

SUPPORTING STATEMENT

Operator Controversion, Operator Response, Operator Response to Schedule for Submission of Additional Evidence, and Operator Response to Notice of Claim OMB NO. 1215-0058

A. Justification.

1. The Office of Workers' Compensation Programs (OWCP) administers the Black Lung Benefits Act (BLBA), 30 USC 901 *et. seq.* The statute provides for the payment of benefits to eligible coal miners and survivors by last coal mine operator for whom the miner had worked at least one year, or by the Black Lung Disability Trust Fund in the event no responsible coal mine operator can be identified. The forms approved by OMB under this collection are:

CM-970 - This form is obsolete and renewal is not requested. It was required in all claims filed on or before January 19, 2001. It was replaced by the CM-2970.

CM-970a - This form is obsolete and renewal is not requested. It was required in all claims filed on or before January 19, 2001. It was replaced by the CM-2970a.

CM-2970 - This form is required by 20 CFR 725.412, and is used by the District Director to define and narrow issues regarding the coal mine operator's liability and the claimant's eligibility for benefits.

CM-2970a -- When DCMWC receives an application for benefits, that applicant is considered potentially eligible for Black Lung benefits until the claim adjudication processes is complete and a proposed decision is issued. This form is used by the District Director to assess the acceptance or denial of potential liability for payment of benefits of coal operators and their insurers.

2. The CM-970 and the CM-970a have been obsoleted from this information collection package due to limited use and because the **CM-970** was required in all claims filed on or before January 19, 2001. BL has opted to replace the CM-970 with the CM-2970. **The CM-970a** was required in all claims filed on or before January 19, 2001. Due to low usage the CM-970a is no longer needed for this purpose and has been replaced by the CM-2970a.

CM-2970 -- The coal mine operator returns this form to controvert their liability and the claimant's entitlement to benefits. The form states the issues the operator is contesting. The claims examiner (CE) acknowledges receipt of the form and establishes with the operator a deadline for submission of evidence to support the disagreement. Failure of the operator to respond to the CM-2970 is deemed an acceptance of the liability. The information collected on this form is used by the District Director to determine whether or not the coal mine operator agrees with the District Director's assessment of the operator's liability for payment of benefits and the claimant's eligibility for benefits.

Once the Agency issues a proposed decision and order approving eligibility or the claimant disagrees with a decision denying eligibility, The Schedule for Submission of Additional Evidence (CM-2970), which names the responsible operator, is sent to the coal mine operator(s) to give them the opportunity to agree with or to controvert liability. To disagree with liability and/or the claimant's entitlement to black lung benefits, the responsible operator must respond within thirty days of receipt. 30 USC 901 *et. seq.* and 20 CFR 725.412 govern this response for claims filed after January 19, 2001.

CM-2970a -- For Claims filed after January 19, 2001, the CM-2970a will be sent to all potential responsible coal mine operators. The CE sends the CM-2970a to the operator with the notice of claim. The returned CM-2970a is used as the operator's notification to DCMWC of the acceptance or controversion of potential liability. If the operator controverts liability, the CE is alerted to examine more closely that aspect of claims development. As a result, it is possible for a different operator to be identified as potentially responsible prior to the determination of eligibility. If the operator does not controvert within 30 days of notification, the potential responsible operator will not be allowed to contest liability for the specific reasons set forth on this form. The information collected on this form is used by the District Director to determine the coal mine operator's response to being named potentially liable for the payment of benefits.

If a coal mine operator has been identified as potentially liable for payment of those benefits, the responsible operator is sent notification of that claim. The CM-2970a, sent with that notification, gives the operator an opportunity to controvert

their liability and the applicant's eligibility. The operator must return the completed form within 30 days of receipt contesting liability, or he will not be allowed to contest possible liability for the reasons set forth on this form as the responsible operator. The CM-2970a may also be sent to a potentially liable operator when a claimant disagrees with a potential denial and that claim has been appealed. 30 USC 901 *et. seq.* and 20 CFR 725.407 & .408 necessitate the notification to the operator and contain the statutory and regulatory requirements for the identification and notification of the coal mine operator for claims filed after January 19, 2001.

3. In accordance with the Government Paperwork Elimination Act, the CM-2970 and CM-2970a are interactive and are available on the Internet for downloading or electronic submission at <http://www.dol.gov/esa/regs/compliance/owcp/cm-2970.pdf> and <http://www.dol.gov/esa/regs/compliance/owcp/cm-2970a.pdf>. These links are to be published in the revised Compliance Guide to the Black Lung Benefits Act and will be highlighted on the new DCMWC web site, currently under construction. To date, no forms have been electronically submitted.

