

SUPPORTING STATEMENT

Claim adjudication process for alleged presence of pneumoconiosis (CM-933, CM-933b, CM-988, CM-1159, and CM-2907)

OMB No. 1215-0090

A. Justification.

1. When a miner applies for benefits, the Division of Coal Mine Workers' Compensation (DCMWC) is required to schedule a series of four diagnostic tests to help establish eligibility for black lung benefits. Each of the diagnostic tests has its own form that sets forth the medical results. In the supporting statement, when necessary, each form is explained separately.

CM-933 One diagnostic test authorized by DCMWC is the chest x-ray. The results of the x-ray may be used to establish the presence of pneumoconiosis, a criterion for entitlement. The Black Lung Benefits Act of 1977 as amended, 20 U.S.C. 901 et. seq. and 20 CFR 718.102 set forth criteria for the administration and interpretation of x-rays. The CM-933 is used to classify the physician's findings.

CM-933b Once a diagnostic X-ray is received with the accompanying interpretation form, the x-ray is sent for a quality reread to be certain that the x-ray is of acceptable quality. The quality of the x-ray is indicated on the CM-933b. The Black Lung Benefits Act of 1977 as amended, 20 U.S.C. 901 et. seq. and 20 CFR 718.102 set forth criteria for performance of x-rays.

CM-988 Part of the complete pulmonary examination that DCMWC is required to offer to all miner applicants is the physical examination, which can be used to establish the presence of pneumoconiosis, total disability, and the causal relationship between the miner's coal mine employment and pneumoconiosis, all of which are criteria for entitlement. The CM-988 provides all information concerning the physical examination required by DOL. The Black Lung Benefits Act of 1977 as amended, 30 U.S.C. 901 et. seq. and 20 CFR 718.104 set forth criteria for completion of the physical examination report.

CM-1159 The arterial blood gas study is authorized by DCMWC and may be used to establish total disability, a criterion for entitlement. This form was designed to report the results of the arterial blood gas studies as required by the regulations. The Black Lung Benefits Act of 1977 as amended, 30 U.S.C. 9023 and 20 CFR 718.105 set forth criteria for performance of blood gas study.

CM-2907 This form is used to report the results of the ventilatory or pulmonary functions study. The results of the study can be used to establish total disability, a criterion for entitlement. The Black Lung Benefits Act of 1977 as amended, 30 U.S.C. 901 et. seq. and 20 CFR 718.103 set forth specific standards governing performance of the study.

2. The claims examiner partially completes the forms and sends them to the appropriate medical provider. The provider completes the forms and submits them with the appropriate documentation to a specific DCMWC district office. The claims examiner reviews the completed forms along with the medical documentation to determine if the results indicate that the miner meets the eligibility criteria for black lung benefits.

CM-933 & 933b The CM-933 is sent to the physician authorized to perform diagnostic x-rays for the Department. The physician completes the form and submits it with the actual x-ray film to a specific DCMWC district office. For claims filed after January 1, 1982, and before January 20, 2001, the claims examiner sends another partially completed CM-933 with the x-ray to the physician (a "B-reader") who is rereading the x-ray film for quality and content.

Since the regulations require that the x-ray should be of suitable quality for proper classification of pneumoconiosis, the CM-933b is used to record only the B-reader's interpretation of the film's quality. It is completed by B-readers only when reading x-ray films of miners who filed claims prior to January 1, 1982, the effective date of the Black Lung Amendments of 1981, or after January 19, 2001, to determine only the quality of the x-ray film.

Both forms were developed to show the information needed by DOL and the criteria used for the purpose of coding for DOL. The completed form is evaluated to determine whether the miner has pneumoconiosis, a criterion for entitlement. If this information were not gathered, determinations on the existence of pneumoconiosis could not be made.

CM-988 The form is sent to the physician authorized to perform the physical examination for the Department. The completed form is evaluated by the claims examiner for the purpose of establishing the presence of total disability, and the causal relationship between the miner's coal mine employment and pneumoconiosis. If this information were not gathered, important evidence that could be used to establish disease, disability, and causality (all conditions of entitlement) would be unavailable to the adjudication officer.

