

Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979). There are few if any persons currently using the area for swimming or fishing, and any restrictions on vessel movement will be temporary. The safety zones do not extend into the main navigation channel. Therefore, any restriction on vessel transit will have minimal, if any, effect.

#### Small Entities

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

#### Regulations

In consideration of the foregoing, the Coast Guard amends Subpart F of Part 165 of title 33, Code of Federal Regulations as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-6, and 160.5; and 49 CFR 1.46.

2. A new § 165.905 is added to read as follows:

#### § 165.905 USX Superfund Cite Safety Zones: St. Louis River.

(a) The following areas of the St. Louis River, within the designated boxes of latitude and longitude, are safety zones:

(1) *Safety Zone #1 (North Spirit Lake):*

North Boundary: 46°41'33" W

South Boundary: 46°41'18" W

East Boundary: 92°11'53" W

West Boundary: 92°12'11" W

(2) *Safety Zone #2 (South Spirit Lake):*

North Boundary: 46°40'45" N

South Boundary: 46°40'33" N

East Boundary: 92°11'40" W

West Boundary: 92°12'05" W

(b) Transit of vessels through the waters covered by these zones is prohibited. Swimming (including water

skiing or other recreational use of the water which involves a substantial risk of immersion in the water) or taking of fish (including all forms of aquatic animals) from the waters covered by these safety zones is prohibited at all times.

Dated: August 31, 1995.

**D.S. Gilbert,**

*Captain, U.S. Coast Guard, Captain of the Port Duluth.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AH67

### Reinstatement of Benefits Eligibility Based Upon Terminated Marital Relationships

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning reinstatement of benefits for a surviving spouse of a veteran whose remarriage after the veteran's death is terminated by legal proceedings. The amendment makes clear that such proceedings must have been brought by the individual seeking to establish his or her status as the veteran's surviving spouse. The purpose of the amendment is to make the regulation conform to the relevant statute.

**EFFECTIVE DATE:** This amendment is effective October 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** A surviving spouse of a veteran must be unmarried to receive VA benefits. The law regarding the eligibility for benefits of a surviving spouse of a veteran who remarries after the veteran's death and whose remarriage later terminates has changed several times in recent years.

Before November 1, 1990, 38 U.S.C. 103(d)(2) provided that the remarriage of a surviving spouse of a veteran would not bar benefits if the remarriage was terminated by death or dissolved by a court with basic authority to render divorce decrees, unless VA determined that the divorce was secured through

fraud by the surviving spouse or collusion.

The Omnibus Budget Reconciliation Act of 1990 (OBRA), Pub. L. 101-508, deleted 38 U.S.C. 103(d)(2). The effect of this change was to deny benefits to those filing claims on or after November 1, 1990, who had remarried at any time after the death of the veteran.

The Veterans' Benefits Programs Improvement Act of 1991, Pub. L. 102-86, provided that the 1990 OBRA amendments would not apply to any person who met the statutory definition of a surviving spouse on October 31, 1990, unless after that date the individual married or lived with another person and held himself or herself out openly to the public as that person's spouse.

The Veteran's Benefits Act of 1992, Pub. L. 102-568, provided in section 103 that the 1990 OBRA amendment would not apply to any case in which a legal proceeding that terminated an existing marital relationship was commenced before November 1, 1990, by an individual who, but for that marital relationship, would be considered the surviving spouse of a veteran.

VA regulations pertaining to reinstatement of benefits eligibility of a surviving spouse based upon termination of a marital relationship appear at 38 U.S.C. 3.55(a). Previously, subsection (a) included the following provisions:

(2) On or after January 1, 1971, remarriage of a surviving spouse terminated prior to November 1, 1990, or terminated by legal proceedings commenced prior to November 1, 1990, shall not bar the furnishing of benefits to such surviving spouse provided that the marriage:

\* \* \* \* \*

(ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by the surviving spouse or through collusion.

\* \* \* \* \*

Since 38 CFR 3.55(a)(2) previously did not provide that the legal proceedings which result in termination of the remarriage must have been commenced by the individual seeking benefits as a veteran's surviving spouse, it is now amended to conform with section 103 of Pub. L. 102-568. We are also making nonsubstantive amendments to 38 CFR 3.400 in order to update cross-references and authority citations.

VA is issuing a final rule to make the above described amendments. The amendment to 38 CFR 3.55(a)(2) is necessary to conform that regulatory

provision with Pub. L. 102-568. Because these amendments merely restate a statutory provision and make nonsubstantive changes, publication as a proposal for public comment is unnecessary.

