

Form 151 (Search/Arrest/Seizure Report) at the time and place where the violation occurred; Information and representations supplied by importers, brokers and other agents pursuant to the entry and processing of merchandise or in the clearing of individuals or baggage through Customs. Also included is information gathered pursuant to DHS/CBP investigations of suspected or actual violations of Customs, immigration, agriculture and other laws enforced or administered by DHS/CBP, regulations, recommendations, and information supplied by other agencies; Port Director of CBP who has jurisdiction over fines, penalties, and forfeitures; penalty notices; Search/Arrest/Seizure Reports transmitted to the Fines, Penalties, and Forfeitures Office by ports and stations within the area; and mail shipments.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). In addition, to the extent a record contains information from other exempt systems of records, CBP will rely on the exemptions claimed for those systems.

Dated: December 10, 2008.

#### Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS-2008-0139]

### Privacy Act of 1974; United States Coast Guard—010 Physical Disability Evaluation System Files System of Records

**AGENCY:** Privacy Office; DHS.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of records notices, the Department of Homeland Security is

giving notice that it proposes to update and reissue the following legacy record system, DOT/CG 571 Physical Disability Separation System as a Department of Homeland Security system of records notice titled, Department of Homeland Security United States Coast Guard—010 Physical Disability Evaluation System. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice have been reviewed and updated to better reflect the Department of Homeland Security United States Coast Guard's physical disability evaluation record system. This new system will be included in the Department of Homeland Security's inventory of record systems.

**DATES:** Written comments must be submitted on or before January 20, 2009. This new system will be effective January 20, 2009.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2008-0139 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 1-866-466-5370.

- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket, to read background documents, or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: David Roberts (202-475-3521), United States Coast Guard Privacy Officer, United States Coast Guard. For privacy issues please contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/United States Coast Guard (USCG) has relied on preexisting Privacy Act systems of records notices for the collection and maintenance of

records that concern physical disability evaluation proceedings.

As part of its efforts to streamline and consolidate its record systems, DHS is updating and reissuing a DHS/USCG system of records under the Privacy Act (5 U.S.C. 552a) that deals with USCG's physical disability evaluation proceedings. This record system will allow DHS/USCG to collect and preserve the records regarding physical disability evaluation proceedings. The collection and maintenance of this information is used to ensure equitable application of the provisions of Title 10, United States Code, Chapter 61, which relates to the separation or retirement of military personnel by reason of physical disability. These laws were enacted primarily for the purpose of maintaining a vital and fit military organization with full consciousness of the necessity for maximum use of the available work force. These laws provide benefits for eligible members whose military service is terminated through no fault of their own due to a service-connected disability, and they prevent the arbitrary separation from the service of those members who incur a disabling injury or disease, yet remain fit for duty. The collection and maintenance of this information will assist DHS/USCG in meeting its obligation to manage the physical disability evaluation process proceedings.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of records notices, DHS is giving notice that it proposes to update and reissue the following legacy record system, DOT/CG 571 Physical Disability Separation System (65 FR 19476 April 11, 2000), as a DHS/USCG system of records notice titled, DHS/USCG-010 Physical Disability Evaluation System. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice have been reviewed and updated to better reflect the DHS/USCG physical disability evaluation record system. This new system will be included in DHS's inventory of record systems.

##### II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some

identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/USCG-010 Physical Disability Evaluation Files System of Records.

### III. Health Insurance Portability and Accountability Act

This system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act of 1996, applies to most of such health information. Department of Defense 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

#### System of Records: DHS/USCG-010.

##### SYSTEM NAME:

United States Coast Guard—010 Physical Disability Evaluation System.

##### SECURITY CLASSIFICATION:

Unclassified.

##### SYSTEM LOCATION:

Records are maintained at the USCG Headquarters in Washington, DC and field offices.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USCG active duty and reserve personnel who are referred for potential

separation or retirement for physical disability.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Name;
- Social Security Number (SSN) and/or Employee ID (EmpID)
- Informal Physical Evaluation Board files;
- Formal Physical Evaluation Board files;
- International Classification of Diseases code (ICD);
- Physical Review Council files;
- Physical Disability Appeal Board files; and
- Physical Disability Board of Review files.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; the Federal Records Act, 44 U.S.C. 3101; 10 U.S.C. Chapter 61.

##### PURPOSE(S):

The purpose of this system is to document physical disability evaluation proceedings and ensure equitable application of the provisions of Title 10, United States Code, Chapter 61, which relates to the separation or retirement of military personnel by reason of physical disability.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

**Note:** For records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. The Routine Uses set forth below do not apply to this information. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

A. To medical personnel to the extent necessary to meet a bona fide medical emergency;

B. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation provided that employees are individually identified;

C. To the employee's medical review official;

D. To the administrator of any Employee Assistance Program in which

the employee is receiving counseling or treatment or is otherwise participating;

E. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or

F. Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action. *See* 42 U.S.C. 290dd, 290ee, and Public Law 100-71, Section 503(e).

**Note:** For all other records besides those noted above, this system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act of 1996, applies to most of such health information. Department of Defense 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. Therefore, routine uses outlined below may not apply to such health information.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such

information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individuals that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To Department of Veterans Affairs for assistance in determining the eligibility of individuals for benefits administered by that agency and available to U.S. Public Health Service or the Department of Defense medical personnel in connection with the performance of their official duties.

I. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to

demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The electronic versions of records are stored on magnetic disc, tape, digital media, and CD-ROM.

**RETRIEVABILITY:**

Records may be retrieved by name, social security number, employee identification number, command, date, and the diagnosis or International Classification of Diseases (ICD) code.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

Records are transferred to National Personnel Records Center, Military Personnel Records NPRC (MPRC) three years after last activity. Records are destroyed 50 years from the date of the latest document in the record. (AUTH: NC1-26-82-5, Item 2a2).

**SYSTEM MANAGER AND ADDRESS:**

Commander, U.S. Coast Guard, Personnel Command CGPC—MS 7200, 4200 Wilson Boulevard, Suite 1100, Arlington, Virginia 20598-7200.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to Commander, U.S. Coast Guard, Personnel Command CGPC—MS 7200, 4200 Wilson

Boulevard, Suite 1100, Arlington, Virginia 20598-7200.

When seeking records about yourself from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov/FOIA> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

See "Notification procedure" above.

**CONTESTING RECORD PROCEDURES:**

See "Notification procedure" above.

**RECORD SOURCE CATEGORIES:**

Information in records developed through proceedings of administrative bodies listed in "Categories of records" above.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Dated: December 10, 2008.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

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