CM-1159 The form is sent to and completed by physicians authorized to perform diagnostic arterial blood gas studies. The completed report together with the original medical documentation is reviewed by the claims examiner to determine if the results establish total disability as defined in the regulations. If this information were not gathered, determinations on total disability could not be made using this required test.

CM-2907 The form is sent to and completed by physicians authorized to perform the ventilatory test. The actual tracings, including the flow-volume loop, must be returned with the completed form. The Regulations specify that the ventilatory study is one method that may be used to establish total disability, and requires the Department to offer the test. If this information were not gathered, determinations on total disability could not be made using this required test.

3. In accordance with the Government Paperwork Elimination Act (GPEA), these forms are impractical for electronic submission. It is required that medical tests be attached to the forms. Sending the form electronically and the original medical test separately is impractical because of the potential for the forms and the required attachments to become separated. However, the forms are available for downloading from the DCMWC website as PDF documents for those physicians who need them. They may be completed on-screen, printed, signed, and mailed with the required test results. The forms can be downloaded from <http://www.dol.gov/esa/regs/compliance/owcp/cm-933.pdf>; <http://www.dol.gov/esa/regs/compliance/owcp/cm-933b.pdf>; <http://www.dol.gov/esa/regs/compliance/owcp/cm-988.pdf>; <http://www.dol.gov/esa/regs/compliance/owcp/cm-1159.pdf>; and <http://www.dol.gov/esa/regs/compliance/owcp/cm-2907.pdf>.
4. These forms all record information solicited by the Program such that it conforms to regulatory standards for diagnostic medical tests. Since the information requested on these forms specifically relates to eligibility criteria for the Black Lung Program, i.e., presence of pneumoconiosis, total disability, and causal relationship between coal mine employment and pneumoconiosis, no identical information is requested by other programs.
5. This information collection does not have a significant economic impact on a substantial number of small entities.
6. Information for Forms CM-933, CM-933b, CM-988, CM-1159 and CM-2907 is collected one time: to report the results of a required medical examination. If the collection were done less frequently, eligibility for benefits under the Black Lung Act could not be established.
7. There are no special circumstances for conducting this information collection.
8. The CM-933, 933b, 988, and 1159 have been in use since 1981 with no adverse comments received. The CM-2907 is very similar to the form it replaced in 2004, the CM-907, and it too has elicited no adverse comments. This length of time has provided ample opportunity for respondents to voice any complaints regarding their use. Program

staff maintains ongoing consultations with the respondents regarding medical test information.

A Federal Register Notification inviting public comment was published on January 30, 2008. No comments were received.

9. Respondents do not receive gifts to furnish the requested information. Respondents receive payment for services rendered and expenses.
10. The attached Privacy Act System notices (ESA-6 and ESA-30) provide confidentiality of information collection involving a claimant's medical record.
11. There are no questions of a sensitive nature on these forms.
12. The number of responses represents the approximate number of new miner applications and refiling during the past year, plus the estimated number of retesting due to invalid test results caused by technical or patient problems, plus retesting ordered prior to a formal hearing. The public burden estimate of this information collection totals approximately 4,259 hours. This burden is based on the submission of about 17,500 responses and was calculated as follows:

<u>FORM</u>	<u>RESPONSES</u>	<u>PER RESPONSE</u>	<u>HOURS</u>
CM-933	3,500	5 min.	292
CM-933b	3,500	3 min.	175
CM-988	3,500	30 min.	1,750
CM-1159	3,500	15 min.	875
CM-2907	<u>3,500</u>	20 min.	<u>1,167</u>
Total	17,500	Total	4,259

The estimated annualized cost to respondents to provide this information is \$329,391.00 (4,259 hours x \$77.34 per hour). This hourly wage for physicians (internists) is taken from the May 2006 National Occupational Employment and Wage Estimates, published by the Bureau of Labor Statistics (<http://www.bls.gov/oes/current/oes291063.htm>.) The BLS occupational category 29-1063 for internists is appropriate because most physicians who perform black lung testing are board-certified in internal medicine.

