Peace. Portions of the original homelands of the Onondaga Nation, Cayuga Nation, Seneca Nation, and Oneida Nation lie within the proposed boundaries of the sanctuary. This area was their homeland and they developed a deep understanding of, and had a strong connection to, the land and to the water.

Eastern Lake Ontario represents a diverse array of important events in our Nation's history, including military conflicts, maritime innovation, and American expansion to the west. This area has been a critical nexus of maritime trade and transportation for centuries, beginning with canoes and boats of early Indigenous peoples. During the colonial period, Lake Ontario was a strategic theater of conflict among European powers and the young American republic. Military actions occurred in the region during the French and Indian War, Revolutionary War, and the War of 1812. Later, this region was critical to the development of the American West and the Nation's industrial core.

Well-preserved by cold, fresh water, the shipwrecks and other underwater cultural resources in the proposed sanctuary possess exceptional historical, archaeological and recreational value. Vessels that historically plied Lake Ontario's waters often met with treacherous conditions, which resulted in numerous wrecking events. The area contains a total of 43 known shipwrecks and one aircraft, including one shipwreck (*St. Peter*) that is listed on the National Register of Historic Places and one wreck (*David Mills)* that is a New York State Submerged Cultural Preserve and Dive Site. This area may also include approximately 20 potential shipwreck sites (shipwrecks which may exist, but additional research is needed to locate and describe these shipwrecks), three aircraft, and 13 other underwater archaeological sites. Represented in the collection are commercial and military vessels from colonial wars and the War of 1812, as well as submerged battlefields at Oswego and Sackets Harbor. Other shipwrecks represent the earliest maritime commerce on the Great Lakes, including the nearly intact *Lady Washington* built in 1797.

Article IV: Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, historical, scientific, educational, cultural, archaeological, or aesthetic resources and qualities of the area. Listing an activity in the Terms of Designation does not mean that such activity is being or will be regulated. Listing an activity here means that Secretary of Commerce can regulate the activity, after complying with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). Further, no regulation issued under the authority of the NMSA except an emergency regulation issued with the approval of the Governor of the State of New York may take effect in New York state waters within the sanctuary if the Governor of the State of New York certifies to the Secretary of Commerce that such regulation is unacceptable within the forty-five day review period specified in NMSA.

Activities Subject to Regulation:

- Injuring or disturbing sanctuary resources;
- Possessing, transporting, or engaging in commerce of any sanctuary resource.
- Grappling into or anchoring on shipwreck sites.
- Deploying tethered underwater mobile systems at shipwreck sites.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss, or injury, any activity and all activities, including those not listed in Section 1, are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of New York or her/his designee or designated agency.

Article V: Alteration of This Designation

The terms of designation, as defined under Section 304(e) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, Tribal, state, regional, and local authorities and agencies, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee.

[FR Doc. 2023–00861 Filed 1–18–23; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 726

RIN 1240–AA16

Black Lung Benefits Act: Authorization of Self-Insurers

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department is proposing revisions to regulations under the Black Lung Benefits Act (BLBA or the Act) governing authorization of self-insurers. These proposed rules will determine the process for coal mine operators to apply for authorization to self-insure, the requirements operators must meet to qualify to self-insure, the amount of security self-insured operators must provide, and the process for operators to appeal determinations made by the Office of Workers' Compensation Programs (OWCP).

DATES: The Department invites written comments on the proposed regulations from interested parties. Written comments must be received by March 20, 2023.

ADDRESSES: You may submit written comments by any of the following methods. To facilitate receipt and processing of comments, OWCP encourages interested parties to submit their comments electronically.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Facsimile:* (202) 693–1395 (this is not a toll-free number). Only comments of ten or fewer pages, including a fax cover sheet and attachments, if any, will be accepted by fax.
- *Regular Mail/Hand Delivery/Courier:* Submit comments on paper to the Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW, Suite S3229–DCWMC, Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: Your submission must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. *Caution:* All comments received will be posted without change to *https://www.regulations.gov.* Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

Docket: For access to the rulemaking docket and to read background documents or comments received, go to *https://www.regulations.gov.* Although some information (*e.g.,* copyrighted material) may not be available through the website, the entire rulemaking record, including any copyrighted material, will be available for inspection at OWCP. Please contact the individual named below if you would like to inspect the record.

FOR FURTHER INFORMATION CONTACT: Michael Chance, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW, Suite S3229–DCWMC, Washington, DC 20210. Telephone: 1–800–347–2502. This is a toll-free number. TTY/TDD callers may dial toll-free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The BLBA, 30 U.S.C. 901–944, provides for the payment of benefits to coal miners and certain of their dependent survivors for total disability or death due to pneumoconiosis, commonly known as black lung disease. 30 U.S.C. 901(a); *Usery* v. *Turner Elkhorn Mining Co.,* 428 U.S. 1, 5 (1976). The Act places the primary responsibility for paying benefits on coal mine operators. 30 U.S.C. 932(b). When a coal miner is determined to be eligible for benefits, the operator responsible for paying benefits (the responsible operator) is generally the one that most recently employed the miner for a period of at least one year and is financially capable of paying benefits. 20 CFR 725.495(a)(1). If a responsible operator cannot be determined, is unable to pay, or defaults on its obligation to pay, the responsibility for paying benefits falls to the Black Lung Disability Trust Fund, which is financed by an excise tax on coal mined for domestic use and, as necessary, borrowing from the U.S. Treasury's general fund. 30 U.S.C. 932(j), 934(b); 26 U.S.C. 4121, 9501.

Because coal mine operators are principally responsible for paying benefits, the Act requires every operator to secure the payment of benefits for which it may be found liable. 30 U.S.C. 932(b). Each operator must secure the payment of benefits either by purchasing commercial insurance or by qualifying as a self-insurer ''in accordance with regulations prescribed by the Secretary.'' 30 U.S.C. 933(a); *see also* 20 CFR 726.1.

The current regulations—Part 726 Subpart B—establish the standards for a coal mine operator to qualify as a self-insurer. They provide that, to qualify as a self-insurer, an operator must meet certain minimum requirements, including ''obtain[ing] security . . . in a form approved by [OWCP] and . . . in an amount to be determined by [OWCP].'' 20 CFR 726.101(b)(4). The regulations identify four forms of security that OWCP may allow an operator to provide: (1) Indemnity bonds; (2) deposits of negotiable securities; (3) letters of credit; or (4) trust funds under Section 501(c)(21) of the Internal Revenue Code. 20 CFR 726.104(b). The regulations further provide that ''[OWCP] shall require the amount of security which it deems necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act.'' 20 CFR 726.105. The regulations also set forth a non-exhaustive list of factors that OWCP will consider in setting the amount of security an operator must provide, including the operator's net worth, the existence of a guarantee by a parent corporation, and the operator's existing liability for benefits. *Id.*

The Department historically has not required self-insured operators to post security with a face value that would cover all of the operator's expected black lung liability. *See* 62 FR 3338, 3370 (Jan. 22, 1997). Instead, the Department has relied in part on a company's size as evidence of its ability to make future benefits payments. *Id.* Depending on the operator's assets, the Department usually required security sufficient to cover from three to fifteen years of the operator's payments on claims currently in award status, rather than the operator's total liability for current and future claims. *Id.* Under this model, most large operators therefore posted fewer years of payment relative to smaller operators.

A number of bankruptcies in the mining industry revealed weaknesses in that process and demonstrated that a more substantial security amount would be required to adequately protect the Trust Fund. Specifically, beginning in 2014, three large self-insured operators filed for bankruptcy. Because these operators had insufficient securities to cover the full amount of expected benefits, an estimated $865 million in liabilities will ultimately transfer to the Trust Fund. *See* U.S. Government Accountability Office, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed,* at 13 (Feb. 2020), available at *https://www.gao.gov/products/gao-20-21.*

In response, OWCP developed revised guidelines and procedures for authorizing coal mine operators to self-insure, which it began to implement in 2019. These guidelines were intended to standardize the process by which applicants provide financial and actuarial information to OWCP. OWCP required each company to calculate and report its projected black lung liabilities through actuarial reports using a set of standardized assumptions, including discount rate, claim cost trends, and the probability of awards. OWCP also developed a set of financial metrics and a methodology to assess each operator's solvency, profitability, and risk of default. This assessment would determine the proportion of the operator's projected liabilities it would be required to post as security. Operators determined to be at less risk of not meeting their obligations would be required to provide smaller amounts of security, while operators at higher risk would be required to provide larger amounts of security. These guidelines were summarized in a December 2020 bulletin, s*ee* BLBA Bulletin No. 21–01 (Dec. 7, 2020).[1]

Although the revised guidelines allowed OWCP to better identify and account for self-insured operators that presented significant bankruptcy risk, they proved problematic in several respects. The financial metrics were not able to consistently predict which operators were at risk of experiencing financial difficulties. The process contemplated by the guidelines also imposed significant burdens on OWCP in continuously monitoring the financial health of individual operators on a quarterly basis. In addition, although the guidelines were shared with the public in various ways while they were being developed, stakeholders raised procedural concerns about how the guidelines were developed.

Based on its experience administering the self-insurance program over the years and in response to stakeholder concerns, the Department now proposes to revise Subpart B and seeks comments on its proposal. The proposed rule would codify the practice of basing a self-insured operator's security requirement on an actuarial assessment of its total present and future black lung liability. The Department proposes to eliminate the financial scoring process. Instead, the Department proposes to require all self-insured operators to post security equal to 120 percent of their projected black lung liabilities, which ensures adequate coverage regardless of an operator's financial health.[2] The Department has determined that 120 percent is an appropriate level of security because, among other things, it protects the Trust Fund in the event an operator's actual liabilities exceed its projected liabilities. The proposed rule would also remove the requirement that an operator's average current assets over the preceding three years must exceed its current liabilities, which would not be necessary to protect the Trust Fund under the proposed security scheme.