#### Administrative Procedure Act

The substantive changes made by this final rule merely reflect a statutory change contained in Pub. L. 102-568. Accordingly, pursuant to 5 U.S.C. 553, there is a basis for dispensing with prior notice and comment on this final rule and dispensing with a 30-day delay of its effective date.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The catalog of Federal Domestic Assistance program numbers are 64.101, 64.105, and 64.110.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: September 11, 1995.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

### PART 3—ADJUDICATION

#### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

#### § 3.55 [Amended]

2. In § 3.55(a)(2) introductory text add “by an individual who, but for the remarriage, would be considered the surviving spouse,” immediately before “shall not bar”.

#### § 3.400 [Amended]

3. In § 3.400(u)(3) remove “§ 3.55(e)” and add, in its place, “§ 3.55(b)”.

4. In § 3.400(u)(4) remove “§ 3.55(e)” and add, in its place, “§ 3.55(b)”.

5. In § 3.400(v), the heading, remove “38 U.S.C. 103(d)(2)” and add, in its place, “38 U.S.C. 103(d)”.

6. In § 3.400(v)(3) remove “§ 3.55(b)” and add, in its place, “§ 3.55(a)”.

7. In § 3.400(v)(4) remove “§ 3.55(b)” and add, in its place, “§ 3.55(a)”.

8. In § 3.400(w), the heading, remove “103(d)(3)”.

9. In § 3.400(w) remove “§ 3.55(c) or (d)” and add, in its place, “§ 3.55(a)”.

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### 38 CFR Part 3

RIN 2900-AH48

#### Examinations

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning compensation and pension claims filed by veterans, surviving spouses, or parents. This changes the language for authorizing VA examinations by providing that a VA examination will be authorized where there is a well-grounded claim for disability compensation but where the medical evidence accompanying the claim is not adequate for rating purposes. This more accurately reflects statutory language and caselaw requirements concerning such VA examinations.

**DATES:** The effective date of this interim final rule is October 11, 1995. Comments must be received on or before December 11, 1995.

**ADDRESSES:** Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or hand-deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001. Comments should indicate that they are in response to “RIN 2900-AH48.” All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001, between the hours 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** For many years VA regulations provided that a compensation claim could not be rated without a current VA examination, or a report deemed to be the equivalent of a VA examination. In general, hospital reports (government or private) were deemed to be VA examinations if

otherwise adequate for rating purposes, but private physicians' reports were not.

On July 14, 1994, VA published a final rule in the **Federal Register** (59 FR 35851) amending 38 CFR 3.326 to permit acceptance of a private physician's statement for the purpose of rating claims for increased compensation due to the increased severity of service-connected disabilities. A private physician's statement, however, was still not acceptable for rating an original compensation claim.

On November 2, 1994, the Veterans' Benefits Improvements Act of 1994, Pub. L. 103-446, was signed into law. Section 301 of Pub. L. 103-446 underscored the Secretary of Veterans Affairs' discretionary authority to accept the report of a private physician's examination that is otherwise adequate for rating purposes to establish entitlement to any compensation or pension benefit. A final rule enabling the Secretary to exercise that discretionary authority was published on May 24, 1995 in the **Federal Register** (60 FR 27409). That final rule amended 38 CFR 3.326(d) as well as §§ 3.157, 3.327, and 3.352.

Previously, paragraph (a) of § 3.326 indicated that a VA examination would be authorized where the reasonable probability of a valid claim was indicated in any compensation or pension claim filed by a veteran, surviving spouse, or parent, whether an original or reopened claim or a claim for increase. This document revises paragraph (a) to state that a VA examination will be authorized where there is a “well-grounded claim” for disability compensation or pension but where the medical evidence accompanying the claim is not adequate for rating purposes. We believe this will not cause a substantial change in the criteria for authorizing VA examinations; however, this change is made to more accurately reflect statutory language and caselaw requirements concerning such VA examinations.

The Court of Veterans Appeals has held that scheduling a VA examination may be required as part of VA's duty to assist the claimant under 38 U.S.C. 5107(a), and that the duty to assist attaches when a claim is well-grounded, i.e., when the claim is plausible, meritorious on its own, or capable of substantiation. See, e.g., *Betties v. Brown*, 6 Vet. App. 333, 336 (1993).

The amendments made by this document do not affect the provisions already in the place that require former prisoners of war to be afforded a complete examination at a VA hospital