

SUPPORTING STATEMENT

Disclosure of Medical Evidence Notice of Proposed Rulemaking Conducted by the U.S. Department of Labor 1240-0NEW

This Information Collection Request (ICR) is being submitted in association with a Notice of Proposed Rulemaking (NPRM). The Department of Labor asks that the Office of Management and Budget conclude its review by filing comment on this ICR in accordance with 5 C.F.R. § 1320.11(c).

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collections. Attach a copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information.

The Department is proposing revisions to the regulations implementing the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, to address several issues that have arisen in claims processing and adjudications. Among these revisions, the Department is proposing a new rule (to be codified at 20 C.F.R. § 725.413) that would require parties to disclose to each other all medical information about the miner developed in connection with a claim for benefits, including information the parties do not intend to submit as evidence in the claim. The new rule is intended to help protect a miner's health and promote accurate benefit determinations.

The potential parties to a BLBA claim include the benefits claimant, the responsible coal mine operator and its insurance carrier, and the Director, Office of Workers' Compensation Programs (OWCP). Under this rule, when a party or a party's agent receives medical information about the miner, the receiving party must send a copy to all other parties within 30 days after receipt or, if a hearing before an administrative law judge has already been scheduled, at least 20 days before the hearing. The exchanged information is entered into the record of the claim only if a party submits it into evidence.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual

use the agency has made of the information received from the current collection.

Parties to a black lung benefits claim would be required to disclose certain medical information about the miner that the party or the party's agent receives by sending a complete copy of the medical information to all other parties in the claim. The purpose of this exchange is to protect a miner's health and promote accurate benefit determinations.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

This rule would not preclude electronic responses. However, these exchanges would be made in the context of a claim's litigation, and the allowable transmission methods will be dictated by the procedures established by the particular forum adjudicating the claim (either an OWCP district director or an administrative law judge in the Department's Office of Administrative Law Judges). In some circumstances, the forum may allow exchange by electronic methods, such as facsimile or e-mail. But the Department anticipates that parties will usually exchange these documents by U.S. postal mail or a commercial delivery service (e.g., Federal Express, UPS), and has calculated the associated burdens accordingly.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information collected will not be duplicative of any information available elsewhere.

5. If the collection information impacts small businesses or other small entities, describe any methods used to minimize burden.

The Department does not believe this rule will have a significant economic impact on a substantial number of small entities because in many (and perhaps the majority) of cases, the parties already exchange all of the medical information in their possession as part of their evidentiary submissions.

6. Describe the consequence of Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

This information collection would be required by regulation. If the collection were not conducted or conducted less frequently, there would be a direct negative impact on the parties to BLBA claims because the miner may not have full access to information about his or her health and benefit determinations may be less accurate.

7. Explain any special circumstances required in the conduct of this information collection.

There are no special circumstances for the collection of this information.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments.

Concurrent with this ICR submission, the Department published an NPRM that provides a 60-day period for the public to comment. The NPRM also advised the public that comments on the information collection in the proposed rule could be sent directly to OMB during a 30-day period.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There would be no payments or gifts made to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

While the regulations this ICR would support offer no express confidentiality assurance, the provisions of the Privacy Act assure the private citizen's right to confidentiality of personal information, including financial and medical history in agency records filed in a system of records under the individual's own name.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary; the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The information parties would disclose does relate to a miner's health; however, the regulations require the disclosure of this information to protect a miner's health and promote accurate benefit determinations.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special surveys to obtain information on which to base burden estimates. Consultation with a sample of potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden and explain the reason for the variance. Generally, estimates should not include burden hours for customary and usual business practices. Provide estimates of the hour burden of the collection of information.**

As noted above (see response to no. 5), the Department does not believe this information collection will have a large impact on the parties to black lung benefits claims. But because this information collection has not been conducted in the past, the Department has chosen to develop upper-bound burden estimates. These estimates likely overstate the actual burdens that would be imposed if the proposed rule were to be adopted in final.

The Department based this upper-bound estimate on the following factors: (1) the number of black lung cases adjudicated by OWCP and the Office of Administrative Law Judges in Fiscal Year 2014, which totaled 4,074 claims; and (2) the assumption that in each claim, one party had to disclose three pages of medical information to two other parties (i.e. the claimant, the coal mine operator/insurance carrier, or the Director, OWCP). The

Department chose the three-page measure because many supplemental medical opinions or interpretations of test results (such as an X-ray reading) fall within this limit.

The hour burden estimate of this information collection is approximately 679 hours. This burden is based on 4,074 claims, where each claim requires the respondent to photocopy and mail 3-pages of medical evidence to two other parties. Respondent will spend an estimate of 10 minutes to identify the medical evidence, photocopy the documents, address envelopes, affix postage, and mail the documents to two other parties.

$$4,074 \times 10 = 40,074 / 60 = 679 \text{ hours.}$$

The agency has not assigned a burden to the initial creation of records, as the regulation would not require their creation. The regulation, rather, would only require the disclosure of records the parties have developed under existing usual and customary business practices. See 5 CFR 1320.3(b)(2).

For purposes of this estimate, the agency has assumed that a legal secretary working for an in-house legal department will be responsible copying the records. The estimated annualized cost of the burden hours to respondents to take this action is \$14,856.52 (679 hours X \$21.88 per hour). This hourly wage is the mean wage for this occupation as calculated from the Occupational Earnings Tables: United States, May 2014, <http://www.bls.gov/oes/current/oes436012.htm>, published by the Bureau of Labor Statistics, under the heading of Occupational Employment and Wages, Legal Secretaries (\$45,670 per year / 2,087 = \$21.88 per hour average).

$$679 \text{ hours} \times \$21.88 \text{ per hour} = \$14,856.52.$$

13. Annual Costs to Respondents (capital/start-up & operation and maintenance).

This information collection would not require the use of systems or technology for exchanging data beyond those respondents already use in customary business practice. Thus, operational costs are limited to photocopying and mailing. The estimated annual operational cost to respondents is approximately \$6,681.36, which is based on 4,074 claims, where each claim requires the respondent to photocopy and mail 3-pages of medical evidence.

The cost to respondents to photocopy the medical documents is estimated at \$2,444.40, which is based on 3 pages photocopied for two parties of the claim, a total of 6 pages.

6 pages X \$.10 a page = \$.60
\$.60 X 4,074 = \$2,444.40

The cost to respondents to mail the medical documents is estimated at \$1.04 per mailing (49¢ stamp plus 3¢ for the envelope) to two parties of the claim, for a total respondent cost of \$4,236.96 (\$1.04 x 4,074).

4,074 X \$1.04 = \$4,236.96

Total cost: \$2,444.40 copying cost + \$4,236.96 mailing cost = \$6681.36.

14. Provide estimates of annualized cost to the Federal government.

There are no annualized costs to the Federal government. The Department usually submits any medical information it develops about a miner as evidence in the claim record. Thus, the Department generally has no additional medical information that it would be required to exchange under the proposed rule.

15. Explain the reasons for any program changes or adjustments.

This would be a new information collection to support regulations 20 C.F.R. § 725.413.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection information, completion of report, publication dates, and other actions.

There are no plans to publish data collected as a result of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This information collection request does not seek a waiver from the requirement to display the expiration date.

18. Explain each exception to the certification statement identified in ROCIS.

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Statistical methods are not used in these collections of information.