[1] OWCP published a notice in the **Federal Register** seeking comment on the Bulletin in January 2021, pursuant to then-operative Executive Order 13891 and the Department's implementing regulation. 86 FR 1529 (Jan. 8, 2021). OWCP later withdrew the notice after the Executive Order and the Department's regulation were rescinded and the new Administration imposed a temporary regulatory freeze. 86 FR 8806 (Feb. 9, 2021).

[2] This means the applicant would have to purchase an instrument that would pay out up to 120% of the projected liability, not that the applicant would have to actually spend that amount on collateral. OWCP estimates that premiums on surety bonds will cost anywhere from 2 percent to 12 percent of the security amount, and we welcome comments on this estimation.

The proposed rule would also prospectively remove Section 501(c)(21) trust funds, which have proven to be less reliable, as an acceptable form of security. Furthermore, the proposed rule will clarify the process for operators to apply for authorization to self-insure, how long the authorization remains effective, the conditions under which OWCP will deny or revoke authorization to self-insure, and the process for operators to appeal OWCP's determinations.

The Department believes that the proposed rule will better protect the Trust Fund when a self-insured operator becomes insolvent. Moreover, by eliminating the need to continuously monitor each individual operator's financial situation, the proposed rule will lessen the administrative burden on OWCP to gather, review, and analyze operators' financial information, and lessen the burden on operators to collect and provide such information. The procedural changes will also provide greater clarity and certainty with respect to OWCP's and operators' respective obligations in the self-insurance authorization process. Based on all of these considerations, the Department has preliminarily determined the benefits of the proposed rule (*e.g.,* the increased safeguards for the Trust Fund and taxpayers, the decreased administrative burden, etc.) would outweigh the purchase price of any additional surety bonds or other securities for operators who choose to self-insure.

The Department invites comments on the proposed rule from all interested parties. The Department is particularly interested in comments addressing the impact of the proposed rulemaking on coal mine operators currently participating in the self-insurance program and any resulting impact on their ability to continue participating in the program.

II. Statutory Authority

Section 426(a) of the BLBA, 30 U.S.C. 936(a), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration and enforcement of the Act.

III. Summary of the Proposed Rule

A. General Provisions

The Department is proposing several general revisions to advance the goals set forth in Executive Order 13563, 76 FR 3821 (Jan. 21, 2011), on Improving Regulation and Regulatory Review. The Order states that regulations must be ''accessible, consistent, written in plain language, and easy to understand.'' *Id.; see also* E.O. 12866, 58 FR 51735 (Sept. 30, 1993) (agencies must draft ''regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.''). Accordingly, the Department proposes numerous technical and stylistic changes to Subpart B to improve clarity, consistency, and readability.

The Department proposes to remove the imprecise term ''shall'' throughout the sections that it is amending, and to substitute ''must,'' ''must not,'' ''will,'' or other situation-appropriate terms. No alteration in meaning either results from or is intended by these changes.

Consistent with the goal of making this regulation easier to understand, the Department proposes several additional technical changes. For instance, the Department proposes to replace references to ''the Office'' with ''OWCP'' because that acronym is more commonly used by stakeholders. As explained in current § 725.101(a)(21), ''Office'' and ''OWCP'' both mean ''the Office of Workers' Compensation Programs, United States Department of Labor.'' Thus, no alteration in meaning either results from or is intended by this change.

The current regulations frequently refer to applications ''for authority to become a self-insurer'' or ''for authorization to self-insure.'' Where appropriate, OWCP proposes to amend such references to include applications ''to renew authorization to self-insure'' or similar language. This change is intended to clarify, where necessary, whether and when the requirements of this Subpart B apply to renewal applications.

The technical and stylistic changes designated here are not included in the section-by-section explanation. All proposed substantive revisions to existing rules and all proposed new rules are discussed below.

B. Section-by-Section Explanation

20 CFR 726.101 Who May Be Authorized To Self-Insure

OWCP proposes substantially revising § 726.101 to update the minimum requirements an operator must meet to qualify for authorization to self-insure and remove the provisions requiring OWCP to continuously monitor each applicant's financial situation.

Paragraph (a) is retained in its entirety.

Current paragraph (b) establishes the minimum requirements that an operator must meet to qualify for authorization to self-insure. At present, paragraphs (b)(1), (b)(3), and (b)(5) respectively provide that an operator must have been in the business of coal mining for at least three consecutive years prior to applying, the operator's average current assets over the prior three years must exceed its current liabilities by a specified amount, and the operator must have five or more employee-miners. Paragraphs (b)(2) and (b)(4) respectively provide that an operator must demonstrate the administrative capacity to fully service claims and that an operator must obtain security in a form approved by OWCP and in an amount determined by OWCP.

OWCP proposes to remove paragraphs (b)(1), (b)(3), and (b)(5). Because OWCP elsewhere proposes to require all self-insurers to post security equal to 120 percent of their projected black lung liabilities, the requirements of paragraphs (b)(1), (b)(3), and (b)(5) would no longer be necessary. OWCP has preliminarily determined that a 120 percent security level for all companies would better protect the Trust Fund in the event of an operator's default than percentages that vary based on a company's continuously-changing financial status. OWCP has likewise preliminarily determined that an actuarial assessment of liability for current and future claims is a better gauge of the dollar amounts the Trust Fund may be required to pay out, than consideration only of an operator's current claims. This change would also reduce the administrative burdens for both OWCP and self-insured operators.

Given the foregoing changes, OWCP proposes to renumber current paragraph (b)(2) as paragraph (b)(1), and paragraph (b)(4) as paragraph (b)(2).

Current paragraph (c) provides that no operator who is unable to meet the requirements of this section should apply for authorization to self-insure and that OWCP will not approve an application for self-insurance ''until such time as the amount prescribed by [OWCP] has been secured in accordance with this subpart.'' OWCP proposes to revise paragraph (c) by removing the language prohibiting nonqualifying operators from applying. That requirement will serve no purpose and have no practical consequences in the revised regulation. OWCP also proposes to revise paragraph (c) by clarifying that no application will be approved until OWCP receives security in the amount and in the form determined by OWCP. Revised paragraph (c) will also specify that, if an applicant is seeking authorization to self-insure for the first time, the applicant is not authorized to self-insure while its application is under review. The purpose of this change is to

clarify the circumstances under which OWCP will approve a qualifying operator's application to self-insure.

OWCP also proposes to add a new paragraph (d), which will provide that no operator whose application for authorization to self-insure or to renew authorization to self-insure is denied may reapply until 12 months after a final decision denying such application. The purpose of this addition is to prevent non-qualifying operators from filing serial applications for authorization to self-insure. In turn, this addition would reduce the administrative burden on OWCP to review renewed applications. Moreover, if an operator disagrees with the amount of security OWCP has determined is appropriate, the operator can simply use the appeal process set forth in § 726.116 rather than filing a new application. Barring operators from reapplying within 12 months after a denial prevents operators from pursuing new applications while an appeal on the denied application is pending.

20 CFR 726.102 Application for Authority To Become a Self-Insurer; How Filed; Information To Be Submitted

OWCP proposes to amend paragraph (a) to require operators to file applications for authorization to self-insure (or to renew authorization to self-insure) electronically in a manner prescribed by OWCP, and to remove existing requirements that apply only to paper filings (*e.g.,* affixing a corporate seal). This change is intended to streamline the application process and reduce the administrative burden of processing physical mail and documents.

OWCP proposes to substantially revise paragraph (b) to change and update the information that must be submitted with an application for authorization to self-insure or to renew authorization to self-insure.

Current paragraphs (b)(1), (b)(2), (b)(3), and (b)(5) require an operator to submit several pieces of information, including a statement of the employer's payroll, a statement of the average number of employees engaged in coal mine employment within the preceding three years, a list of mines covered by any particular self-insurance agreement and a statement demonstrating the applicant's administrative capacity to service claims. OWCP requires operators to provide much of this information in the requisite application forms, namely, forms CM–2017 and CM–2017b, which are available on OWCP's website at *https://www.dol.gov/agencies/owcp/dcmwc/regs/compliance/blforms.* Accordingly, OWCP proposes to retain current paragraphs (b)(1), (b)(2), (b)(3), and (b)(5), but renumber them after adding two more paragraphs.

OWCP proposes to add a new paragraph (b)(1) that will require an application to include any application forms required by OWCP. As noted above, those forms currently include CM–2017 and CM–2017b.

OWCP also proposes to add a new paragraph (b)(2) to require an applicant to include with its application an actuarial report using OWCP-mandated actuarial assumptions. Proposed paragraph (b)(2) would also provide that an operator must submit a new actuarial report every three years and allow an operator to submit an additional actuarial report using alternative assumptions.

With the additions of proposed paragraphs (b)(1) and (b)(2), current paragraphs (b)(1), (b)(2), (b)(3), and (b)(5) are respectively renumbered as (b)(3), (b)(4), (b)(5), and (b)(6).

Current paragraph (b)(4) requires an applicant to submit its gross and net assets and liabilities for the preceding three years. Because OWCP elsewhere proposes to eliminate the minimum requirement pertaining to an operator's assets and liabilities, it likewise proposes to remove current paragraph (b)(4).

Current paragraph (b)(6), which allows OWCP to request additional information or evidence from an applicant at OWCP's discretion, is retained and renumbered as paragraph (b)(7). OWCP proposes to make stylistic changes to new paragraph (b)(7) by removing unnecessary language. No alteration in meaning either results from or is intended by this change.

Paragraph (c), which specifies which entities may apply for authorization to self-insure, is retained in its entirety, but revised to clarify that the paragraph also applies to applications to renew authorization to self-insure.

20 CFR 726.103 Application for Authority To Self-Insure; Effect of Regulations Contained in This Part

Current § 726.103 is retained in its entirety.

