

## Chapter NR 351

### EXEMPTIONS FROM WATER QUALITY CERTIFICATION IN NONFEDERAL WETLANDS

NR 351.01 Applicability; purpose.  
NR 351.02 Definitions.  
NR 351.03 Exemptions from water quality certification.

NR 351.04 Inapplicability of exemptions from water quality certification.  
NR 351.05 Incorporation by reference.

**Note:** As a result of 2011 Wis. Act 118, ss. 88 to 96, this chapter now applies to all activities located in all wetlands, federal and nonfederal, when the activities are activities that may or may not be exempt under s. 281.36 (4) or (5), Stats.

**NR 351.01 Applicability; purpose. (1) APPLICABILITY.** This chapter applies to all activities located in nonfederal wetlands exempted from state water quality certification under s. 281.36 (4) and (5), Stats.

**(2) PURPOSE.** This chapter is adopted under s. 281.36 (6), Stats., to identify and incorporate by rule any federal regulation, rule, memorandum of agreement, guidance letter, interpretive document or other provision established by a federal agency that is promulgated or adopted pursuant to s. 33 USC 1344 (f) or that is used to interpret or implement s. 33 USC 1344 (f) for determining whether certain activities in nonfederal wetlands are eligible for exemption under s. 281.36 (4) and (5), Stats.

**History:** CR 02-015: cr. Register January 2003 No. 565, eff. 2-1-03.

**NR 351.02 Definitions.** The definitions contained in s. 281.36 (1), Stats., apply to the terms used in this chapter.

**History:** CR 02-015: cr. Register January 2003 No. 565, eff. 2-1-03.

**NR 351.03 Exemptions from water quality certification.** The exempted activities for which this chapter is applicable are those under s. 281.36 (4), Stats.

**History:** CR 02-015: cr. Register January 2003 No. 565, eff. 2-1-03.

**NR 351.04 Inapplicability of exemptions from water quality certification.** This chapter applies to all activities that meet the conditions and criteria pursuant to s. 281.36 (4) and (5), Stats.

**History:** CR 02-015: cr. Register January 2003 No. 565, eff. 2-1-03.

**NR 351.05 Incorporation by reference.** The following federal regulations, rules, memoranda of agreement, guidance letters, interpretive documents or other provisions established by a federal agency that is promulgated or adopted pursuant to s. 33 USC 1344 (f) or that is used to interpret or implement s. 33 USC 1344 (f) when determining whether certain activities in nonfederal wetlands are exempt or not eligible for exemption under s. 281.36 (4) and (5), Stats., are hereby incorporated by reference under ss. 227.21 (2) and 281.36 (6), Stats.:

**(1) Code of Federal Regulations (CFR).** U.S. Army Corps of Engineers Regulatory Program Regulations 33 CFR 320-331 and U.S. Environmental Protection Agency Program Regulations 40 CFR 232.

**Table 1**  
**CFR References**

	Part	Name
33 CFR	Part 320	General Regulatory Policies – July 1, 2001 Edition
33 CFR	Part 323	Permits for Discharges of Dredged or Fill Material Into Waters of U.S. – July 1, 2001 Edition
33 CFR	Part 328	Definition of Waters of the United States – July 1, 2001 Edition
40 CFR	Part 232	404 Program Definitions; Exempt Activities Not Requiring Permits – July 1, 2000 Edition

**Note:** The documents in Table 1 are available at the following websites. U.S. Army Corps of Engineers, Regulatory Program, Statutory, Administrative & Judicial Materials (<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/GuidanceLetters.aspx>). U.S. Environmental Protection Agency documents (<http://www.epa.gov/epahome/rules.html#codified>) and Title 40 CFR: Protection of the Environment (<http://www.epa.gov/epahome/cfr40.htm>). Copies of these materials are available for inspection in the offices of the department of natural resources, secretary of state and legislative reference bureau, Madison, Wisconsin and in some public libraries or may be purchased for personal use from:

Superintendent of Documents  
PO Box 371954  
Pittsburgh PA 15250-7954

**(2) U.S. Army Corps of Engineers Regulatory Guidance Letters.**

**Table 2**  
**Applicable Regulatory Guidance Letters**

RGLs	Title
82-03	Irrigation Exemption in Section 404(F)(1)(C) of the Clean Water Act
84-01	Regulatory Jurisdiction Over Vegetative Operations
84-05	Fifth Circuit Decision in Avoyelles vs. Marsh
85-04	Agricultural Conversion
86-01	Exemptions to Clean Water Act – Plowing
86-03	Exemption of Farm and Forest Roads
87-07	Exemption for Drainage Ditch Maintenance

87-09	Exemption for Construction or Maintenance of Farm or Stock Ponds
92-02	Water Dependency and Cranberry Production
93-03	Rescission of RGL's 90-5 and 90-8
96-02	Applicability of Exemptions under Section 404(f) to "Deep Ripping" Activities in Wetlands

**Note:** The documents in Table 2 are available at the following website: U.S. Army Corps of Engineers, Regulatory Program, Statutory, Administrative & Judicial Materials (<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/GuidanceLetters.aspx>). Copies of these materials are available for inspection in the offices of the department of natural resources, secretary of state and legislative reference bureau, Madison, Wisconsin and in some public libraries or may be purchased for personal use from:

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**(3) Memoranda of Understanding and Agreement (MOA/MOUs).** Memorandum for the Field: Clean Water Act Section 404 Regulatory Program and Agricultural Activities (USEPA and Department of the Army).

**Note:** The above MOA can be obtained at website (<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/MOUMOAs.aspx>). Copies of these materials are available for inspection in the offices of the department of natural resources, secretary of state and legislative reference bureau, Madison, Wisconsin and in some public libraries or may be purchased for personal use from:

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