corps Manual).<sup>12</sup> This document provides national-level technical guidance and procedures for identifying and delineating wetlands that may be subject to regulatory jurisdiction under the above statutory provisions.<sup>13</sup> It sets out a three-factor approach to identifying wetlands focused on hydrophytic vegetation, hydric soil, and wetland hydrology.<sup>14</sup>

According to USACE, a single national manual cannot adequately consider regional differences.<sup>15</sup> As such, the agency issues supplements to the Corps Manual to address regional wetland characteristics and improve the accuracy and efficiency of wetland-delineation procedures.<sup>16</sup>

In 2007, USACE issued the Regional Supplement for the Alaska Region, which covers the entire state.<sup>17</sup> With its highly variable climate, geology, and landforms, USACE identified this vast region for a supplement in part because of its geographic

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support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” 33 C.F.R. § 328.3(c)(1); 40 C.F.R. § 120.2(c)(1). They generally include “swamps, marshes, bogs, and similar areas.” *Id.*

<sup>9</sup> *Sackett*, 598 U.S. at 661.

<sup>10</sup> 33 U.S.C. § 1344; *Sackett*, 598 U.S. at 661.

<sup>11</sup> Pub. L. No. 55-425, 30 Stat. 1121 (Mar. 3, 1899); 33 U.S.C. § 403.

<sup>12</sup> *Wetlands Research Program Technical Report Y-87-1* (Jan. 1987), available at <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4530> (last visited Mar. 17, 2026).

<sup>13</sup> Regional Supplement, at 1.

<sup>14</sup> *Id.*

<sup>15</sup> Regional Supplement, at 1.

<sup>16</sup> *Id.* at ii, 1.

<sup>17</sup> Regional Supplement, at 3.

isolation and climate.<sup>18</sup> Alaska in fact has more wetlands than any other U.S. region.<sup>19</sup>

The Regional Supplement provides Alaska-specific wetland indicators, delineation guidance, and other information.<sup>20</sup> It intends to update the Corps Manual with current knowledge and practice in the region, and not to change the way wetlands are defined or identified.<sup>21</sup> To this end, the Regional Supplement has chapters providing indicators for hydrophytic vegetation, hydric soil, and wetland hydrology; a chapter on problematic wetlands situations in Alaska; and four appendices, including a wetland determination data form for the Alaska Region.

The Regional Supplement is meant to be used with the Corps Manual but expressly replaces several Corps Manual portions for applications in Alaska.<sup>22</sup> Where they differ, the Regional Supplement controls in the Alaska Region.<sup>23</sup> Additionally, the Regional Supplement's wetland indicators and guidance, together with the Corps Manual's procedures, can be used to identify wetlands for various purposes including resource inventories, management plans, and regulatory programs.<sup>24</sup> But the determination that a wetland is subject to regulatory jurisdiction under section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act must be made independently of the Regional Supplement's procedures.<sup>25</sup>

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<sup>18</sup> *Id.* at 3–4.

<sup>19</sup> *Id.* at 4. Non-agency parties, such as landowners, can participate in the wetland determination process in various ways. These may include requesting USACE jurisdictional determinations (see 33 C.F.R. §§ 320.1(a)(6), 331.2); submitting permit applications containing required information (see *id.* § 325.1); commenting on permit applications in response to public notices (see *id.* §§ 325.2(a)(3), 325.3); and appealing certain USACE decisions as an affected party (see *id.* §§ 331.1, 331.2).

<sup>20</sup> Regional Supplement, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> Regional Supplement, at 1–2.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 1.

<sup>25</sup> *Id.*

## Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and to the Comptroller General for review before a rule can take effect.<sup>26</sup> The report must contain a copy of the rule, “a concise general statement relating to the rule,” and the rule’s proposed effective date.<sup>27</sup> CRA allows Congress to review and disapprove rules issued by federal agencies for a period of 60 days using special procedures.<sup>28</sup> If a resolution of disapproval is enacted, then the new rule has no force or effect.<sup>29</sup>

CRA adopts the definition of a rule under the Administrative Procedure Act (APA), which states that a rule is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.”<sup>30</sup> However, CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.<sup>31</sup>

USACE did not submit a CRA report to Congress or the Comptroller General on the Regional Supplement.<sup>32</sup> In its response to us, DOD stated that the Regional Supplement is not subject to CRA because it is both a rule relating to agency management or personnel and a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.<sup>33</sup>

## DISCUSSION

At issue here is whether the Regional Supplement meets CRA’s definition of a rule, which adopts APA’s definition of a rule, with three exceptions. As explained below, we conclude that it does. The next step is to determine whether any CRA

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<sup>26</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* § 802.