20 CFR 726.104 Action by OWCP Upon Application of Operator

OWCP proposes deleting and replacing paragraph (a) to clarify what action OWCP must take with respect to an application and the timeframe within which OWCP will take such action. New paragraph (a) provides that OWCP will issue a written determination, either denying the application or determining the amount of security, within 30 days after determining that an application is complete. New paragraph (a) also allows OWCP to extend the 30-day deadline if it determines that additional evidence is needed or that the applicant's evidence is not in compliance with OWCP's requirements.

OWCP proposes removing current paragraph (b)(4), which allows a self-insurer to give security by funding a trust pursuant to section 501(c)(21) of the Internal Revenue Code. Few self-insured operators use 501(c)(21) trusts as security and most of those operators use them in combination with other forms of security. Also, OWCP has determined that section 501(c)(21) trusts are a less reliable form of security and more burdensome for OWCP to monitor because, unlike other forms of security which generally guarantee a fixed dollar amount, the amounts kept in the trusts can fluctuate and significantly decrease as self-insurers use such trusts to pay claims and the costs of administration. The remaining provisions of paragraph (b) are retained.

OWCP proposes to add a new paragraph (c). New paragraph (c) provides that if the applicant is receiving authorization to self-insure for the first time, OWCP will notify the applicant that its authorization to self-insure is contingent upon submitting the required security and completed agreement and undertaking, and that the applicant's authorization will be effective for 12 months from the date such security and completed agreement and undertaking are received by OWCP. The purpose of this amendment is to clarify when a new applicant's authorization to self-insure becomes effective. Additionally, as explained in more detail below, under new § 726.111, OWCP will also notify the applicant of the date on which its authorization is effective, the date on which such authorization will expire, and the date by which the applicant must apply to renew that authorization if it intends to continue self-insuring its liabilities.

OWCP proposes to add a new paragraph (d) for procedures when OWCP renews the applicant's authorization to self-insure. Under proposed paragraph (d)(1), if there are no changes in the required security amount, OWCP would notify the applicant that the applicant's authorization to self-insure is effective for 12 months from the date a completed agreement and undertaking is received. Under proposed paragraph (d)(2), if changes are required to the existing security amount, OWCP would notify the applicant that the applicant's authorization to self-insure is not effective until the applicant has

submitted the required security and a completed agreement and undertaking. In the latter event, the applicant's authorization to self-insure will be effective for 12 months from the date such updated security and completed agreement and undertaking are received by OWCP. The purpose of this amendment is to clarify when a renewal applicant's reauthorization to self-insure becomes effective.

Current paragraph (c) is retained but renumbered as paragraph (e). OWCP proposes to amend this paragraph to provide that any applicant who cannot meet the security requirements imposed by OWCP should proceed to obtain a commercial policy or contract of insurance and submit proof of such coverage within 30 days after OWCP issues its decision. Current paragraph (c) also sets forth the process by which an applicant may appeal OWCP's determination on an application. Because OWCP elsewhere proposes to set forth new procedures for an applicant to appeal OWCP's determinations (see § 726.116), that language is now redundant. Accordingly, OWCP proposes to revise paragraph (c) to clarify that an applicant may appeal such determinations in the manner set forth in new § 726.116. For the same reasons, OWCP proposes to delete current paragraph (d), which describes what action OWCP will take with respect to such an appeal.

20 CFR 726.105 Fixing the Amount of Security

Current § 726.105 requires OWCP to set the amount of security each applicant is required to post by determining the amount ''necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act.'' The current regulation provides that OWCP will consider various factors including, but not limited to, the operator's net worth, the existence of a guarantee by a parent corporation, and the operator's existing liability for benefits.

OWCP proposes to delete current § 726.105 and replace it with a new § 726.105. Proposed § 726.105 would provide that any operator approved to self-insure must submit security equal to 120 percent of its actuarial estimated liabilities (all present and future liabilities) as determined by OWCP based on the actuarial report or reports submitted by the applicant (or on file with OWCP), other information submitted with the operator's application, or any other materials or information that OWCP deems relevant. This means the applicant would have to purchase an instrument that would pay out up to 120% of the projected liability, not that the applicant would have to actually spend that amount on collateral. OWCP estimates that premiums on surety bonds will cost anywhere from 2 percent to 12 percent of the security amount, and we welcome comments on this estimation.

This change would better protect the Trust Fund in the event that a self-insured operator becomes insolvent or enters bankruptcy. This change will also better protect the Trust Fund in the event an insolvent operator's actual liabilities turn out to be greater than its projected liabilities. Generally, OWCP will continue to determine an operator's projected liabilities based on the operator's actuarial report and supporting information, including the information submitted with an operator's annual renewal application. Because those reports attempt to project future liabilities, however, they are inherently imperfect and open to potential error. This approach is also consistent with the practices of some state workers' compensation programs that set a security deposit amount based on accrued or projected liabilities. *See, e.g.,* 8 Alaska Admin. Code section 46.040 (setting security deposit amount at $600,000 or 125% of the total accrued workers' compensation liability, whichever is greater); Ariz. Code section 23–961(a)(2) and Ariz. Admin. Code section 20–5–206(D) (setting guaranty bond amount at fixed dollar amount or 125% of the total outstanding accrued liability); La. Rev. Stat. section 23:1168(a)(4); La. Admin. Code tit. 40, Pt. I, section 1725 (requiring amount of securities or surety bond to be at least $100,000, or at least 110% of the average workers' compensation losses incurred over the most recent three year period, or at least 110% of the total amount of unpaid workers' compensation reserves at the time of application, whichever is greatest); Minn. Stat. section 79A.04, subd. 2 (setting 110 percent security deposit for self-insurance); N.C. Code section 97–185(a1), (b2) (requiring security deposit of at least 100% of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary, but not less than $500,000 or such greater amount or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer); Tenn. Comp. R. & Regs. 0780–01–83–.05(2) (setting 125 percent security deposit); Tx. Labor 407.064(d) (requiring security deposit of the greater of $300,000 or 125% of applicant's incurred liabilities for compensation). Additionally, by adopting this change, OWCP would no longer have to continuously monitor or collect information about each operator's financial situation. Furthermore, as explained in greater detail below, the Department has determined that the anticipated benefits of this change outweigh the costs.

20 CFR 726.106 Type of Security

Current § 726.106 is retained in its entirety. OWCP proposes to make stylistic changes to § 726.106. No alteration in meaning either results from or is intended by these changes. In addition to these stylistic changes, OWCP proposes to revise paragraph (a) to clarify that an operator may not provide any form of security other than those provided for in § 726.104(b). This change merely clarifies existing requirements.

20 CFR 726.107 Deposits of Negotiable Securities With Federal Reserve Banks or the Treasurer of the United States; Authority To Sell Such Securities; Interest Thereon

OWCP proposes to substantially revise § 726.107 to clarify and update the treatment of negotiable securities.

New paragraph (a) retains the requirements that deposits of securities provided for by the regulations in this part must be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by OWCP, or the Treasurer of the United States. New paragraph (a) also adds a requirement that any such deposit must be held in the name of the Department of Labor.

New paragraph (b) provides that, if a self-insurer defaults on its obligations under the Act, OWCP has the power, in its discretion, to (1) collect the interest on such securities as it may become due; (2) sell any or all of the securities; and (3) apply the collected interest or proceeds from the sale of securities to the payment of any benefits for which the self-insurer may be liable. This paragraph largely restates existing requirements.

New paragraph (c) provides that, if a self-insurer with deposits of securities has neither defaulted nor appealed from a determination made by OWCP under § 726.104, OWCP will allow the self-insurer to collect interest on the security deposit. This change will replace existing provisions of current § 726.106, which provide that OWCP may authorize a self-insurer to collect interest on the securities deposited by a self-insurer when OWCP deems it

unnecessary to resort to such securities for the payment of benefits.

In light of these changes, OWCP also proposes to retitle § 726.107 to read: ''How Negotiable Securities Are Handled.''

20 CFR 726.108 Withdrawal of Securities

OWCP proposes to substantially revise current § 726.108, to clarify the circumstances under which a self-insurer may make withdrawals of any form of security.

New paragraph (a) provides that no withdrawal of any form of security (indemnity bonds, negotiable securities, and/or letters of credit) may be made except upon express written authorization by OWCP.

New paragraph (b) provides that, if a self-insurer wishes to withdraw securities, it must submit a written request, which must include (1) an updated actuarial report using OWCP-mandated actuarial assumptions to support why the existing security levels are no longer applicable; or (2) replacement securities in the amount and form approved by OWCP.

These changes are intended to protect the Trust Fund by preventing a self-insured operator from taking actions with respect to its security deposit that could hinder OWCP's ability to use those securities to pay benefits. Furthermore, because new § 726.108 applies to all forms of security, not only negotiable securities, OWCP proposes to retitle § 726.108 to read: ''Withdrawal of Securities.''

20 CFR 726.109 Increase in the Amount of Security

OWCP proposes to delete and replace current § 726.109. New § 726.109 provides that OWCP may, at its discretion, increase the amount of security a self-insurer is required to post whenever OWCP determines that the amount of security on deposit is insufficient to secure the payment of benefits and medical expenses under the Act. OWCP might make such a determination, for example, if it learns that the data on which an operator's liability estimate were based have significantly changed or an operator acquires new mines or employees.

New § 726.109 no longer allows OWCP to reduce an operator's required security amount between self-insurance renewal authorizations. OWCP believes it is not necessary to allow for a reduction in an operator's security amount in between renewals, which would occur every 12 months, because that process would simply allow an operator to relitigate OWCP's original determination, even after an operator has exhausted the appeal process. Disallowing operators from requesting decreases in their security amounts would thus preserve OWCP's limited resources to review and process self-insurance applications. Furthermore, if an operator believes that its projected liabilities have decreased due to a change in circumstances, the operator will have an opportunity to request a lower security amount during the annual renewal process.

