April 22, 2019

Office of Information and Regulatory Affairs
Attn: OMB Desk, Officer for DOL-OWCP
Office of Management and Budget
Room 10235
725 17th Street, N.W.
Washington, DC 20503
Sent To: OIRA – Submissions@OMB.eop,gov

COMMENTS OF THE NATIONAL MINING ASSOCIATION ON DATA COLLECTION RELATED TO APPLICATION FOR SELF-INSURANCE UNDER THE BLACK LUNG BENEFITS ACT

These comments are submitted on behalf of the National Mining Association (NMA) in response to the proposed collection of information notice published in the Federal Register on March 22, 2019, 84 Fed. Reg. 10839-40.

On October 30, 2017, 82 Fed. Reg. 50166, the Department of Labor (the Department) first published a request for public comment on several proposed changes to the forms and content of forms used in the evaluation of a coal mine operator's application for authorization to self-insure its benefit obligations under the Black Lung Benefits Act. 30 U.S.C. §901-945. NMA submitted comments in response to that first notice and appreciates the opportunity to respond again to the revisions made by the Department in response to those comments and the comments of others.

NMA remains concerned that its original comments have not been fully or adequately considered and for that reason a copy of those comments is attached to this letter and resubmitted for reconsideration by the Department of Labor.

Some of the key points addressed in that letter merit additional consideration. First, however, we think it is important that the Department did not conduct this exercise in closer collaboration with interested participants in the black lung self-insurance program. The program has been in place for over 40 years, and any effort to revise it in a significant way may have benefitted from a joint and collaborative effort that includes all stakeholders such as self-insured operators, claimants for black lung benefits, the Department's black lung claims administrators, public policymakers, the legal community and additional interested groups. Such an approach can lead to a more informed and transparent process that protects the interests of all parties. The option to proceed this way still remains open and should be considered.

In this same connection, some of the Department's revised proposals have clear regulatory implications. The Department's regulations governing the authorization for self-insurance in 20 C.F.R. § 726.101-104, 112, are not fully compatible with the proposed data collection proposal, and for that reason the proposal or parts of it must meet the provisions in 5 U.S.C. § 553(b). Some of the requests for data, including the production of an actuarial report and detailed individual claim information, are not clearly tied to criteria for the approval of an application and not required by existing regulations. No federal program specific actuarial report is created now for any purpose, nor would it be useful. The proposed requirement would impose a considerable burden with no obvious benefit to the Department or an operator.

The ability to self-insure is a statutory privilege that must be offered by the Department under, 30 U.S.C. 933(a) pursuant to regulations published by the Secretary. Those regulations should, in turn, establish a consistent, predictable and reasonable framework for the self-insurance application and approval process. The Department has yet to achieve this goal and it is hard to see how the current revised proposal meaningfully advances this objective.

On page 2 of comments that NMA submitted on December 29, 2017, the preferability of statutory rulemaking over the current data collection notices is set forth in some detail. That analysis holds true with respect to the current notice, and for the same reasons NMA still believes that a more comprehensive approach is called for now, as was our position in 2017. The mining industry needs to be able to rely on the Department to create a transparent, objective, reliable and fair benefit financing regime that includes a robust and readily available self-insurance option. NMA looks forward to a better approach that prioritizes these goals.

We agree also with the Department's decision not to pursue a parental guaranty. No such guaranty has been in use, and the concept it embodies would surely end any possibility of black lung self-insurance, thus depriving all operators of an important statutory benefit. It would be unprecedented for the Department to include a parental guaranty as a condition to qualify for self-insurance authorization. We believe also that doing so would be a patently clear violation of the Black Lung Benefits Act and Administrative Procedure Act.

The Department's decision to remove this provision without comment is troubling because doing so fails to acknowledge the impropriety of impinging upon any operator's right to buy and sell mines or subsidiaries without substantial risk that does not currently and should not exist in the business environment.

In NMA's December 29, 2017, letter we requested a withdrawal of the Department's proposals. NMA is not convinced that the Department has adequately demonstrated a need for the current proposal, or any benefit to be gained from the significant amount of additional information requested in the new proposed collection activity. The finalization of the proposal would impose unnecessary and irrelevant burdens not only on the mine operator community, but also especially on the independent contractors who qualify as small businesses and who

perform work for mine operators. The Department has not justified why the proposal should be finalized. This proposal should not be adopted.

Sincerely,

Thomas Harman

Enclosure: December 29, 2017, Comments

cc: Julia Hearthway, Director OWCP
DOL Office of the Chief Information Officer