

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-14-7-.13
Rule Title: Military Munitions

 New **X** Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer *Mindy Elliott*

Date November 18, 2022

REC'D & FILED

NOV 18 2022

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE:

335-14-7-.06 Recyclable Materials Utilized for Precious Metal Recovery (Amend)
335-14-7-.07 Spent Lead-Acid Batteries Being Reclaimed (Amend)
335-14-7-.13 Military Munitions (Amend)
335-14-7-.14 Conditional Exemption for Low-Level Mixed Waste Storage, Treatment,
Transportation, and Disposal (Amend)
335-14-7-.16 Hazardous Waste Pharmaceuticals (Amend)

INTENDED ACTION: Revise Division 14 of the ADEM Administrative Code.

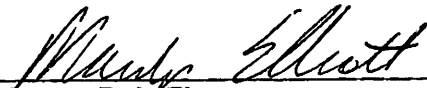
SUBSTANCE OR PROPOSED ACTION: Revise portions of Division 14 Regulations to incorporate changes to ensure consistency with State and Federal Statutes; to adopt certain State specific requirements; and to provide clarification of State requirements for the management of hazardous waste.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held January 24, 2023, at 2:00 pm in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: January 24, 2023

CONTACT PERSON AT AGENCY: Lynn Roper, Chief, Office of Land Services (334-271-7728)



Lance R. LeFleur
Director

335-14-7-.13 Military Munitions.

(1) Applicability.

(a) The regulations in 335-14-7-.13 identify when military munitions become a solid waste, and, if these wastes are also hazardous under 335-14-7-.13 or 335-14-2, the management standards that apply to these wastes.

(b) Unless otherwise specified in 335-14-7-.13, all applicable requirements in 335-14-1 through 335-14-9 apply to waste military munitions.

(2) [Reserved]

(3) 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 335-14-2-.01(2)(c)1., or burning for energy recovery as defined in 335-14-2-.01(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 335-14-7-.13(3)(a)], 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).

(4) 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 335-14-2, are listed or identified as a hazardous waste (and thus are subject to regulation under 335-14-1 through 335-14-9), 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 Department 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 335-14-7-.13(4)(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 transporter becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of 335-14-7-.13(4)(a)1.

2. If any waste military munitions shipped under 335-14-7-.13(4)(a)1. 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 Department within 5 days.

3. The exemption in 335-14-7-.13(4)(a)1. 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 335-14-7-.13(4)(a)1. applies only so long as all of the conditions in 335-14-7-.13(4)(a)1. are met.

(b) Reinstatement of exemption. If any waste military munition loses its exemption under 335-14-7-.13(4)(a)1., an application may be filed with the Department 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 335-14-7-.13(4)(a)1. If the Department 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 Department may reinstate the exemption under 335-14-7-.13(4)(a)1. If the Department 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 Department may terminate a conditional exemption reinstated by default in the preceding sentence if the Department 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 335-14-7-.13(4)(a)1., the Department 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 335-14-7-.13(4)(a)1.(ii) 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 335-14-7-.13(4)(a)1. on the date the Department of Defense publishes notice in the Federal Register that the shipping controls referenced in 335-14-7-.13(4)(a)1.(ii) have been amended.

(5) Standards applicable to emergency responses. Explosives and munitions emergencies involving military munitions or explosives are subject to 335-14-3-.01(1)(i), 335-14-4-.01(1)(e), 335-14-5-.01(1)(g)8., 335-14-6-.01(1)(c)11., and 335-14-8-.01(1)(c)3., or alternatively to 335-14-8-.06(1).

(6) 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 335-14-2, are listed or identified as a hazardous waste (and thus are subject to regulation under 335-14-1 through 335-14-17), 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 March 27, 1998 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 Department of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in 335-14-7-.13(6)(a)1. is claimed.

(v) The owner or operator must provide oral notice to the Department 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 335-14-7-.13(6)(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 335-14-7-.13(6)(a)1.

(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 335-14-7-.13(6)(a)1., 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 335-14-7-.13(6)(a)1. 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 335-14-7-.13(6)(a)1. applies only so long as all of the conditions in 335-14-7-.13(6)(a)1. are met.

(b) Notice of termination of waste storage. The owner or operator must notify the Department when a storage unit identified in 335-14-7-.13(6)(a)1.(iv) 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 335-14-7-.13(6)(a)1., an application may be filed with the Department 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 335-14-7-.13(6)(a)1. If the Department 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 Department may reinstate the conditional exemption under 335-14-7-.13(6)(a)1. If the Department 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 Department 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 335-14-7-.13(6)(a)1., the Department 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 335-14-2, 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 335-14-2, are not subject to the storage prohibition in RCRA section 3004(j), codified at 335-14-9-.05(1).

(e) Amendments to DDESB storage standards. The DDESB storage standards applicable to waste military munitions, referenced in ~~paragraph 335-14-7-.13(6)(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 335-14-7-.13(6)(a)1. on the date the Department of Defense publishes notice in the Federal Register that the DDESB standards referenced in 335-14-7-.13(6)(a)1. have been amended.

(7) 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 335-14-1 through 335-14-9.

Author: C. Edwin Johnston; Bradley N. Curvin; Jonah L. Harris.

Statutory Authority: Code of Alabama 1975, §§ 22-30-4, 22-30-6, 22-30-11.

History: March 27, 1998.

Amended: Effective: April 13, 2001; **Amended:** Effective: March 31, 2005;

Amended: Effective: March 31, 2009; **Proposed: November 18, 2022.**