Furthermore, reducing an operator's security amount could only increase the risk that an operator's liabilities could transfer to the Trust Fund. This change thus better protects the Trust Fund, consistent with Congress's intent that the coal operators who exposed coal miners to coal dust be responsible for paying black lung benefits, not taxpayers. If an operator disagrees with OWCP's determination to increase its security amount, it would be free to appeal that determination using the appeals process set forth in § 726.116.

In light of these changes, OWCP proposes to retitle § 726.109 to read: ''Increase in the Amount of Security.''

20 CFR 726.110 Filing of Agreement and Undertaking

OWCP proposes to amend § 726.110 to update the requirements for filing of an agreement and undertaking.

Current paragraphs (a) and (b) are retained. Current paragraph (a)(3) provides that, in an agreement and undertaking, the applicant must agree to provide security in a form approved by OWCP and in an amount established by OWCP ''as elected in the application.'' OWCP proposes to delete ''as elected in the application'' to make clear that OWCP, not the applicant, has the final say as to which form or forms of security a particular operator may or must post.

Paragraph (c) is new. It provides that any operator authorized to self-insure must notify OWCP of any changes to its business structure, including the purchase or sale of any coal mining operations, that could affect the operator's liability for benefits under the Act. It further provides that the operator must provide such notification to OWCP within 30 days of such change, but clarifies that an operator's liability following such a change remains governed by Subpart G of these regulations, 20 CFR 725.490–725.497. The purpose of this change is to ensure that operators promptly notify OWCP of changes that could require or justify an increase in the operator's security amount.

Paragraph (d) is also new. It provides that OWCP may, at its discretion, request any information from a self-insured operator that may affect the operator's liability for benefits under the Act. The purpose of this change is likewise to ensure that OWCP can request information that could require or justify an increase in the operator's security amount.

20 CFR 726.111 Notice of Authorization to Self-Insure

Current § 726.111 is retained in its entirety. OWCP proposes to make stylistic changes to § 726.111. No alteration in meaning either results from or is intended by these changes. In addition to these stylistic changes, OWCP proposes to add a new sentence, providing that OWCP will also notify the applicant of the date on which its authorization is effective, the date on which such authorization will expire, and the date by which the applicant must apply to renew that authorization if it intends to continue self-insuring its liabilities. The purpose of this addition is to ensure that the appropriate dates and deadlines are clear and clearly communicated to the applicant.

20 CFR 726.112 Reports Required of Self-Insurer; Examination of Accounts of Self-Insurer

Current § 726.112 is retained in its entirety. OWCP proposes to make stylistic changes to § 726.112. No alteration in meaning either results from or is intended by these changes.

20 CFR 726.113 Disclosure of Confidential Information

Current § 726.113 is retained in its entirety. OWCP proposes to make stylistic changes to § 726.113. No alteration in meaning either results from or is intended by these changes.

20 CFR 726.114 Authorization and Reauthorization Timeframes

OWCP proposes to delete and replace current § 726.114 to substantially revise the timeframe for authorizations and reauthorizations.

New paragraph (a) provides that no initial or renewed authorization to self-insure may be granted for a period in excess of 12 months unless OWCP determines that extenuating circumstances justify a longer period. This change thus shortens the existing maximum allowable authorization period from 18 months to 12 months.[3]

[3] The existing regulations provide an 18-month period only for a company's initial self-insurance authorization. After the initial authorization, self-insurers ''will receive from the Office each year a bond form for execution in contemplation of

The purpose of this change is to require self-insured operators to provide information to OWCP more frequently, thereby ensuring that the security amounts set by OWCP are based on up-to-date information. For instance, operators will be required to submit data concerning their existing claims and employee figures each year, which could alert OWCP to potential changes in an operator's projected liabilities. This process will also allow OWCP to better track other potentially relevant information, including a self-insured operator's subsidiaries, corporate officers, mines, and the like. Requiring renewal applications on an annual basis also makes sense insofar as most operators operate on twelve-month fiscal calendars. This approach would also give outside stakeholders confidence that OWCP is adequately enforcing compliance with these regulations and ensuring that self-insured operators post sufficient security.

New paragraph (b) provides that each operator authorized to self-insure must apply for reauthorization 90 days prior to the 12-month authorization expiration date. This change will ensure that OWCP has the opportunity to act on an operator's application for reauthorization to self-insure before the operator's existing authorization expires.

In light of these changes, OWCP proposes to retitle § 726.114 to read: ''Authorization and Reauthorization Timeframes.''

20 CFR 726.115 Revocation of Authorization to Self-Insure

OWCP proposes to restructure and make stylistic changes to current § 726.115 for clarity. No alteration in meaning either results from or is intended by these changes. In addition, OWCP proposes one substantive change. Current § 726.115 provides that the failure or insolvency of the surety on an operator's indemnity bond can provide good cause for OWCP to withdraw the operator's authorization to self-insure. OWCP proposes to revise § 726.115 to clarify that the same result will obtain if any other financial institution holding any form of security provided by an operator fails or becomes insolvent. OWCP believes this change simply recognizes that there is no valid reason to treat the failure of a surety any differently than the failure of any other financial institution holding security on behalf of an operator. OWCP also proposes to change ''communication of the Office'' to ''request made by OWCP'' for clarity.

20 CFR 726.116 Appeal Process

Section 726.116 is new. It establishes and clarifies the process for an operator to appeal a self-insurance determination made by OWCP.

Paragraph (a) sets forth the process to file an appeal. It provides that any applicant who wishes to appeal a determination made by OWCP must submit a request for review to the Division of Coal Mine Workers' Compensation (DCMWC) within 30 days after such determination. It also provides that the 30-day deadline to appeal may not be extended. This method is consistent with general appellate practices and 30 days provides operators with sufficient time to determine whether to appeal a determination.

Paragraph (b) sets forth the process for submitting briefs and evidence. It provides that, within 30 days of submitting a request for review, the applicant must submit any evidence and/or briefing on which the applicant intends to rely. It also provides that DCMWC may, at its discretion, extend this deadline upon a showing of good cause by the applicant.

Paragraph (c) sets forth the process for requesting an informal conference on an appeal. Paragraph (c)(1) provides that an applicant may request an informal conference and that such requests must be made when the applicant submits briefing in support of its request for review. Paragraph (c)(2) provides that, if an applicant requests a conference, DCMWC will hold a conference between DCMWC, the Office of the Solicitor, and the applicant's representatives. Paragraph (c)(3) provides that, if the applicant does not request a conference, DCMWC may either decide the appeal on the record or schedule a conference on its own initiative. Paragraph (c)(4) provides that the conference will be limited to the issues identified in the applicant's written materials. Again, this method is consistent with general appellate practices and provides an applicant with an adequate opportunity to be heard on its appeal.

Paragraph (d) sets forth DCMWC's obligations in the review process. It provides that DCMWC will review the previous determination in light of the evidence and arguments submitted and issue a supplemental decision.

Paragraph (e) sets forth the process for further appeals. Paragraph (e)(1) provides that any applicant aggrieved by a supplemental determination made by DCMWC may request further review by the Director of OWCP within 30 days of such supplemental determination. Paragraph (e)(2) provides that the Director of OWCP will review the supplemental determination and evidence of record only and that the applicant may not submit new evidence or arguments to the Director of OWCP. Paragraph (e)(3) provides that the Director of OWCP will issue a final agency decision within 30 days of receipt of an appeal. This requirement will ensure that there is a final agency action that is reviewable in the Federal courts as provided in the Administrative Procedure Act, 5 U.S.C. 701 *et seq. See also* 5 U.S.C. 704.

IV. Administrative Law Considerations

A. Information Collection Requirements

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person may generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Although the proposed rules contain information collections within the meaning of the PRA (*see* proposed § 726.102), these collections are not new. They are currently approved for use in the black lung program by OMB under Control Number 1240–0057 (CM–2017 Application or Renewal of Self-Insurance Authority; and CM–2017b Report of Claims Information for Self-Insured Operators). Aside from the removal of the collection associated with form CM–2017a, the requirements for completion of the forms and the information collected on the forms will not change if this rule is adopted in final. Since that is the only change being made to the collections, the overall burdens imposed by the information collections will be reduced if this proposal is adopted.

The information collection package for this proposal has been submitted to OMB for review under 44 U.S.C. 3504, paragraph (c) of the Paperwork Reduction Act of 1995, as amended.

reauthorization, and the submission of such bond duly executed in the amount indicated by the Office will be deemed and treated as such self-insurer's application for reauthorization for the ensuing fiscal year.'' 20 CFR 726.114(a).

Comments may be sent by the methods listed in the **ADDRESSES** section of this preamble.

OWCP is particularly interested in comments that address the following:

- Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- The accuracy of OWCP's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

OMB Control Number: 1240–0057.

Affected Public: Business or other for-profit.

Number of Respondents: 61.

Frequency: Annually.

Number of Responses: 122.

Annual Burden Hours: 244.

Annual Respondent or Recordkeeper Cost: $34,000.

OWCP Form(s): OWCP Forms CM–2017 (Application or Renewal of Self-Insurance Authority), CM–2017b (Report of Claims Information for Self-Insured Operators).

B. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of the available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Under Executive Order 12866, the Office of Information and Regulatory Affairs of OMB determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It also instructs agencies to review ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.''

The Department has considered the proposed rule with these principles in mind and has determined that the anticipated benefits of this regulation outweigh the costs. The discussion below sets out the rule's anticipated economic impact, including factors favoring adoption of the proposal. The Office of Information and Regulatory Affairs of OMB has determined that the Department's rulemaking is not an ''economically significant regulatory action'' under Section 3(f)(1) of Executive Order 12866.

1. Economic Considerations

The proposed rule will have an economic impact on coal mine operators that currently participate in the self-insurance program, as well as any new applicants. The proposed rule nevertheless would be necessary to better protect the Trust Fund, reduce the administrative burdens on OWCP and operators, and bring clarity to the self-insurance process.

