

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, and 270

[EPA 530-Z-95-013; FRL-5686-4]

RIN 2050-AD90

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In response to section 107 of the Federal Facility Compliance Act (FFCA) of 1992, EPA is today finalizing a rule that identifies when conventional and chemical military munitions become a hazardous waste under the Resource Conservation and Recovery Act (RCRA), and that provides for the safe storage and transport of such waste. Today's final rule also amends existing regulations regarding emergency responses involving both military and non-military munitions and explosives. This rule also exempts all generators and transporters of hazardous waste, not just the military, from the RCRA manifest for the transportation of hazardous waste on public or private right-of-ways on or along the border of contiguous properties, under the control of the same person, regardless of whether the contiguous properties are divided by right-of-ways. This revision is expected to reduce the paperwork burden, for hazardous waste generators whose property is divided by right-of-ways without loss in protection of public health.

EFFECTIVE DATE: This rule is effective on August 12, 1997.

ADDRESSES: The public docket for this rulemaking is available for public inspection at EPA's RCRA Docket, located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The regulatory docket for this final rule contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 703-603-9230 and request the list of references in EPA Docket #F-97-MMF-FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9:00a.m.-6:00 p.m. EST, toll-free, at 800-424-9346; 703-412-9810 from Government phones or if in the Washington, D.C. local calling area; or 800-553-7672 for the hearing impaired. For more detailed information on specific aspects of the rulemaking, contact Ken Shuster by calling 703-308-8759 or by writing, to U.S. Environmental Protection Agency, Office of Solid Waste, Permits and State Programs Division, 401 M St., S.W. (Mailcode 5303W), Washington, D.C. 20460.

>>>> The preamble has not been included in this file. <<<<

For the reasons set forth in the preamble, 40 CFR Parts 260, 261, 262, 263, 264, 265, 266, and 270 are amended as follows:

PART 260--HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937-6939, and 6974.

2. Section 260.10 is amended by adding the following definitions, in alphabetical order, to read as follows:

§ 260.10 Definitions.
* * * * *

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary,

unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response" specialist means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

* * * * *

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

* * * * *

PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.2 is amended by removing the period at the end of paragraph (a)(2)(iii) and adding a semicolon followed by "or"; and by adding new paragraph (a)(2)(iv) to read as follows:

§ 261.2 Definition of solid waste.

(a) * * *
(2) * * *
(iii) * * *; or
(iv) A "military munition" identified as a solid waste in 40 CFR 266.202.
* * * * *

PART 262--STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922-6925, 6937, and 6938.

2. Section 262.10 is amended by adding, before the notes, new paragraph (i) to read as follows:

§ 262.10 Purpose, scope, and applicability.
* * * * *

(i) Persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.
* * * * *

3. Section 262.20 is amended by adding new paragraph (f) to read as follows:

§ 262.20 General requirements.
* * * * *

(f) The requirements of this subpart and § 262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 40 CFR 263.10(a), the generator or transporter must comply with the requirements for transporters set forth in 40 CFR 263.30 and 263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

PART 263--STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

1. The authority citation for part 263 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922-6925, 6937 and 6938.

2. Section 263.10 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 263.10 Scope.

* * * * *

(e) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii).

(f) Section 266.203 of this chapter identifies how the requirements of this part apply to military munitions classified as solid waste under 40 CFR 266.202.

PART 264--STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding new paragraphs (g)(8)(i)(D), (g)(8)(iv), and (i) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(8) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for

three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

(i) Section 266.205 of this chapter identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under § 266.202 of this chapter. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 40 CFR parts 260 through 270.

3. Section 264.70 is revised to read as follows:

§ 264.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

4. Part 264 is amended by adding new subpart EE, consisting of §§ 264.1200 through 264.1202, to read as follows:

Subpart EE--Hazardous Waste Munitions and Explosives Storage

Sec.

264.1200 Applicability.

264.1201 Design and operating standards.

264.1202 Closure and post-closure care.

§ 264.1200 Applicability.

The requirements of this subpart apply to owners or operators who store munitions and explosive hazardous wastes, except as § 264.1 provides otherwise. (NOTE: Depending on explosive hazards, hazardous waste munitions and explosives may also be managed in other types of storage units, including containment buildings (40 CFR part 264, subpart DD), tanks (40 CFR part 264, subpart J), or containers (40 CFR part 264, subpart I); See 40 CFR 266.205 for storage of waste military munitions).

