



**US Army Corps  
of Engineers**

Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435  
Fax No. 505-342-3498

# NORMAL FARMING EXEMPTION SUMMARY

## NORMAL FARMING, SILVICULTURE AND RANCHING ACTIVITIES

Pursuant to Section 404 of the Clean Water Act (33 USC 1344) and Federal Regulations (33 CFR 323.4):

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation and must be in accordance with definitions in Sec. 323.4(a)(1)(iii). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

(iii)(A) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and

silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(1) Minor Drainage means:

(i) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. (Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit.);

(ii) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(iii) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species. (The provisions of paragraphs (a)(1)(iii)(C)(1) (ii) and (iii) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.)

(iv) The discharges of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the

blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption.

(2) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(E) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

A Section 404 permit is required if either of the following occurs:

(1) Any discharge of dredged or fill material resulting from the above activities which contains any toxic pollutant listed under

Section 307 of the Clean Water Act shall be subject to any applicable toxic effluent standard or prohibition, and shall require a permit.

(2) Any discharge of dredged or fill material into waters of the United States incidental to the above activities must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches, or other works or structures used to effect such conversion. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

If the proposed discharge satisfies all of the above restrictions, it is automatically exempted and no further permit action from the Corps of Engineers is required. If any of the restrictions of this irrigation exemption will not be complied with, an individual permit is required and should be requested using ENG Form 4345 (Application for a Department of the Army permit). A nationwide permit authorized by the Clean Water Act may be available for the proposed work. State or local approval of the work may also be required.

For additional information concerning exemptions, nationwide permits, or for a written determination regarding a specific project, please contact the Corps at the following addresses:

In New Mexico:  
Albuquerque District Corps of Engineers  
ATTN: Regulatory Branch  
4101 Jefferson Plaza, NE  
Albuquerque, New Mexico 87109-3435  
Phone: (505) 342-3283

In southeastern Colorado:  
Southern Colorado Regulatory Office  
720 North Main Street, Room 205  
Pueblo, Colorado 81003-3046  
Phone: (719) 543-9459

In southern New Mexico and western Texas:  
El Paso Regulatory Office  
P.O. Box 6096  
Ft. Bliss, Texas 79906-0096  
Phone: (915) 568-1359