<sup>29</sup> *Id.* § 801(b)(1).

<sup>30</sup> 5 U.S.C. §§ 551(4), 804(3).

<sup>31</sup> *Id.* § 804(3).

<sup>32</sup> Response Letter, at 1.

<sup>33</sup> *Id.*

exceptions apply. We conclude that the Regional Supplement falls within the exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

### The Regional Supplement is a Rule under APA

Applying APA's definition of a rule, the Regional Supplement meets all of the required elements. First, the Regional Supplement is an agency statement as it was issued by USACE, a federal agency within DOD.<sup>34</sup>

Second, the Regional Supplement is of future effect. Its indicators and procedures are meant to assist USACE staff on a prospective basis in identifying and delineating wetlands in the Alaska Region.<sup>35</sup> This guidance, combined with the Corps Manual's procedures, can be used to identify wetlands for various future purposes including resource inventories, management plans, and regulatory programs.<sup>36</sup> Therefore, the Regional Supplement has future effect.

Finally, the Regional Supplement implements, interprets, or prescribes law or policy. It provides step-by-step methods that broadly apply the regulatory definition of "wetlands" and how the Corps Manual interprets it to wetland evaluations in Alaska.<sup>37</sup> Moreover, USACE has final authority over using and interpreting the Regional Supplement and the Corps Manual in the region.<sup>38</sup> The Regional Supplement thus effectuates USACE's reading of the Corps Manual, and by

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<sup>34</sup> See B-337503, Sept. 18, 2025. See also 10 U.S.C. § 111(b)(6) (stating the Department of the Army is a component of DOD); § 7011 (establishing that the Department of the Army operates under the Secretary of Defense's authority, direction, and control); and § 7063(a)(4) (providing USACE is a basic branch of the Army).

<sup>35</sup> See Regional Supplement, at 1. See also B-337330, Aug. 25, 2025 (agency action was of future effect as it was to be used to guide future oil and gas leasing activities in an area of Alaska); B-335316, Nov. 29, 2023 (action reiterating recommendations meant to assist health care providers on a prospective basis was of future effect).

<sup>36</sup> Regional Supplement, at 1.

<sup>37</sup> See B-331171, Dec. 17, 2020 (agency guidance providing a step-by-step method to assist housing providers in meeting their legal obligations interpreted and implemented law); *Rapanos v. United States*, 547 U.S. 715, 761 (2006) (Kennedy, J., concurring) (explaining how the Corps Manual interprets the definition of wetlands under USACE's regulations).

<sup>38</sup> Regional Supplement, at 2.

extension its regulations and the Clean Water Act, in the Alaska Region. Therefore, it interprets and implements law.

The Regional Supplement also implements law and policy by augmenting and even supplanting Corps Manual guidance.<sup>39</sup> We have previously determined that where an agency action goes beyond mere restatement of existing policy, it satisfies this element of the definition.<sup>40</sup> The Regional Supplement goes beyond merely reiterating the Corps Manual’s wetlands policy by replacing and taking precedence over certain Corps Manual portions to provide Alaska-specific instructions.<sup>41</sup>

Finally, the Regional Supplement prescribes agency policy by advancing the Corps Manual’s national wetlands policy while customizing it to Alaska’s climate and other features.<sup>42</sup> For these reasons, the Regional Supplement implements, interprets, or prescribes law or policy. As such, the Regional Supplement meets the third element of the APA definition of a rule.

Having satisfied all the required elements, the Regional Supplement meets the APA definition of a rule.

### CRA Exceptions

We must next determine whether any of CRA’s three exceptions apply. CRA provides for three types of rules that are not subject to its requirements: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and

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<sup>39</sup> See Regional Supplement, at 1–2.

<sup>40</sup> B-337330, Aug. 25, 2025. *Accord* B-337705, Jan. 15, 2026, at 10–11 (“We have recognized that a statement by an agency that simply restates an established interpretation treads no new ground and leaves the world just as it found it, and thus cannot be fairly described as implementing, interpreting, or prescribing law or policy.”) (brackets, citations, and internal quotation marks omitted).

<sup>41</sup> Regional Supplement, at 2. See, e.g., *id.* at 8 (providing vegetation sampling guidance “intended to supplement the Corps Manual for applications in Alaska”), 83 (explaining that Chapter 5 addresses “making wetland determinations in difficult-to-identify wetland situations in Alaska”).

<sup>42</sup> See USACE, *Updating Regional Supplements to the Corps of Engineers Wetland Delineation Manual*, ERDC TN-WRAP-12-1, at 5–6 (Aug. 2012), available at <https://apps.dtic.mil/sti/tr/pdf/ADA571250.pdf> (last visited Mar. 17, 2026) (stating USACE’s system of supplements “allows for the flexibility necessary to address regional variations throughout the Nation’s wetlands, while maintaining a structured, fair, and consistent national policy toward wetland resource management”).