As explained in the preamble, prior security requirements have proven inadequate to protect the Trust Fund when a self-insured operator becomes insolvent. From 2014 to 2016, three self-insured coal operators entered bankruptcy with combined collateral of $27.4 million; the resulting transfer of black lung liabilities to the Trust Fund was eventually estimated to be $865 million. *See* U.S. Government Accountability Office, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed,* at 13 (Feb. 2020), available at *https://www.gao.gov/products/gao-20-21.* Had this proposed rule been in effect at the time, the three operators would have had far more in collateral, producing dollar-for-dollar savings for the Trust Fund. Of note, the amount of the coal operators' future black lung liability was originally estimated in 2019 to be around $313 million to $325 million. This was revised to $865 million in 2020 due to a variety of factors, including increases in black lung benefit award rates and higher medical treatment costs. Because the amount of a coal operator's future black lung liability is inherently unpredictable to some degree and can increase over time, requiring collateral at 120% better protects the Trust Fund than a lower percentage.

Moreover, the existing financial scoring process has proven overly cumbersome and costly to OWCP in terms of time and resources. The proposed rule would eliminate the financial scoring process and require all self-insured operators to post security equal to 120 percent of their projected black lung liabilities. By requiring sufficient security based simply on projected liabilities, the financial scoring process is no longer needed, removing the burden on the agency to attempt to assess risk by collecting and analyzing the information in the form CM–2017a. The proposed rule would also remove certain minimum requirements that would become unnecessary, including the requirement that an operator's average current assets over the preceding three years exceed its current liabilities.

This analysis provides the Department's estimate of the economic impact of the proposed rule, both on the economy as a whole and on individual operators. The Department invites comments on this analysis from all interested parties. The Department is particularly interested in comments addressing the Department's evaluation of the impact of the proposed rule on operators that currently participate in the self-insurance program.

a. Data Considered

To determine the proposed rule's general economic impact, the Department calculated how the rulemaking would affect several stakeholder groups, including: (i) OWCP, (ii) taxpayers, (iii) commercially insured operators, and (iv) self-insured operators.

i. OWCP

The proposed rule change does not impose additional demands on OWCP resources and in fact will result in a reduction in administration costs.[4] It

[4] In the 2017 Information Collection Request, when the form CM–2017a was first approved, OWCP estimated that analyzing the information collected in that form would cost the agency $3,279.94 annually. No longer requiring this form should save the agency this cost.

eliminates the need for OWCP to repeatedly perform annual financial health assessments on each self-insured operator. This produces a short-term savings in the administrative costs to perform the analysis, including both costs associated with OWCP time and contractors hired to assist OWCP in this analysis. The proposed rule would require OWCP to review actuarial liability estimates every three years and monitor authorized self-insureds for compliance with eligibility requirements, but these are not new costs because OWCP is already performing those functions under the current guidelines. The savings in administrative expenses is estimated to be, at a minimum, equivalent to the annual cost of one full-time financial analyst.

ii. Taxpayers

The proposed rule provides taxpayers with both short- and long-term benefits. In the short term, taxpayers will benefit from lower administration expenses, because savings can be used elsewhere in the government without requiring additional tax revenues. In the long term, the proposed rule reduces taxpayers' financial exposure by reducing the risk that the Trust Fund—which has borrowed from the U.S. Treasury's general fund nearly every year since 1979 to make needed expenditures—will need to assume liabilities of self-insured operators that become insolvent. The proposed rule would require security deposits that are 120 percent of the actuarial liability, instead of only partial security deposits as is currently the case for most self-insured operators. Under the current guidelines, the Trust Fund remains partially exposed to the risk of coal operator bankruptcies for operators considered at low or medium risk of failing to meet their obligations; under the current guidelines, these operators must provide security for 70 percent and 85 percent respectively of their black lung liabilities. Even operators considered high risk under the current guidelines, and therefore required to provide security for 100 percent of their black lung liabilities, present some risk that their projected liabilities will prove too low. Moreover, due to the pending appeals discussed above, a number of operators have securities on deposit with OWCP that are substantially less than those required under the existing guidelines.

Requiring a 120 percent liability security deposit transfers the risk of insufficient securities to commercial security bond underwriters and banks that specialize in financial risk assessments and are better equipped than OWCP to assess the financial stability of coal mine operators (and who are compensated for assuming that risk via operators' purchase of surety bonds or other forms of security). The proposed rule would require self-insured operators to post additional security in the aggregate, which would cover the claims for which they are responsible if they were to default on their claim payments (based on the operators' current estimates of their actuarial liabilities). This means the burden for self-insured operators' liabilities would remain with them instead of transferring to the Trust Fund and, indirectly, to taxpayers.

iii. Commercially Insured Operators

The proposed rule will not impose additional costs on operators that secure their BLBA liabilities through commercial insurance. The proposed rule affects only the eligibility criteria, security requirements, and other procedures for operators that secure their liabilities by qualifying to self-insure. At most, commercially insured operators might choose to reassess whether, in light of these changes, commercial insurance remains the most cost-effective option for securing their liabilities or, instead, whether to switch to self-insurance. The cost of any such assessment would be *de minimis.*

iv. Self-Insured Operators

The proposed rule could increase costs for current operators that are self-insured. In 2019, OWCP identified a total of 20 operators that were, or recently had been, actively mining coal and participating in the self-insurance program. Four of these operators have since gone bankrupt and are not included in this impact analysis. Of the remaining 16 self-insured operators, seven have commercial insurance for their current operations, but self-insure their legacy liabilities. Nine secure both their current and legacy liabilities through self-insurance.

The proposed rule would apply to the 16 operators noted above. Table 1 lists the 16 operators' actuarially estimated liabilities, securities currently on deposit, the present security requirement under current guidelines, and future security requirements under the proposed rule.

Table 1: Self-Insured Coal Mine Operators Actuarial Liabilities and Security Deposits

Table 1 - Self-Insured Coal Mine Operators Actuarial Liabilities and Security Deposits

all dollar amounts in thousands (,000)

Coal Mine Operator				Present - On Deposit		Present Rule		Proposed Rule	
ID No.	Name	Status	Operator Reported Black Lung Actuarial Liability	Operator Securities on Deposit	Ratio of Securities to Reported Actuarial Liability	Operator Securities Requirement	Ratio of Securities to Reported Actuarial Liability	Operator Securities Requirement	Ratio of Securities to Reported Actuarial Liability
1	Company 1	Active	162,939	24,400	15%	114,057	70%	195,527	120%
2	Company 2	Active	132,536	20,330	15%	92,775	70%	159,043	120%
3	Company 3	Active	111,518	6,900	6%	78,063	70%	133,822	120%
4	Company 4	Active	93,826	2,500	3%	65,678	70%	112,591	120%
5	Company 5	Legacy	57,730	8,400	15%	40,411	70%	69,276	120%
6	Company 6	Legacy	56,802	21,000	37%	39,761	70%	68,162	120%
7	Company 7	Active	30,139	1,500	5%	21,097	70%	36,167	120%
8	Company 8	Legacy	23,935	12,412	52%	16,755	70%	28,722	120%
9	Company 9	Active	21,400	14,079	66%	14,980	70%	25,680	120%
10	Company 10	Legacy	3,297	3,301	100%	3,297	100%	3,956	120%
11	Company 11	Active	656	558	85%	558	85%	787	120%
12	Company 12	Legacy	1,364	1,364	100%	1,159	85%	1,637	120%
13	Company 13	Legacy	1,333	1,133	85%	1,133	85%	1,600	120%
14	Company 14	Legacy	1,230	1,046	85%	1,046	85%	1,476	120%
15	Company 15	Active	746	634	85%	634	85%	895	120%
16	Company 16	Active	205	400	195%	174	85%	246	120%
		Self-Insured Operators Total	699,656	119,957	17%	491,579	70%	839,587	120%

The proposed rule does not impose additional reporting or filing requirements on the coal operators currently in the self-insurance program beyond notifying OWCP of any business structure changes that could affect the operator's liability for benefits under the Act. If anything, the proposed rule decreases administrative burdens. Operators are required to continue updating their actuarial liability estimates on a three-year cycle but are no longer required to file quarterly financial reports. There will be a cost to the operators for the time required to review and understand the rule. Because of the small number of affected establishments, this rule familiarization cost is *de minimis* in aggregate and is not included in the rule's total cost estimate.

The proposed rule requires self-insured operators to adjust the amount of their security deposits to reach 120 percent of their reported actuarial black lung liability. Table 1 reflects that 15 of the 16 current self-insured operators would be required to increase their security deposits as a result. For each operator, the cost of the increase in security deposits depends on which security deposit option the operator employs (since different security options have different costs) and amount of the required increase.

Operators with security deposits in the form of indemnity bonds will incur a cost determined by the commercial bond underwriters. OWCP does not have direct information on the cost of these bonds, as pricing is a function of multiple qualitative and quantitative attributes of each operator and is determined by underwriters on a case-by-case basis. Each underwriter has their own pricing formula and offers various payment options. To estimate the cost impacts of the proposed rule, an annual premium ranging from 2 percent to 12 percent of the additional security was used as an estimate. This range is based on a review of public data from several different surety companies; however, actual costs could be higher or lower.[5] The agency welcomes comment on these assumptions and estimates. Additionally, this analysis focuses solely on surety bonds because that is both the most widely used option among currently self-insured operators and the most cost-effective option.

