

December 28, 2017

Mr. Michael A. Chance
Director
Division of Coal Mine Workers' Compensation
United States Department of Labor
200 Constitution Avenue, NW
Room S-3323
Washington, DC 20210

Dear Director Chance:

The Pennsylvania Coal Alliance (PCA) appreciates the opportunity to provide comment on the U.S. Department of Labor's (DOL) Proposed Collection of Information notice published in the Federal Register on October 2017, 82 Fed. Reg. 50166. PCA is the principal trade organization representing underground and surface bituminous coal operators in Pennsylvania, as well as other associated companies whose businesses rely on coal mining and a strong coal economy. PCA member companies produce almost 90 percent of the bituminous coal mined annually in Pennsylvania, which totaled nearly 46 million tons in 2016, making the Commonwealth the third largest coal producing state.

PCA members have raised several concerns with both the administrative procedure and specific details of the proposed Collection of Information notice, which are outlined below. Given these outstanding concerns, PCA objects to the Proposed Collection of Information requirements and new application for self-insurance and urges the DOL to withdraw the new submittal requirements.

PCA's specific concerns with the Proposed Collection of Information include the following:

The Proposed Collection of Information process violates the Administrative Procedures Act (APA) and the Federal Mine Safety and Health Act (MSHA)

On its face, the Proposed Collection of Information is an attempt to change the regulatory requirements for self-insurance under 20 CFR §726.101-104 and §726.112. Both the APA and MSHA strictly define the process that a federal agency must adhere to when promulgating new, or revising existing regulatory requirements. In issuing the Proposed Collection of Information the DOL is circumventing these statutory-required processes. This is especially troubling given that long-established regulations already standardize and control the information to be submitted by proposed self-insurers.

The information mandated from operators and the requirement for filing a parental guarantee exceed current regulatory and statutory authority

The Proposed Collection of Information mandates that operators provide information and a parental guarantee to determine if an operator should be (or continue to be) authorized to self-insure. These requirements result in a significant expansion of program oversight and add a new level of operator fiscal responsibility that goes beyond the statutory and regulatory guidelines currently dictating self-insurance review. In fact, the parental guarantee creates an uninsurable long-term liability, which neither the statute or current regulations afford the DOL to mandate. Furthermore, the Proposed Collection of Information is ambiguous in delineating how DOL intends to use the additional information and the parental guarantee to review self-insurance applications. This leads to concerns that it will result in a more subjective review process.

The requirement to submit actuarial reports and expanded payroll data and state-level collateral are unnecessary and excessive

DOL historical practice has been an annual review of an operators' financial appropriateness to self-insure for its obligation under the program. However, the new application requires the submission of actuarial reports with an application for self-insurance, which is unnecessary given this annual review process. Unfortunately, the administration and timeliness of the annual review process has not recently been a priority for the DOL. Thus, the new requirement for submittal of actuarial reports that project future long-term liability is unnecessary if DOL would correctly and timely administers the annual review process. Furthermore, the requirement under the new application to submit three years of payroll data and types and amounts of any state-level workers compensation collateral is excessive. Data for those covered under the Act or thru insurance is already required along with a list of self-insured states for workers compensation. Also, state workers compensation often utilize a broader range of occupations disease/injuries when calculating collateral and therefore should not be considered in review for or to maintain self-insurance.

PCA believes the requirements imposed under the Proposed Collection of Information and new application, especially the parental guaranty, infringe upon the statutory right to self-insure. Furthermore, PCA believes the Proposed Collection of Information and new application violate the Administrative Procedures Act (APA) and the Federal Mine Safety and Health Act (MSHA) thereby limiting stakeholder engagement in what appears to be a regulatory change under the designation of an information collection notice. Therefore, PCA requests DOL to withdraw the Proposed Collection of Information and new application for self-insurance.

Sincerely,



Will Dando
Director of Government Affairs
Pennsylvania Coal Alliance

Cc: Julia Hearthway, Director, OWCP