(3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.<sup>43</sup>

(1) Rule of Particular Applicability

The Regional Supplement is not a rule of particular applicability. Such rules are addressed to specific, identified persons or entities and determine actions that person or entity may or may not take, considering facts and circumstances specific to those persons or entities.<sup>44</sup> In determining whether a rule is one of general or particular applicability, we have noted that a rule need not apply to the population as a whole to be considered a rule of general applicability; rather, all that is required is that the rule has general applicability within its intended range, regardless of the magnitude of the range.<sup>45</sup> For example, we have determined that a rule is one of general applicability even if the rule is limited to a specific geographic area, so long as the rule does not apply to specific, identified persons or entities.<sup>46</sup>

Here, the Regional Supplement neither identifies specific entities by name nor addresses specific actions for a named entity to take.<sup>47</sup> Instead, it applies to all wetland determinations across the entire state of Alaska, giving it general application within its intended range. Therefore, the Regional Supplement is a rule of general applicability.

(2) Rule of Agency Management or Personnel

The Regional Supplement is not a rule of agency management or personnel. This exception applies to rules relating to “purely internal agency matters.”<sup>48</sup> These include rules related to controlling, directing, or supervising internal management

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<sup>43</sup> 5 U.S.C. § 804(3).

<sup>44</sup> B-337673, Jan. 16, 2026.

<sup>45</sup> B-337059, May 28, 2025.

<sup>46</sup> See B-329065, Nov. 15, 2017 (resource management plan in Alaska was not a rule of particular applicability as it governed all resource management activities, approved projects, and persons or entities engaged in permitted uses); B-238859, Oct. 23, 2017 (plan amendment for Alaskan national forest was not a rule of particular applicability because it applied to all persons or entities using the forest).

<sup>47</sup> See B-334540, Oct. 31, 2023.

<sup>48</sup> B-335142, May 1, 2024, at 5.

issues, as well as those related to personnel matters like communications between employees and managers, leave, or benefits.<sup>49</sup>

The Regional Supplement does not concern purely internal agency matters. Rather, it provides guidance and indicators applicable throughout Alaska for identifying wetlands under USACE and EPA regulations.<sup>50</sup> In addition, the Regional Supplement was prepared with input from state and federal agencies, academia, and the private sector, and underwent independent peer reviews in accordance with Office of Management and Budget guidelines.<sup>51</sup> Though not dispositive, these contributions by external stakeholders provide further evidence that the Regional Supplement does not clearly and directly implicate internal management or personnel issues.<sup>52</sup> Therefore, the Regional Supplement does not meet the second exception.

(3) Rule of Agency Organization, Procedure, or Practice That Does Not Substantially Affect Non-Agency Parties

Lastly, the Regional Supplement satisfies the exception for rules of agency organization, procedure, or practice with no substantial effect on the rights or obligations of non-agency parties. A rule of agency organization, procedure, or practice is a rule that is limited to an agency's methods of operation or how the agency organizes its internal operations.<sup>53</sup> We have previously explained that this exception was modeled on the APA exception to notice-and-comment rulemaking requirements for "rules of agency organization, procedure, or practice."<sup>54</sup> The purpose of the APA exception is to ensure "that agencies retain latitude in organizing their internal operations," so long as such rules do not have a substantial impact on non-agency parties.<sup>55</sup>

Following this principle in the CRA context, we have only applied CRA's third exception to rules that primarily focus on the internal operations of an agency. For instance, in B-329926, Sept. 10, 2018, we found that updates to a Social Security Administration (SSA) hearing manual governing SSA adjudicators' use of

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<sup>49</sup> B-336512, Aug. 29, 2024; B-335115, Sept. 26, 2023.

<sup>50</sup> Regional Supplement, at 2.

<sup>51</sup> See *id.* at ix–xi.

<sup>52</sup> See B-335115, Sept. 26, 2023.

<sup>53</sup> B-337059, May 28, 2025.

<sup>54</sup> 5 U.S.C. § 553(b)(A); see B-329926, Sept. 10, 2018, at 4.

<sup>55</sup> *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980).

information from the internet qualified as a rule of agency organization, procedure, or practice. There, the manual outlined procedures for SSA employees to follow in processing and adjudicating benefits claims.<sup>56</sup> Because the manual was directed to and binding only on SSA officials without imposing new burdens on claimants, we concluded that the manual met CRA's third exception.<sup>57</sup>

The Regional Supplement is a rule of agency organization, procedure, or practice. Like the SSA manual in B-329926, Sept. 10, 2018, the Regional Supplement is directed to agency personnel.<sup>58</sup> It describes USACE's methods of operation by outlining procedures for agency staff to follow when identifying and delineating wetlands in Alaska.<sup>59</sup> And it concerns USACE's internal operations by providing intra-agency guidance for its Alaska Region.<sup>60</sup> For these reasons, the Regional Supplement qualifies as a rule of agency organization, procedure, or practice.