For operators with security deposits in the form of negotiable securities, the additional costs would consist of the opportunity costs of the additional deposits (*i.e.,* the difference in return between funds held in such accounts and funds invested elsewhere, such as in higher-performing investments or reinvested into the operations of the business itself). One common convention to estimate hypothetical returns on forgone investments is to use a company or industry-level Weighted Average Cost of Capital (WACC); the median WACC for the metals and mining industry is currently around 9.4 percent, although the WACC for coal mining companies specifically, and in particular for individual coal mining companies, may be higher or lower. The opportunity costs for these operators could be estimated by calculating the difference between their WACC and the annual return earned on their security deposit and multiplying that figure by the dollar increase in their security. OWCP has not quantified these costs for two principal reasons. First, as noted above, most self-insured operators use indemnity bonds as security. OWCP does not anticipate that these operators will begin using negotiable securities. Second, annual indemnity bond costs are likely to be lower than the one-time payment of negotiable securities and associated opportunity costs, making indemnity bonds the more cost-effective option. As this economic analysis demonstrates, OWCP predicts that any increased indemnity bond costs associated with this rulemaking will not have a significant impact on self-insured operators. Furthermore, any operators that currently use negotiable securities to secure some or all of their liabilities can continue using those securities in combination with indemnity bonds to comply with any increased security requirement (*i.e.,* some portion of the operator's liabilities could be secured with negotiable securities and the remainder could be secured with indemnity bonds).

Table 2 calculates the estimated increased costs of a larger indemnity bond for each operator and compares this figure to each operator's annual revenues. Annual revenues are represented by a three-year average over the 2018–2020 time period, as reported by S&P or operator-provided financial statements. Annual costs are estimated as the average of the maximum and minimum annual premium (*i.e.,* the midpoint of the 2 percent to 12 percent range). As shown in Table 2, the estimated annual impact for operators as a percentage of annual revenue ranges from a high of 0.941 percent to less than 0.1 percent (including one negative value).[6]

OWCP invites additional information from commenters on the cost of these bonds.

[5] In reaching this estimate, OWCP reviewed publicly available estimates of surety bond premiums from BondExchange; Bryant Surety Bonds; Insureon; JW Surety Bonds; Lance Surety Bond Associates, Inc.; NNA Surety Bonds; Surety Bonds Direct; Surety Solutions; and Value Penguin. Note that these are for surety bonds generally, not surety bonds for coal companies specifically. The 2 to 12 percent range was then developed based on this public data.

[6] Surety bonds are generally paid for annually, and the premium is paid up front at the beginning of the year or charged a finance fee for a payment plan. Discounting is not presented in Table 2 because the average estimated cost represents one annual premium payment, rather than the total net present value of all future payments.

Table 2: Estimated Annual Cost of Increased Security Deposit in the Form of Indemnity Bonds

Table 2 - Estimated Annual Cost of Increased Security Deposit

all dollar amounts in thousands (,000)

Coal Mine Operator		Proposed Security Deposit = 120%								
ID No.	Name	Operator Reported Black Lung Actuarial Liability	Operator Securities on Deposit	Operator Securities Proposed Requirement	Change in Secured Position[1]	Minimum Estimated Cost of Change in Securities	Maximum Estimated Cost of Change in Securities	Average Estimated Cost of Change in Securities	Average Annual Revenue	Estimated Operator Impact as a Percent of Revenue
1	Company 1	162,939	24,400	195,527	171,127	3,423	20,535	11,979	1,272,800	0.941%
2	Company 2	132,536	20,330	159,043	138,713	2,774	16,646	9,710	4,362,100	0.223%
3	Company 3	111,518	6,900	133,822	126,922	2,538	15,231	8,885	2,060,967	0.431%
4	Company 4	93,826	2,500	112,591	110,091	2,202	13,211	7,706	1,816,233	0.424%
5	Company 5	57,730	8,400	69,276	60,876	1,218	7,305	4,261	1,461,400	0.292%
6	Company 6	56,802	21,000	68,162	47,162	943	5,659	3,301	1,143,000	0.289%
7	Company 7	30,139	1,500	36,167	34,667	693	4,160	2,427	1,764,233	0.138%
8	Company 8	23,935	12,412	28,722	16,310	326	1,957	1,142	1,603,500	0.071%
9	Company 9	21,400	14,079	25,680	11,601	232	1,392	812	15,558,533	0.005%
10	Company 10	3,297	3,301	3,956	655	13	79	46	134,933	0.034%
11	Company 11	656	558	787	230	5	28	16	70,826	0.023%
12	Company 12	1,364	1,364	1,637	272	5	33	19	636,657	0.003%
13	Company 13	1,333	1,133	1,600	467	9	56	33	11,080,000	0.000%
14	Company 14	1,230	1,046	1,476	430	9	52	30	6,014,500	0.001%
15	Company 15	746	634	895	261	5	31	18	68,545	0.027%
16	Company 16	205	400	246	(154)	(3)	(18)	(11)	1,728,700	-0.001%
	Self-Insured Operators Total	699,656	119,957	839,587	719,631	14,393	86,356	50,374	50,776,928	0.099%
Commercially Insured Operators Total[2]										0.000%
Coal Mine Industry Total (Self-Insured + Commercially Insured)										0.053%

1. The change represents the difference between the proposed requirement and the securities currently on deposit.
2. Commercially Insured Operators includes all other coal mine operators other than the self-insured operators listed.

b. Economic Impact Summary

The Office of Management and Budget uses a $100 million-dollar annual threshold for determining the proposed rule's economic significance. *See, e.g.,* E.O. 12866 (defining regulation that has annual effect on the economy of $100 million or more as ''significant''). Based on this test, the self-insurance proposal would not be ''economically significant.''

Operator securities on deposit are estimated to change by nearly $720 million. This, however, represents an estimate of the projected liabilities over the lifetime of all claims for all self-insured companies. Even if they were all to go bankrupt simultaneously—which is extremely unlikely—the estimated liabilities represent benefits payments over the lifetime of the impacted miners and survivors. As an illustration, consider the annual payout in recent years from the estimated $865 million transfer of black lung liabilities to the Trust Fund as a result of the three bankruptcies from 2014 to 2016. From fiscal years 2015 through 2022, the Trust Fund paid out between $8 million and $30 million per year to active beneficiaries as a direct result of those three bankruptcies. OWCP does not have the ability to predict bankruptcies with certainty, as explained elsewhere in this preamble as a rationale for proposing to eliminate the financial scoring process. Nevertheless, given the fact that $865 million in projected liabilities has thus far not resulted in more than $30 million in disbursements to active beneficiaries per year, OWCP predicts that the share of benefits paid from this additional $720 million in securities on deposit will not exceed $30 million in any given year.

Furthermore, OWCP estimates ranges from approximately $14 million to $86 million on an annual basis, with a mid-range estimate of $50 million. In Table 2 above, the minimum and maximum estimated costs of change in securities are based on 2 percent and 12 percent, respectively, of the total change in secured position for each operator. OWCP used an annual premium ranging from 2 percent to 12 percent of the additional security based on a review of public data from several different surety companies. OWCP used estimates for surety bonds because that is both the most widely used option among currently self-insured operators and likely to be the most cost-effective option.

The combined opportunity cost on the current self-insurance operators is less than 0.1 percent of aggregate average annual revenues. Even for the operator facing the largest increase as a portion of revenues (Company 1 in Table 2), the expected impact is less than 1 percent of average annual revenues. The impact on the coal industry overall is smaller than that of the self-insured operator group because there is no impact (0.0 percent) on commercially insured operators.

2. Other Considerations

The Department considered alternative options and methods before proposing these changes to the self-insurance program. Specifically, the Department considered imposing a 100 percent security requirement (20 points lower than the proposed rule) or a 140 percent security requirement (20 points greater than the proposed rule). These alternative requirements were subjectively selected for the purpose of sensitivity testing. In both cases the overall impact remains below the aggregate 1 percent of revenue thresholds.

After considering these alternatives, the Department determined that the 120 percent security requirement is more cost-effective than the 100 percent or 140 percent requirements. Relative to the hypothetical 100 percent requirement, the 120 percent requirement better protects the Trust Fund because if an operator's actuarial estimates prove too low, any liabilities not covered by the operator's securities would ultimately transfer to the Trust Fund. Even when operators use OWCP's mandated actuarial assumptions, the operator's actuarial report will reflect, ultimately, a best estimate of the operator's existing and future liabilities. Insofar as any projection of future events is inherently fallible, an operator's actual liabilities could turn out to be greater than its earlier estimates. Indeed, prior operator

bankruptcies have demonstrated that an operator's actual black lung liabilities can far exceed their prior actuarially projected liabilities. *See* U.S. Government Accountability Office, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed,* at 13 (Feb. 2020), available at *https://www.gao.gov/products/gao-20-21* (noting that the estimated transfer in benefit liabilities to the Trust Fund pursuant to three bankruptcies went from $325 million in 2019 to $865 million in 2020). This approach is also consistent with the practices of some state workers' compensation programs, as described in more detail in the Section-by-Section Explanation. *See, e.g.,* Minn. Stat. section 79A.04, subd. 2 (setting 110 percent security deposit for self-insurance); Tenn. Comp. R. & Regs. 0780–01–83-.05(2) (setting 125 percent security deposit).

The hypothetical 140 percent requirement, by contrast, proved too onerous. As reflected in Table 2B below, although the overall impact of the 140 percent requirement remained below the aggregate 1 percent of revenue thresholds, it did have an impact on at least one operator in excess of the 1 percent of revenue threshold.

OWCP also considered not proposing any changes, thereby maintaining the current existing security levels. As with the alternative of requiring 100 percent for all operators, this approach would not adequately protect the Trust Fund and would maintain the challenges and administrative burden of the financial scoring model described earlier in this preamble. That model was not able to consistently predict which operators were at risk of experiencing financial difficulties, and it imposed significant burdens on OWCP to continuously monitor the financial health of individual operators on a quarterly basis. OWCP therefore considered, but ultimately rejected, maintaining the financial scoring model.

In light of all of these considerations, the Department has preliminarily determined that setting a security requirement as a single percentage of projected black lung liabilities, regardless of assessments of financial health, and setting that percentage at 120 percent strikes the right balance between adequately protecting the Trust Fund and accommodating operators' interests. OWCP seeks comment on this preliminary determination.

