

Dated: September 21, 1995.

**C.E. Schaff,**

*LCDR, JAGC, U.S. Navy, Acting Deputy Assistant Judge Advocate General (Admiralty).*

Dated: September 26, 1995.

**M.D. Schetzle,**

*LT, JAGC, USNR, Alternate Federal Register Certifying Officer.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD09-95-026]

#### Safety Zones; USX Superfund Site on the St. Louis River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing two safety zones in segments of the St. Louis River near Duluth, Minnesota, in areas which are part of the USX Superfund Site, in order to protect the public from the effects of contaminated sediments at that site. Navigation of vessels through the zones is prohibited. Swimming and fishing are prohibited within the zones. Although this regulation is being made effective immediately in order to protect public health, the public is invited to comment on this action and the Coast Guard will consider changes in this action in response to any comments received.

**DATES:** This rule is effective on August 31, 1995. Comments on this rule must be received on or before December 15, 1995.

**ADDRESSES:** Comments and supporting materials should be mailed or delivered to Lieutenant (junior grade) Anthony Beatrez, U.S. Coast Guard Marine Safety Office, 600 S. Lake Ave., Canal Park, Duluth, MN 55802. Please reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comments to be acknowledged, please include a stamped, self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) Anthony Beatrez, U.S. Coast Guard Marine Safety Office, 600 S. Lake Ave., Canal Park, Duluth, MN 55802, (218) 720-5286.

#### SUPPLEMENTARY INFORMATION:

##### Immediate Effect of Regulation

In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to the public interest because the existence of contaminated sediments at this site constitutes an immediate danger to the health of any person swimming in the area or consuming fish from the area. In addition, it is expected that creation of these limited safety zones will have minimal effects on public use of the waterway.

##### Request for Comments

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable in order to insure that the regulation is both reasonable and workable. Accordingly, the Coast Guard encourages interested persons to participate in this rulemaking by submitting comments which may consist of data, views, arguments, or proposals for amendments to the proposed regulations. The Coast Guard does not currently plan to have a public hearing. However, consideration will be given to holding a public hearing if it is requested. Such a request should indicate how a public hearing would contribute substantial information or views which cannot be received in written form. If it appears that a public hearing would substantially contribute to this rulemaking and there is sufficient time to publish a notice, the Coast Guard will announce such a hearing by a later notice in the **Federal Register**.

##### Background and Purpose

The USX Superfund Clean-up Site is a 640-acre site located about five miles southwest of the Duluth central business district. The St. Louis River runs along the east and south sides of the site; the river empties into Lake Superior about eight miles downstream of the site. The Duluth subdivisions of Gary and New Duluth are located to the southwest of the site; the subdivisions of Morgan Park and Smithville are immediately adjacent to the site to the north and northwest, respectively. U.S. Steel and Duluth Works operated a large integrated steel mill on the site from about 1915 until 1979. Operations included coke and iron production, open hearth steel production, wire rolling, and wire milling. Although the Duluth Works operation closed in 1979,

the Hallett Co. continued to operate a wire mill on the site until 1987. Soil, sediments, surface water, and ground water at the site are contaminated with coke and tar products which contain high concentrations of polycyclic aromatic hydrocarbons (PAHs). Sediments also contain elevated levels of heavy metals. PAHs include phenanthrene, acenaphthene, and fluoranthene. The Minnesota Department of Health (MDH) has determined that the site is a public health concern from possible exposure to hazardous substances via dermal contact, ingestion, or inhalation of contaminated soil or sediments. Therefore, based on advice from MDH, the Coast Guard Captain of the Port in Duluth has determined that swimming or fishing in the designated areas is unsafe. In addition, to prevent agitation of the bottom and further spreading of contaminated sediments, vessel traffic through the areas is prohibited.

##### Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Anthony Beatrez, U.S. Coast Guard Marine Safety Office, Duluth, and Commander Eric Reeves, Chief, Port & Environmental Safety Branch, Ninth Coast Guard District.

##### Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file. This regulatory action is being taken to protect the public from the danger posed by contamination at the site and is designed to limit the existing threat to the environment.

##### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This routine use of traditional and well-recognized Coast Guard authority over the navigable waters is being taken on the advice of, and in consultation with, the Minnesota Department of Health.

##### Regulatory Evaluation

This regulation is considered to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under

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