Alabama Coal Association

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:

These comments are submitted on behalf of the members of the Alabama Coal Association ("ACA") in response to the Proposed Collection of Information notice published in the Federal Register on October 30, 2017 82 Fed. Reg. 50166 ("Proposed Information Collection"). The ACA understands that the National Mining Association ("NMA") has submitted comments to your office. The ACA agrees with and subscribes to the comments submitted on behalf of the NMA. In addition to those comments, we would like to bring to your attention additional issues involving the proposed information collection's unauthorized interference (direct and indirect) with state workers compensation programs that are outside the purview of the Black Lung Benefits Act ("BLBA"), 30 U.S.C. § 901 *et seq.*

The Alabama Coal Association was formed in 1972 by a small number of surface mining companies who recognized the need for a unified voice to cope with the modern issues that dramatically impact the mining industry. In July, 1984, ACA merged with the Alabama Mining Institute, a 75 year old consortium of underground and surface mining operators. The combined entities forming ACA comprise firms which produce 92% of all coal mined in the State of Alabama.

The Proposed Information Collection effectively forces mine operators to abandon their existing and effective self-insurance programs and resort to the commercial insurance market to pay mining-related pneumoconiosis claims. As the NMA has noted, the proposed data collection requirements are apparently designed to enable the DOL to reject operator self-insurance applications without having properly adopted standards for evaluating applications for self-insured status.

Furthermore, compliance with the proposed data collection requirements would be overwhelmingly burdensome and necessitate allocating administrative resources toward compliance rather than the funding of the self-insurance program itself. These consequences – intended by the Division or not – drive mine operators toward seeking coverage for Black Lung liability to the commercial insurance market.

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Unfortunately, the market for commercial insurance covering Black Lung claims is extremely limited. There are approximately four commercial carriers that provide federal BLBA coverage at all. Critically, to the best of the ACA's knowledge, there is NO commercial carrier that offers workers' compensation coverage limited to federal BLBA pneumoconiosis claims. Instead, every commercial carrier that provides coverage for BLBA claims requires the Mine Operator to purchase insurance coverage for not just BLBA claims, but for all state-law required workers' compensation insurance coverage. Because of this bundling requirement, the Proposed Information Collection has the effect of regulating not only federal BLBA claims, but also completely unrelated state law illness and injury claims.

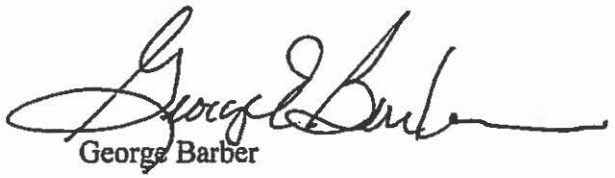
Stated simply, the DOL's Proposed Information Collection gambit will have the inexorable effect of forcing Mine Operators to abandon self-insurance for state workers' compensation altogether. The Proposed Information Collection will supplant state laws allowing, and in some cases preferring, self-insurance for nonfederal worker injury and illness claims. The federal government's power to regulate state workers' compensation claims is limited and only recognized where specifically authorized by statute. For example, federal courts do not have removal jurisdiction to adjudicate state law workers' compensation claims. *See* 28 U.S.C. § 1445(c). Even this agency's own website acknowledges that "The U.S. Department of Labor, Office of Workers' Compensation Programs, does not have a role in the administration or oversight of state workers' compensation programs." (https://www.dol.gov/owcp/owcpkeyp.htm)

There is plainly no authority in Mine Safety and Health Act or the Black Lung Benefits Act ("BLBA") for the Secretary of Labor to regulate or preempt state workers' compensation laws. The BLBA is specifically limited in its operation to disability benefits arising from pneumoconiosis. 30 U.S.C. § 30(a). Further, the authority of the Secretary of Labor to regulate qualifications of self-insurance is limited to payment of benefits for pneumoconiosis. 30 U.S.C. § 933(a) ("[E]ach operator of a coal mine . . . shall secure the payment of benefits for which he is *liable under section 932* of this title by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary . . .). Thus, the Secretary has no authority to regulate the determination of self-insured status under state workers' compensation laws. But the DOL's proposed information collection has exactly that effect. By arbitrarily and without proper notice eliminating a Mine Operator's ability to cover BLBA claims with self-insurance, the DOL has also imposed its own standards for state law workers' compensation self-insurance status onto each state.

Each state has its own requirements for authorizing self-insurer status for state law workers compensation claims. *See, for example*, Ala. Code § 25-5-8(b), Ala. Admin. Code § 480-5-2.02. Forcing each Mine Operator to obtain commercial BLBA coverage will have the effect of supplanting each of these state regulatory schemes. If promulgated, the Proposed Information Collection form will become the *ipso facto* regulation affecting all state workers' compensation self-insurance for Mine Operators, even though the BLBA and other federal laws leave that power of regulation to the states. Note the difference between the Proposed Information Collection form and Alabama's application for self-insurance status – should this proposed regulation become the law of the land, Alabama's application will become effectively obsolete.
(https://labor.alabama.gov/docs/forms/wc_app_self_insur.pdf)

The DOL's usurpation of the regulation of non-federal workers compensation claims would violate the Tenth Amendment to the United States Constitution. The ACA urges the Department of Labor to rethink this Proposed Information Collection in order to avoid the inevitable, and unlawful, consequences of this proposal.

Sincerely,



George Barber

cc: Nicholas Geale, Acting Solicitor
Julia Hearthway, Director, OWCP

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