Any estimated annualized cost to respondents for providing the requested information is offset by direct payment to the respondent for the usual and customary cost for the medical testing and reports. The Program is required to offer a complete pulmonary evaluation to every miner claimant at the Program's expense. The Program pays the physician for the medical tests, examinations, and for other expenses, which include mailing charges. The physician reports these test results on the appropriate forms.

13. Because all costs including postage are reimbursed, there are no operation and maintenance costs.
14. The estimated annualized cost to the Program is \$2,112,037.63 which includes Program costs associated with printing, mailing and processing the 17,500 forms annually, plus the cost of the test procedures. The testing costs include the professional fees charged by the examining physician or, in the case of the CM-933 and CM-933b, by the radiologist. The DOL employee cost reflects a level of GS-12 Step 5, or \$35.47. (This figure is taken from the Office of Personnel Management's 2008 General Schedule, found here: http://www.opm.gov/oca/08tables/html/gs_h.asp.) This cost estimate is higher than that of the current collection, which also included the annualized cost to respondents in Item 12 as part of the Program cost because physicians are paid a fee by the Department of Labor for each test they perform. We have determined that the previous method of calculating program costs was inaccurate, and a new bill payment system that was put into production in January 2005 allows DCMWC to more accurately calculate amounts spent on each test procedure.

The associated Program costs were figured as follows:

- mailing 17,500 x \$1.41 = **\$24,675.00**
postage and large envelope [\$1.31 + \$0.10 = \$1.41] to mail

CM-933 **\$161,740.53**

The cost for an average annual usage of 3,500 forms is estimated as follows:

- printing \$ 450.00
 - cost of testing \$ 150,945.00
 - processing \$ 10,345.53
- GS-12/5 spends five minutes processing each form.
 $1/12 \times 3,500 \times \$35.47 = \$10,345.53$

CM-933b **\$62,692.23**

The cost for an average annual usage of 3,500 forms is estimated as follows:

- printing \$ 450.00
 - cost of testing \$ 51,896.70
 - processing \$ 10,345.53
- GS-12/5 spends five minutes processing each form.
 $1/12 \times 3,500 \times \$35.47 = \$10,345.53$

CM-988 **\$1,049,970.62**

The cost for an average annual usage of 3,500 forms is estimated as follows:

- printing \$ 700.00
- cost of testing \$ 966,507.40
- processing \$ 82,763.22

A GS-12/5 spends 40 minutes processing each form.

$$2/3 \times 3,500 \times \$35.47 = \$ 82,763.22$$

CM-1159

\$487,281.23

The cost for an average annual usage of 3,500 forms is estimated as follows:

- printing \$ 450.00
- cost of testing \$ 476,485.70
- processing \$ 10,345.53

GS-12/5 spends five minutes processing each form.

$$1/12 \times 3,500 \times \$35.47 = \$ 10,345.53$$

CM-2907

\$325,678.02

The cost for an average annual usage of 3,500 forms is estimated as follows:

- printing \$ 450.00
- cost of testing \$ 304,537.30
- processing \$ 20,690.72

GS-12/5 spends ten minutes processing each form.

$$1/6 \times 3,500 \times \$35.47 = \$20,690.72$$

15. Because the number of coal miners filing claims for benefits has been relatively steady since the previous clearance, total burden hours have remained the same at 4,259.

FORM	RESPONSES	COST	BURDEN
CM-933	3,500	0	292 hours
CM-933b	3,500	0	175 hours
CM-988	3,500	0	1,750 hours
CM-1159	3,500	0	875 hours
CM-2907	<u>3,500</u>	<u>0</u>	<u>1,167 hours</u>
TOTAL	17,500	0	4,259 hours

16. The information collected will not be published for statistical use.

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.