

SUPPORTING STATEMENT

Application for Approval of a Representative's Fee in Black Lung Claim Proceedings Conducted by the U.S. Department of Labor (CM-972) OMB NO. 1215-0171

A. Justification.

1. Individuals filing with the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP) and Division of Coal Mine Workers' Compensation (DCMWC) for benefits under the Black Lung Benefits Act may elect to be represented or assisted by an attorney or other representative. For those cases that are approved, 30 U.S.C. 901 of the Black Lung Benefits Act and 20 CFR 725.365-6 of the Black Lung Regulations established standards for the information and documentation that must be submitted to the Program for review so that the representative may be paid for services rendered to the claimant. Upon receipt of that evidence the adjudicating official is required by regulation to evaluate the application, and based on the supporting information in the claim file, approve a fee for services rendered. To assist the representatives participating in the Black Lung Benefits Program a form, CM-972, was devised to provide a standardized format for submitting information required by regulation.
2. The CM-972 is sent to and completed by the authorized representative of a black lung claimant whose claim has been approved for benefits. The completed form is then returned to and evaluated by the district director, administrative law judge, or appropriate appellate tribunal before whom the claimed services were performed, and a fee amount is determined. The regulations (20 CFR 725.366) set forth specific requirements for the items of information that must be included on fee applications. The CM-972 was designed to collect this information.
3. It has been our experience that most attorneys would rather use their letterhead paper to send their bill and only use the CM-972 as a guide for required items. On occasion the attorney's office will use our form as a cover to their letterhead bill. Since attorneys are required to bill by line item and by the quarter-hour, the bill may be many pages long.

As explained in Item 2, we send a copy of the form to the attorney's office at the appropriate time. The form will not be made electronically interactive because, at this time, we have no way to accommodate varying numbers of pages and no way to accommodate the attorney's letterhead paper. Also, the adjudication level (district director, ALJ, BRB, or U.S. Court of Appeals) determines the appropriate review level. Each

adjudication level has a unique computer system, and DCMWC is unable to electronically forward this form to any other agency or tribunal. The form is fillable on-screen, and available for downloading by respondents at <http://www.dol.gov/esa/regs/compliance/owcp/cm-972.pdf>.

4. There are four programs within OWCP that require attorney fee applications. However, after an early attempt to consolidate the reporting formats, it was determined that a universal format would not be feasible because each program has different regulatory requirements and the information collected is unique to each program.
5. The collection affects small businesses and is required so that the adjudicating officer may authorize payment of a representative's fee. The form need only be completed once per claim, but may include multiple services over a long period of time. Only information concerning the validity of a representative's fee is requested. However, this collection of information does not impose a significant impact on small entities.
6. A representative who wishes to collect a fee for services rendered on behalf of a black lung claimant is required to furnish the information to DCMWC only once. If the information were requested and furnished less frequently, fees would not be paid and the intent of the law (to pay representatives of eligible claimants) would not be achieved.
7. Collection of information via the use of the CM-972 is consistent with the guidelines established in 5 CFR 1320.5.
8. Consultation with representatives required to complete the CM-972 takes place at any time a question or problem arises. When the form was developed, the program consulted the Office of Solicitor, the Office of Administrative Law Judges and the Benefits Review Board, all of which are comprised of attorneys.

A Federal Register Notice inviting public comment was published on June 20, 2007. No comments were received.
9. No payments or gifts are made to respondents to furnish the information.
10. Since the completed form is stored in the beneficiary's case file, information collection involving a beneficiary's record is covered by the Privacy Act System of Records, ESA-6.
11. There are no questions of a sensitive nature requested in this information collection.

12. The public burden estimate of this information collection is approximately 199 hours. This burden is based on the submission of approximately 285 CM-972's in one year. The number of forms is based on the estimated number of finally approved claims that had a representative at the District Director's level (185), plus the number of attorney fee awards issued by the Office of Administrative Law Judges, the Benefits Review Board, and the U.S. Court of Appeals(a total of approximately 100). It is estimated that it takes about 42 minutes for a representative to retrieve existing information, complete and mail the form. The public burden estimate of this information collection totals approximately 199 hours for the respondents to read the instructions, retrieve the information, complete and mail the form:

The estimated annualized cost to respondents to provide this information is \$4,845.06. The national mean hourly wage for a legal support worker, the person most likely to complete this form and the fee petition, is \$24.29 per hour. This hourly wage is from the May 2006 report Occupational Employment and Wages, published by the Bureau of Labor Statistics (BLS) and available on the web at <http://www.bls.gov/oes/current/oes232099.htm#nat>. It should be noted that the BLS has changed its classification system since the previous clearance of this form and now classifies all legal support workers under a single occupation using the North American Industry Classification System. The previous clearance cited the occupation "legal secretary" which had a lower wage rate than the current "legal support worker."

$285 \times .70 = 199.50$ hours $199.50 \times \$24.29 = \$4,845.06$.
(This number has been rounded to 200 to reflect what is in ROCIS.)

13. Total capital and start-up costs -- None.
14. The estimated total cost to the Federal Government for development, printing, mailing and processing of 285 forms is approximately \$4,382.90. The cost is computed as follows:

(a) Estimated printing cost = \$ 28.50

(b) Estimated mailing cost = \$ 125.40
($285 \times \$0.44 = \125.40)

(c) Estimated processing cost = \$ 4,229.00

Total cost: \$ 4,382.90

The claims examiner (GS-12/4) reviews each of the forms for work before the District Director (about 185 forms). Legal staff at OALJ, BRB, and US Courts of Appeals (also GS 12/4) review the forms when work was before their respective

offices. In each instance the review takes about 30 minutes. The 2007 hourly rate for a GS 12 step 4 is \$29.68.

GS 12/4: 285 fee petitions x .5 hour = 142.5 hours x 29.68 = \$4,229.

15. There has been a slight increase in the number of attorney fee awards, the approximate number of CM-972's submitted by representatives may increase leading to an increase in the burden hours. There has been an adjustment of +30 in responses and an adjustment of +21 burden hour increases due to rounding from 199.50 to 200 by ROCIS.

285 requested - 255 current = increase of 30 responses

199.50 requested (rounded to 200) - 179 current = +21 total burden hour increases

<u>Adjustment</u>	<u>Burden Hours</u>	<u>Responses</u>
Current inventory	179	255
Requested	200	285
Change	+21	+30

16. There are no plans to publish data collected through the CM-972.
17. This ICR does not seek a waiver from the requirement to display the expiration date.
18. There are no exceptions to the certification statement.