§ 264.1201 Design and operating standards.

(a) Hazardous waste munitions and explosives storage units must be designed and operated with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, and atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For wastes stored outdoors, provide that the waste and containers will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area, or vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (e.g., additional containment, such as overpacking, or removal from the waste area); and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Hazardous waste munitions and explosives stored under this subpart may be stored in one of the following:

(1) Earth-covered magazines. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) To be of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;

(B) To provide working space for personnel and equipment in the unit; and

(C) To withstand movement activities that occur in the unit; and

(iii) Located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(2) Above-ground magazines. Above-ground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(3) Outdoor or open storage areas. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(c) Hazardous waste munitions and explosives must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of 40 CFR 264.14, the preparedness and prevention procedures of 40 CFR part 264, subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 264, subpart D, then these procedures will be used to fulfill those requirements.

(d) Hazardous waste munitions and explosives must be packaged to ensure safety in handling and storage.

(e) Hazardous waste munitions and explosives must be inventoried at least annually.

(f) Hazardous waste munitions and explosives and their storage units must be inspected and monitored as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.

§ 264.1202 Closure and post-closure care.

(a) At closure of a magazine or unit which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310).

PART 265--INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

2. Section 265.1 is amended by adding new paragraphs (c)(11)(i)(D), (c)(11)(iv), and (f) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(11) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

(f) Section 266.205 of this chapter identifies when the requirements of this part apply to the storage of military

munitions classified as solid waste under § 266.202 of this chapter. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 40 CFR parts 260 through 270.

3. Section 265.70 is revised to read as follows:

§ 265.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under § 266.203(a) of this chapter.

4. Part 265 is amended by adding new subpart EE, consisting of §§ 265.1200 through 265.1202, to read as follows:

Subpart EE--Hazardous Waste Munitions and Explosives Storage

Sec.

265.1200 Applicability.

265.1201 Design and operating standards.

265.1202 Closure and post-closure care.

§ 265.1200 Applicability.

The requirements of this subpart apply to owners or operators who store munitions and explosive hazardous wastes, except as § 265.1 provides otherwise. (NOTE: Depending on explosive hazards, hazardous waste munitions and explosives may also be managed in other types of storage units, including containment buildings (40 CFR part 265, subpart DD), tanks (40 CFR part 265, subpart J), or containers (40 CFR part 265, subpart I); See 40 CFR 266.205 for storage of waste military munitions).

§ 265.1201 Design and operating standards.

(a) Hazardous waste munitions and explosives storage units must be designed and operated with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, and atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For wastes stored outdoors, provide that the waste and containers will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area, or vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (e.g., additional containment, such as overpacking, or removal from the waste area); and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Hazardous waste munitions and explosives stored under this subpart may be stored in one of the following:

(1) Earth-covered magazines. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) To be of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;

(B) To provide working space for personnel and equipment in the unit; and

(C) To withstand movement activities that occur in the unit; and

(iii) Located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(2) Above-ground magazines. Above-ground magazines must be located and designed so as to minimize the propagation of an

explosion to adjacent units and to minimize other effects of any explosion.

(3) Outdoor or open storage areas. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(c) Hazardous waste munitions and explosives must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of 40 CFR 265.14, the preparedness and prevention procedures of 40 CFR part 265, subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 265, subpart D, then these procedures will be used to fulfill those requirements.

(d) Hazardous waste munitions and explosives must be packaged to ensure safety in handling and storage.

(e) Hazardous waste munitions and explosives must be inventoried at least annually.

(f) Hazardous waste munitions and explosives and their storage units must be inspected and monitored as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.

§ 265.1202 Closure and post-closure care.

(a) At closure of a magazine or unit which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the

facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (40 CFR 264.310).

PART 266--STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

2. Part 266 is amended by reserving subparts I through L and adding new subpart M to read as follows:

Subparts I-L (Reserved)

Subpart M--Military Munitions

Sec.

266.200 Applicability.

266.201 Definitions.

266.202 Definition of solid waste.

266.203 Standards applicable to the transportation of solid waste military munitions.

266.204 Standards applicable to emergency responses.

266.205 Standards applicable to the storage of solid waste military munitions.

266.206 Standards applicable to the treatment and disposal of waste military munitions.

Subpart M--Military Munitions

§ 266.200 Applicability.