4. Since the information requested on each of these forms specifically relates to the Black Lung Program, no other ESA Programs or Federal agency has similar requirements. The CM-970 and CM-2970a are similar forms. The CM-970 was used for all claims filed on or before, January 19, 2001, the effective date of the new regulations; the CM-2970a is used for claims filed after January 19, 2001. Because of the decline in claims filed on or before January 19, 2001 that are still active and require a new initial finding, use of the CM-970 has all but disappeared. No CM-970 forms have been used in the past year.

The CM-970a and CM-2970 also are similar forms. The CM-970a was used for all claims filed on or before January 19, 2001, the effective date of the new regulations; the CM-2970 is used for claims filed after January 19, 2001. Because of the decline in claims filed on or before January 19, 2001 that are still active and require a new responsible operator to be named, use of the CM-970 has all but disappeared. No CM-970a forms have been used in the past year.

5. Some of the identified coal companies are considered small businesses. The use of a concise form helps the company identify the reason(s) for controversion and minimizes the burden of

response. This information collection does not have a significant economic impact on a substantial number of small entities.

6. This information is requested only once, at the time prescribed in the regulations. If it were not collected, the coal mine operators would not be afforded due process.

7. There are no special circumstances for this information collection.

8. Coal mine operators and their associations have not indicated any problems with the use of the CM-2970 and CM-2970a.

A Federal Register Notice inviting public comment was published on May 15, 2007. No comments were received.

9. Respondents do not receive gifts or payments to furnish the requested information.

10. The attached Privacy Act System notices (ESA-6 & ESA-30) provide confidentiality of information collection involving Black Lung claimant files and computerized data.

11. No questions of a sensitive nature appear on these forms.

12. The estimated total burden to the coal mine operators is 2333 hours. It takes about 20 minutes to complete and mail the 4000 CM-2970 forms and 15 minutes to complete and mail each of the 4,000 CM-2970a. The operators typically have the needed information readily available in their computer systems.

CM-2970	4000x20 min.	= 1,333 hrs.
CM-2970a	4000x15 min.	= 1,000 hrs.

The estimated annualized cost to the respondents is \$14.28 per hour. This hourly wage is from the Bureau of Labor Statistics, National Occupational Employment and Wage Estimates, under the heading Office and Administrative Support Occupations (http://www.bls.gov/oes/current/oes_nat.htm#b43-0000). The estimated annualized cost to respondents to provide this information is approximately \$33,315.24.

$\$14.28 \times 2333 \text{ hours} = \$33,315.24$

13. The operation and maintenance cost are 41¢ for postage and 3¢ for envelope which will be 44¢ (44¢ x 8,000 responses = \$3,520.00)

14. The estimated cost to the Federal Government for these 8,000 forms is approximately \$23,507. The cost is figured as follows:

a. Estimated printing cost: \$ 200.00

4000 CM-2970	100.00
4000 CM-2970a	100.00

b. Estimated mailing cost: \$3,520.00
(41¢ plus 3¢ per envelope for a total of 44¢ per form)

e. Estimated processing cost: \$19,787
[one CE GS-12/4 spends about 5 minutes (12 forms per hour) evaluating each form \$29.68 x 8,000/12 = \$19,787](This hourly salary is taken from the FY 07 Salary Table-GS.)

15. The total burden hour estimate has increased from 1709 hours to 2,333 hours which is an increase of 624 burden hours due to a recalculation of burden hrs on form CM-2970. The estimated operating cost has risen slightly because of an increase in postage from 40¢ to 44¢ from the previous clearance.

<u>FORM</u>	<u>CURRENT</u>			<u>PROPOSED</u>		
	RESPONSES	BURDEN	COST	RESPONSES	BURDEN	COST
CM-970	100	25 hr.	\$40	0	0 hrs.	\$00
CM-970a	100	17 hr.	\$40	0	0 hrs.	\$00
CM-2970	4000	667 hr.	\$1600	4000	1333 hrs.	\$1,760
CM-2970a	4000	1000 hr.	\$1600	4000	1000 hrs.	\$1,760
TOTAL	8,200	1709 hr.	\$3280	8,000	2333 hrs.	\$3,520

16. There are no plans to publish this information.

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.