Table 2A: Estimated Annual Costs of Increased Security Deposit at 100 Percent

Table 2A - Estimated Annual Cost of Increased Security Deposit

all dollar amounts in thousands (,000)

Coal Mine Operator		Proposed Security Deposit = 100%								
ID No.	Name	Operator Reported Black Lung Actuarial Liability	Operator Securities on Deposit	Operator Securities Proposed Requirement	Change in Secured Position[1]	Minimum Estimated Cost of Change in Securities	Maximum Estimated Cost of Change in Securities	Average Estimated Cost of Change in Securities	Average Annual Revenue	Estimated Operator Impact as a Percent of Revenue
1	Company 1	162,939	24,400	162,939	138,539	2,771	16,625	9,698	1,272,800	0.762%
2	Company 2	132,536	20,330	132,536	112,206	2,244	13,465	7,854	4,362,100	0.180%
3	Company 3	111,518	6,900	111,518	104,618	2,092	12,554	7,323	2,060,967	0.355%
4	Company 4	93,826	2,500	93,826	91,326	1,827	10,959	6,393	1,816,233	0.352%
5	Company 5	57,730	8,400	57,730	49,330	987	5,920	3,453	1,461,400	0.236%
6	Company 6	56,802	21,000	56,802	35,802	716	4,296	2,506	1,143,000	0.219%
7	Company 7	30,139	1,500	30,139	28,639	573	3,437	2,005	1,764,233	0.114%
8	Company 8	23,935	12,412	23,935	11,523	230	1,383	807	1,603,500	0.050%
9	Company 9	21,400	14,079	21,400	7,321	146	879	512	15,558,533	0.003%
10	Company 10	3,297	3,301	3,297	(4)	(0)	(1)	(0)	134,933	0.000%
11	Company 11	656	558	656	98	2	12	7	70,826	0.010%
12	Company 12	1,364	1,364	1,364	(0)	(0)	(0)	(0)	636,657	0.000%
13	Company 13	1,333	1,133	1,333	200	4	24	14	11,080,000	0.000%
14	Company 14	1,230	1,046	1,230	184	4	22	13	6,014,500	0.000%
15	Company 15	746	634	746	112	2	13	8	68,545	0.011%
16	Company 16	205	400	205	(195)	(4)	(23)	(14)	1,728,700	-0.001%
	Self-Insured Operators Total	699,656	119,957	699,656	579,700	11,594	69,564	40,579	50,776,928	0.080%
Commercially Insured Operators Total[2]										0.000%
	Coal Mine Industry Total (Self-Insured + Commercially Insured)									0.043%

1. The change represents the difference between the proposed requirement and the securities currently on deposit.
2. Commercially Insured Operators includes all other coal mine operators other than the self-insured operators listed.

Table 2B: Estimated Annual Costs of Increased Security Deposit at 140 Percent

Table 2B - Estimated Annual Cost of Increased Security Deposit

all dollar amounts in thousands (,000)

Coal Mine Operator		Proposed Security Deposit = 140%								
ID No.	Name	Operator Reported Black Lung Actuarial Liability	Operator Securities on Deposit	Operator Securities Proposed Requirement	Change in Secured Position[1]	Minimum Estimated Cost of Change in Securities	Maximum Estimated Cost of Change in Securities	Average Estimated Cost of Change in Securities	Average Annual Revenue	Estimated Operator Impact as a Percent of Revenue
1	Company 1	162,939	24,400	228,115	203,715	4,074	24,446	14,260	1,272,800	1.120%
2	Company 2	132,536	20,330	185,550	165,220	3,304	19,826	11,565	4,362,100	0.265%
3	Company 3	111,518	6,900	156,125	149,225	2,985	17,907	10,446	2,060,967	0.507%
4	Company 4	93,826	2,500	131,356	128,856	2,577	15,463	9,020	1,816,233	0.497%
5	Company 5	57,730	8,400	80,822	72,422	1,448	8,691	5,070	1,461,400	0.347%
6	Company 6	56,802	21,000	79,523	58,523	1,170	7,023	4,097	1,143,000	0.358%
7	Company 7	30,139	1,500	42,195	40,695	814	4,883	2,849	1,764,233	0.161%
8	Company 8	23,935	12,412	33,509	21,097	422	2,532	1,477	1,603,500	0.092%
9	Company 9	21,400	14,079	29,960	15,881	318	1,906	1,112	15,558,533	0.007%
10	Company 10	3,297	3,301	4,616	1,314	26	158	92	134,933	0.068%
11	Company 11	656	558	919	361	7	43	25	70,826	0.036%
12	Company 12	1,364	1,364	1,910	545	11	65	38	636,657	0.006%
13	Company 13	1,333	1,133	1,866	733	15	88	51	11,080,000	0.000%
14	Company 14	1,230	1,046	1,722	676	14	81	47	6,014,500	0.001%
15	Company 15	746	634	1,044	410	8	49	29	68,545	0.042%
16	Company 16	205	400	287	(113)	(2)	(14)	(8)	1,728,700	0.000%
	Self-Insured Operators Total	699,656	119,957	979,519	859,562	17,191	103,147	60,169	50,776,928	0.118%
Commercially Insured Operators Total[2]										0.000%
Coal Mine Industry Total (Self-Insured + Commercially Insured)										0.063%

1. The change represents the difference between the proposed requirement and the securities currently on deposit.
2. Commercially Insured Operators includes all other coal mine operators other than the self-insured operators listed.

C. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires an agency to prepare a regulatory flexibility analysis when it proposes regulations that will have ''a significant economic impact on a substantial number of small entities'' or to certify that the proposed regulations will have no such impact, and to make the analysis or certification available for public comment.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. For the mining industry, SBA uses three levels of employee counts to define small mining operations:

NAICS 212111 Bituminous Coal and Lignite Surface Mining—1,250 employees

NAICS 212112 Bituminous Coal Underground Mining—1,500 employees

NAICS 212113 Anthracite Mining—250 employees

According to the SBA criteria, 6 of the 16 self-insured operators, or 38 percent, are considered small firms. Under this proposed rule, the combined impact on these 6 operators would be 0.2 percent of annual revenues, with a range from 0.1 percent to 0.4 percent. Again, these impacts are very small, and for that reason the proposed rule is not considered to have a significant economic impact on a substantial number of small operators. The overall impact on the large operators is less than 0.1 percent of annual revenues.[7]

Details of the factual basis for economic significance are provided in the Industry Profile and Analysis section of this report. Tables 3A and 3B show the impact on small and large self-insured operators.

[7] The RFA does not define ''significant'' or ''substantial.'' 5 U.S.C. 601. It is widely accepted, however, that ''[t]he agency is in the best position to gauge the small entity impacts of its regulations.'' SBA Office of Advocacy, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,'' at 18 (August 2017), available at *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.* One measure for determining whether an economic impact is ''significant'' is the percentage of revenue affected. For this rule, the Department used as a standard of significant economic impact whether the costs for a small entity equal or exceed 3 percent of the entity's annual revenue.

The Department has used the threshold of 3 percent of revenues for the definition of significant economic impact in a number of recent rulemakings. *See, e.g.,* Wage and Hour Division, Establishing a Minimum Wage for Contractors, Notice of Proposed Rulemaking, 79 FR 34568, 34603 (June 17, 2014); Office of Federal Contract Compliance Programs, Government Contractors, Requirement To Report Summary Data on Employee Compensation, Notice of Proposed Rulemaking, 79 FR 46562, 46591 (Aug. 8, 2014). The 3 percent standard is also consistent with the standards utilized by various other Federal agencies in conducting their regulatory flexibility analyses. *See, e.g.,* Department of Health and Human Services Centers for Medicare & Medicaid Services, ''Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II; Final Rule,'' 79 FR 27105, 27151 (May 12, 2014).

Table 3A: Small Self-Insured Coal Mine Operators

Table 3A - Small Self-Insured Coal Mine Operators

Coal Mine Operator					Average Annual Revenue (in millions)	Employee Counts			
ID No.	Name	Status	Operations Type	Rule Change Impact		2018	2019	2020	3 Yr Average
5	Company 5	Legacy	Surface	0.292%	1,461	1,180	1,171	1,133	1,161
6	Company 6	Legacy	Underground	0.289%	1,143	1,395	1,417	1,401	1,404
10	Company 10	Legacy	Surface	0.034%	135	400	400	500	433
11	Company 11	Active	Surface	0.023%	71	183	183	183	183
12	Company 12	Legacy	Surface	0.003%	637	950	950	950	950
15	Company 15	Active	Anthracite	0.027%	69	142	142	142	142
			Small Self-Insured Operators Total	0.218%	3,515	4,250	4,263	4,309	4,274

Table 3B: Large Self-Insured Coal Mine Operators

Table 3B - Large Self-Insured Coal Mine Operators

Coal Mine Operator					Average Annual Revenue (in millions)	Employee Counts			
ID No.	Name	Status	Operations Type	Rule Change Impact		2018	2019	2020	3 Yr Average
1	Company 1	Active	Surface	0.941%	1,273	1,772	1,792	1,494	1,686
2	Company 2	Active	Surface	0.223%	4,362	7,400	6,600	4,600	6,200
3	Company 3	Active	Surface	0.431%	2,061	3,822	3,700	3,203	3,575
4	Company 4	Active	Surface	0.424%	1,816	4,420	4,360	3,250	4,010
7	Company 7	Active	Underground	0.138%	1,764	3,599	3,602	2,902	3,368
8	Company 8	Legacy	Surface	0.050%	1,604	6,000	6,000	6,000	6,000
9	Company 9	Active	Surface	0.000%	15,559	17,582	17,408	16,787	17,259
13	Company 13	Legacy	Surface	0.000%	11,080	12,097	12,097	11,316	11,837
14	Company 14	Legacy	Surface	0.001%	6,015	5,547	5,547	5,539	5,544
16	Company 16	Active	Surface	-0.001%	1,729	2,863	2,944	3,011	2,939
			Large Self-Insured Operators Total	0.016%	47,262	65,102	64,050	58,102	62,418

Based on these facts, the Department certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, an initial regulatory flexibility analysis is not required. The Department, however, invites comments from members of the public who believe the proposed rule would have a significant economic impact on a substantial number of small coal mine operators. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. See 5 U.S.C. 605.

