

STATEMENT OF DETERMINATION

1. In accordance with 5 CFR 1320.13, the senior official or designee, of the Department of Defense has determined that this collection of information is needed prior to the expiration of the time period under 5 CFR 1320, and is essential to the mission of the agency. The agency cannot reasonably comply with the normal clearance procedures under Part 1320 since such compliance could cause public harm to specific individuals who are waiting to be granted TRICARE coverage and would delay compliance with the statutory requirements.

2. The Office of the Assistance Secretary of Defense for Personnel and Readiness (Military Personnel Policy) (OASD (P&R/MPP)) is submitting the subject requirement for emergency review and approval. This emergency submission is necessary and appropriate to ensure that OASD (P&R/MPP) avoids delays in accomplishing the requirement outlined in 10 U.S.C. 1554(a). That provision of law directs the Secretary of Defense to establish a Physical Disability Board of Review to review disability determinations of individuals who were separated from the armed forces during the period beginning on September 11, 2001 through December 31, 2009 due to unfitness for duty due to a medical condition with a disability rating of 20 percent disabled or less; and were found ineligible for retirement. On June 27, 2008, the Department of Defense published DoD Instruction 6040.44, which provides the guidance for this process, but a form is necessary for former members to request this review. There are specific notice requirements to ensure members make a knowing decision to waive their right to have their Service Board for Corrections of Military Review consider the same issue. There is no existing form that can be used to request this review and address the VA consent requirement. There are an estimated 90,000 potential applicants for this newly created review and applications cannot be accepted until the form is approved. Even after the application is submitted, it will take several months (or longer) for the review to be accomplished, because the medical records must be retrieved and assembled and the case must be re-adjudicated by a three-person panel, and submitted to the Service Secretaries for decision. Former members who have their severance percentage increased to 30 percent will be medically retired as of the date of the approval of the application (not retroactively). This will entitle them to TRICARE health benefits, which they currently do not receive. In fact, this legislation was passed in large part to get those members, who should have been given access to military health care because of their unfit conditions, this TRICARE benefit. For many members, TRICARE will provide better and more convenient access to medical care than the Department of Veteran Affairs system. The fact that Congress gave the Secretary of Defense 90 days to create implementing regulations indicates they want this process instituted in an expeditious manner. Most of the information being sought is already in the possession of the Department of Defense since it is in the former member's military records. OASD (P&R/MPP) has coordinated this submission with the DoD Clearance Officer, Ms. Patricia Toppings.

3. The information that is requested is the minimum necessary to comply with the provisions of 10 U.S.C. 1554(a). A Federal Register notice will be published in the Federal Register prior to the submission of a subsequent information collection package to OMB under regular processing timeframes.