Next, we must determine whether the Regional Supplement substantially affects the rights or obligations of non-agency parties. When analyzing this aspect of CRA's third exception, "the critical question is whether the agency action alters the rights or interests of the regulated entities."<sup>61</sup> Along similar lines, courts have determined that "[a]n agency rule that modifies substantive rights and interests can only be nominally procedural, and the exemption for such rules of agency procedure cannot apply."<sup>62</sup>

Here, the Regional Supplement does not substantially affect the rights or interests of non-agency parties. Its stated intent is to modernize the Corps Manual with current knowledge for the Alaska Region, not alter how wetlands are defined or identified.<sup>63</sup>

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<sup>56</sup> B-329926, Sept. 10, 2018.

<sup>57</sup> *Id.*

<sup>58</sup> See, e.g., Regional Supplement, at 38 (using imperative phrasing such as "[w]hen applying this indicator, first note the dominant color(s) of the soil layer to see if it matches the colors indicated"), 93 ("In the remarks section of the data form or in the delineation report, explain the rationale for concluding that wetland hydrology is present even though indicators of wetland hydrology described in Chapter 4 were not observed.").

<sup>59</sup> *Id.* at 1.

<sup>60</sup> *Id.* at 1–2.

<sup>61</sup> B-329926, Sept. 10, 2018, at 6.

<sup>62</sup> *United States Department of Labor v. Kast Metals Corp.*, 744 F.2d 1145, 1153 (5th Cir. 1984).

<sup>63</sup> Regional Supplement, at 1; Response Letter, at 1–2.

Simply put, the Regional Supplement aims to improve Alaska wetland evaluations, not change how they are done. Thus, it provides localized indicators<sup>64</sup> to improve the accuracy and efficiency of USACE's wetland assessments.<sup>65</sup>

But these technical, scientific indicators do not seek to alter the underlying substantive criteria for either wetland evaluations or regulatory jurisdiction determinations, the latter being a separate agency action that could impact non-agency parties.<sup>66</sup> Nor does the Regional Supplement compel specific legal or policy determinations, or restrict land or resource use in Alaska, such that it imposes new burdens on non-agency parties.<sup>67</sup> To the contrary, USACE staff have the latitude to deviate from the Regional Supplement's indicators when determining whether an area in Alaska is a wetland.<sup>68</sup>

Accordingly, because the Regional Supplement is for internal staff use and does not directly guide public conduct, it does not have a substantial impact on non-agency parties.<sup>69</sup> Although it may help identify wetlands for purposes such as management plans and regulatory programs—later agency actions that could substantially affect rights or interests—the Regional Supplement, by itself, does not change the underlying legal rights or interests of regulated entities in Alaska. The use of these indicators by USACE does not change the behavior or information submitted by the regulated entities in Alaska.

For these reasons, the Regional Supplement does not substantially affect non-agency parties' rights or obligations. Therefore, the Regional Supplement falls within the third exception and is not subject to the CRA's requirements.

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<sup>64</sup> See, e.g., *Tin Cup, LLC v. United States Army Corps of Engineers*, 904 F.3d 1068, 1071 (9th Cir. 2018) (affirming summary judgment for USACE in suit concerning, *inter alia*, the Regional Supplement's use of a different indicator for determining a growing season's presence than the Corps Manual used).

<sup>65</sup> Regional Supplement, at 1.

<sup>66</sup> See Response Letter, at 2; B-330843, Oct. 22, 2019 (Supervision and Regulation Letter from the Board of Governors of the Federal Reserve System to bank examiners did not change the substantive criteria used to examine financial institutions, and thus did not substantially affect the rights or obligations of non-agency parties.). See *also* ERDC TN-WRAP-12-1, at 1 (observing that supplements provide regional wetland delineation indicators without altering the Corps Manual's basic concepts or criteria).

<sup>67</sup> Response Letter, at 2–3.

<sup>68</sup> *Id.* at 3.

<sup>69</sup> See *Kast Metals*, 744 F.2d at 1153.

## CONCLUSION

The Regional Supplement meets the APA definition of a rule but falls within CRA's exception for rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. Therefore, it is not subject to CRA's submission requirements.

A handwritten signature in black ink that reads "Edda Emmanuelli Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez  
General Counsel