(a) The regulations in this subpart identify when military munitions become a solid waste, and, if these wastes are also hazardous under this subpart or 40 CFR part 261, the management standards that apply to these wastes.

(b) Unless otherwise specified in this subpart, all applicable requirements in 40 CFR parts 260 through 270 apply to waste military munitions.

§ 266.201 Definitions.

In addition to the definitions in 40 CFR 260.10, the following definitions apply to this subpart:

"Active range" means a military range that is currently in service and is being regularly used for range activities.

"Chemical agents and munitions" are defined as in 50 U.S.C. section 1521(j)(1).

"Director" is as defined in 40 CFR 270.2.

"Explosives or munitions emergency response specialist" is as defined in 40 CFR 260.10.

"Explosives or munitions emergency" is as defined in 40 CFR 260.10.

"Explosives or munitions emergency response" is as defined in 40 CFR 260.10.

"Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

"Military" means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

"Military munitions" is as defined in 40 CFR 260.10.

"Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

"Unexploded ordnance (UXO)" means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

§ 266.202 Definition of solid waste.

(a) A military munition is not a solid waste when:

(1) Used for its intended purpose, including:

(i) Use in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions); or

(ii) Use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems; or

(iii) Recovery, collection, and on-range destruction of unexploded ordnance and munitions fragments during range clearance activities at active or inactive ranges. However, "use for intended purpose" does not include the on-range disposal or burial of unexploded ordnance and contaminants when the burial is not a result of product use.

(2) An unused munition, or component thereof, is being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities, unless such activities involve use constituting disposal as defined in 40 CFR 261.2(c)(1), or burning for energy recovery as defined in 40 CFR 261.2(c)(2).

(b) An unused military munition is a solid waste when any of the following occurs:

(1) The munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in paragraph (a) of this section), incinerated, or treated prior to disposal; or

(2) The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal, or

(3) The munition is deteriorated or damaged (e.g., the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or

(4) The munition has been declared a solid waste by an authorized military official.

(c) A used or fired military munition is a solid waste:

(1) When transported off range or from the site of use, where the site of use is not a range, for the purposes of storage, reclamation, treatment, disposal, or treatment prior to disposal; or

(2) If recovered, collected, and then disposed of by burial, or landfilling either on or off a range.

(d) For purposes of RCRA section 1004(27), a used or fired military munition is a solid waste, and, therefore, is potentially subject to RCRA corrective action authorities under sections 3004(u) and (v), and 3008(h), or imminent and substantial endangerment authorities under section 7003, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

§ 266.203 Standards applicable to the transportation of solid waste military munitions.

(a) Criteria for hazardous waste regulation of waste non-chemical military munitions in transportation. (1) Waste military munitions that are being transported and that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR part 261, are listed or identified as a hazardous waste (and thus are subject to regulation under 40 CFR parts 260 through 270), unless all the following conditions are met:

(i) The waste military munitions are not chemical agents or chemical munitions;

(ii) The waste military munitions must be transported in accordance with the Department of Defense shipping controls applicable to the transport of military munitions;

(iii) The waste military munitions must be transported from a military owned or operated installation to a military owned or operated treatment, storage, or disposal facility; and

(iv) The transporter of the waste must provide oral notice to the Director within 24 hours from the time the transporter becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of paragraph (a)(1) of this section that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within 5 days from the time the transporter becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of paragraph (a)(1) of this section.

(2) If any waste military munitions shipped under paragraph (a)(1) of this section are not received by the receiving facility

within 45 days of the day the waste was shipped, the owner or operator of the receiving facility must report this non-receipt to the Director within 5 days.

(3) The exemption in paragraph (a)(1) of this section from regulation as hazardous waste shall apply only to the transportation of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to storage, treatment or disposal.

(4) The conditional exemption in paragraph (a)(1) of this section applies only so long as all of the conditions in paragraph (a)(1) of this section are met.

(b) Reinstatement of exemption. If any waste military munition loses its exemption under paragraph (a)(1) of this section, an application may be filed with the Director for reinstatement of the exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of paragraph (a)(1) of this section. If the Director finds that reinstatement of the exemption is appropriate based on factors such as the transporter's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the exemption under paragraph (a)(1) of this section. If the Director does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the Director may terminate a conditional exemption reinstated by default in the preceding sentence if the Director finds that reinstatement is inappropriate based on factors such as the transporter's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the exemption under paragraph (a)(1) of this section, the Director may specify additional conditions as are necessary to ensure and document proper transportation to protect human health and the environment.

(c) Amendments to DOD shipping controls. The Department of Defense shipping controls applicable to the transport of military munitions referenced in paragraph (a)(1)(ii) of this section are Government Bill of Lading (GBL) (GSA Standard Form 1109), requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the Department of Defense shipping controls shall become effective for purposes of

paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the shipping controls referenced in paragraph (a)(1)(ii) of this section have been amended.

§ 266.204 Standards applicable to emergency responses.

Explosives and munitions emergencies involving military munitions or explosives are subject to 40 CFR 262.10(i), 263.10(e), 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3), or alternatively to 40 CFR 270.61.

§ 266.205 Standards applicable to the storage of solid waste military munitions.

(a) Criteria for hazardous waste regulation of waste non-chemical military munitions in storage. (1) Waste military munitions in storage that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR Part 261, are listed or identified as a hazardous waste (and thus are subject to regulation under 40 CFR Parts 260 through 279), unless all the following conditions are met:

(i) The waste military munitions are not chemical agents or chemical munitions.

(ii) The waste military munitions must be subject to the jurisdiction of the Department of Defense Explosives Safety Board (DDESB).

(iii) The waste military munitions must be stored in accordance with the DDESB storage standards applicable to waste military munitions.

(iv) Within 90 days of August 12, 1997 or within 90 days of when a storage unit is first used to store waste military munitions, whichever is later, the owner or operator must notify the Director of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in paragraph (a)(1) is claimed.

(v) The owner or operator must provide oral notice to the Director within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of paragraph (a)(1) that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within 5 days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of paragraph (a)(1) of this section.

(vi) The owner or operator must inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of paragraph (a)(1) of this section, and must maintain records of the findings of these inventories and inspections for at least three years.

(vii) Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.

(2) The conditional exemption in paragraph (a)(1) of this section from regulation as hazardous waste shall apply only to the storage of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to transportation, treatment or disposal.

(3) The conditional exemption in paragraph (a)(1) of this section applies only so long as all of the conditions in paragraph (a)(1) of this section are met.

(b) Notice of termination of waste storage. The owner or operator must notify the Director when a storage unit identified in paragraph (a)(1)(iv) of this section will no longer be used to store waste military munitions.

(c) Reinstatement of conditional exemption. If any waste military munition loses its conditional exemption under paragraph (a)(1) of this section, an application may be filed with the Director for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of paragraph (a)(1) of this section. If the Director finds that reinstatement of the conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the conditional exemption under paragraph (a)(1) of this section. If the Director does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the Director may terminate a conditional exemption reinstated by default in the preceding sentence if he/she finds that reinstatement is inappropriate based on factors such as the owner's or operator's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the conditional exemption under paragraph (a)(1) of this section, the Director may specify additional conditions as

are necessary to ensure and document proper storage to protect human health and the environment.

(d) Waste chemical munitions. (1) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR Part 261, are listed or identified as a hazardous waste and shall be subject to the applicable regulatory requirements of RCRA subtitle C.

(2) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR Part 261, are not subject to the storage prohibition in RCRA section 3004(j), codified at 40 CFR 268.50.

(e) Amendments to DDESB storage standards. The DDESB storage standards applicable to waste military munitions, referenced in paragraph (a)(1)(iii) of this section, are DOD 6055.9-STD ("DOD Ammunition and Explosive Safety Standards"), in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the DDESB storage standards shall become effective for purposes of paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the DDESB standards referenced in paragraph (a)(1) of this section have been amended.

§ 266.206 Standards applicable to the treatment and disposal of waste military munitions.

The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 40 CFR Parts 260 through 270.

PART 270--EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding new paragraphs (c)(3)(i)(D) and (c)(3)(iii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 270.42 is amended by redesignating paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(h) Military hazardous waste munitions treatment and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) The facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject to hazardous waste regulatory requirements;

(2) On or before the date when the waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and

(3) The permittee submits a complete Class 2 modification request within 180 days of the date when the waste military munitions became subject to hazardous waste regulatory requirements.

* * * * *

[FR Doc. 97-3218 Filed 2-11-97; 8:45 am]
BILLING CODE 6560-50-P