Industry Profile and Analysis

Types of Operations

The United States coal mine industry consists of hundreds of mines controlled by hundreds of operators. Coal mine operators vary in size from owners of multiple mines to operators of single mines. The two main categories of coal mining operations are surface and underground, but many operators are also involved in other coal-related enterprises, including steel production, mining technology and support services, petroleum products, other mineral mining operations, and energy generation. Coal mining is the only focus of some operators, while for others it is only incidental to their main enterprise. For purposes of this analysis, operators engaged in surface mining or with multiple streams of revenue were classified as Surface operations (NAICS = 212111). Other operators were classified as Underground (NAICS = 212112) or Anthracite (NAICS = 212113) depending on their main source of revenues. The SBA classification of small entities was applied according to the operator's NAICS code type of operations.

Revenues Versus Coal Production

Typically, coal operators are analyzed on the basis of measures such as coal production, coal reserves, and mine productivity. Among self-insured operators, there are differences in the proportion of coal mining operations covered by self-insurance, and the proportion of operators' total operations that are mining related. To determine the impact of the rule change, total company revenues were used, because an individual operator could have multiple revenue streams available to support their workers' compensation costs. As noted, 38 percent of the self-insured operators are classified as ''small'' using employee counts, under the SBA's definitions. However, 50 percent are classified as ''major'' coal producers based on coal production. The ''major'' classification is based on the US Energy Information Administration (''EIA'') criterion—of producing more than 5 million short tons of coal per year.

Table 4: Coal Production by Operator

Table 4 - Coal Production by Operator

Coal Mine Operator			Coal Production 1000mst					
ID No.	Name	Major US Coal Producer	2018	2019	2020	3 Yr Average	% of Production	Business Size
1	Company 1	Yes	27,592	27,285	18,790	24,556	3.7%	Large
2	Company 2	Yes	155,523	138,731	104,814	133,023	20.0%	Large
3	Company 3	Yes	100,254	87,892	61,705	83,284	12.5%	Large
4	Company 4	Yes	22,811	22,317	13,897	19,675	3.0%	Large
5	Company 5	No	384	108	175	222	0.0%	Small
6	Company 6	Yes	7,735	8,469	7,864	8,023	1.2%	Small
7	Company 7	Yes	40,343	40,555	26,900	35,933	5.4%	Large
8	Company 8	No	1,209	1,334	1,028	1,190	0.2%	Large
9	Company 9	No	1,276	1,354	456	1,028	0.2%	Large
10	Company 10	Yes	37,282	35,755	30,801	34,613	5.2%	Small
11	Company 11	No	411	381	357	383	0.1%	Small
12	Company 12	Yes	9,057	8,707	8,146	8,637	1.3%	Small
13	Company 13	No	2,211	2,120	1,612	1,981	0.3%	Large
14	Company 14	No	0	0	0	0	0.0%	Large
15	Company 15	No	138	150	115	134	0.0%	Small
16	Company 16	No	4,085	3,716	3,737	3,846	0.6%	Large
Self-Insured Operators Total			410,310	378,875	280,397	356,527	53.5%	
Coal Mine Industry Total			756,167	706,309	535,434	665,970	100.0%	
							% of Production	
Major US Coal Producer: Self Insured			400,597	369,711	272,917	347,742	60.2%	
Major US Coal Producer: Commercially Insured			265,533	239,179	185,690	230,134	39.8%	
Total Major US Coal Producers			666,130	608,890	458,607	577,876	100.0%	
Non-Major Self Insured			9,713	9,164	7,480	8,786	10.0%	
Non-Major Commercially Insured			80,324	88,255	69,347	79,309	90.0%	
Total Non-Major US Coal Producers			90,037	97,419	76,827	88,094	100.0%	

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.,* directs agencies to assess the effects of Federal regulatory actions on state, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' The proposed rule does not include any Federal mandate that may result in increased expenditures by state, local, or tribal Governments, or increase expenditures by the private sector by more than $100 million, and therefore is not covered by the Unfunded Mandates Reform Act.

E. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' E.O. 13132, 64 FR 43255 (Aug. 4, 1999). The proposed rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' if promulgated as a final rule. *Id.*

F. Executive Order 12988 (Civil Justice Reform)

The proposed rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

G. Congressional Review Act

The proposed rule is not a ''major rule'' as defined in the Congressional Review Act, 5 U.S.C. 801 *et seq.* If promulgated as a final rule, this rule will not result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local Government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Coal miners, Mines, Penalties.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 726 as follows:

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 1. The authority citation for part 726 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.,* 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.;* 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015)); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

■ 2. For the reasons set forth in the preamble, revise Subpart B as follows:

Subpart B—Authorization of Self-Insurers

Sec.

726.101 Who May be Authorized to Self-Insure.
726.102 Application for Authority to Become a Self-Insurer; How Filed; Information to be Submitted.
726.103 Application for Authority to Self-Insure; Effect of Regulations Contained in this Part.
726.104 Action by OWCP upon Application of Operator.
726.105 Fixing the Amount of Security.
726.106 Type of Security.

726.107 How Negotiable Securities Are Handled.
726.108 Withdrawal of Securities.
726.109 Increase in the Amount of Security.
726.110 Filing of Agreement and Undertaking.
726.111 Notice of Authorization to Self-Insure.
726.112 Reports Required of Self-Insurer; Examination of Accounts of Self-Insurer.
726.113 Disclosure of Confidential Information.
726.114 Authorization and Reauthorization Timeframes.
726.115 Revocation of Authorization to Self-Insure.
726.116 Appeal Process.

§ 726.101 Who May be Authorized to Self-Insure.

(a) Pursuant to section 423 of part C of title IV of the Act, authorization to self-insure against liability incurred by coal mine operators on account of the total disability or death of miners due to pneumoconiosis may be granted or denied in the discretion of the Secretary. The provisions of this subpart describe the minimum requirements established by the Secretary for determining whether any particular coal mine operator may be authorized as a self-insurer.

(b) The minimum requirements which must be met by any operator seeking authorization to self-insure are as follows:

(1) The operator must demonstrate the administrative capacity to fully service such claims as may be filed against it; and,

(2) Such operator must obtain security, in a form approved by OWCP (see § 726.104) and in an amount to be determined by OWCP (see § 726.105).

(c) No application will be approved until OWCP receives security in the amount and in the form determined by OWCP. If the applicant is seeking authorization to self-insure for the first time, it is not authorized to self-insure while its application is under review.

(d) No operator whose application for authorization to self-insure or to renew authorization to self-insure may reapply until 12 months after a final decision denying such application.

§ 726.102 Application for Authority to Become a Self-Insurer; How Filed; Information to be Submitted.

(a) How filed. An application for authorization to self-insure or to renew authorization to self-insure must be submitted electronically in the manner prescribed by OWCP. Such application must be signed by the applicant and if the applicant is not an individual, by the principal officer of the applicant duly authorized to make such application.

(b) Information to be submitted. Each application for authority to self-insure or to renew authorization to self-insure must contain the following:

(1) Any application forms required by OWCP.

(2) An actuarial report using OWCP-mandated assumptions, unless the applicant has submitted an actuarial report within the preceding 3 years. An applicant must submit a new actuarial report every 3 years. The operator may submit an additional actuarial report using alternate assumptions. Such additional report must be accompanied by a statement from the applicant explaining why it believes the alternative assumptions are appropriate.

(3) A statement of the employer's payroll report for each of the preceding 3 years.

(4) A statement of the average number of employees engaged in employment within the purview of the Act for each of the preceding 3 years.

(5) A list of the mine or mines to be covered by any particular self-insurance agreement. Each such mine or mines listed shall be described by name and reference shall be made to the Federal Identification Number assigned such mine by the Bureau of Mines, U.S. Department of the Interior.

(6) A statement demonstrating the applicant's administrative capacity to provide or procure adequate servicing for a claim including both medical and dollar claims.

(7) In addition to the aforementioned, OWCP may in its discretion, require the applicant to submit such further information or such evidence as OWCP may deem necessary.

(c) Who may file. An application for authorization to self-insure (including an application to renew authority to self-insure) may be filed by any parent or subsidiary corporation, partner or partnership, party to a joint venture or joint venture, individual, or other business entity which may be determined liable for the payment of black lung benefits under part C of title IV of the Act, regardless of whether such applicant is directly engaged in the business of mining coal. However, in each case for which authorization to self-insure is granted, the agreement and undertaking filed pursuant to § 726.110 and the security deposit must be respectively filed by and deposited in the name of the applicant only.

§ 726.103 Application for Authority to Self-Insure; Effect of Regulations Contained in this Part.

As appropriate, each of the regulations, interpretations and requirements contained in this part 726 including those described in subpart C of this part are binding upon each applicant under this subpart, and the applicant's consent to be bound by all requirements of the said regulations are deemed to be included in and a part of the application, as fully as though written therein.

§ 726.104 Action by OWCP upon Application of Operator.

(a) Within 30 days after determining that an applicant's application for authorization to self-insure or to renew authorization to self-insure is complete, OWCP will issue a written determination either denying the application or determining the amount of security which must be given by the applicant to guarantee the payment of benefits and the discharge of all other obligations which may be required of such applicant under the Act. OWCP may extend the 30-day deadline if it determines that additional evidence is needed or that the applicant's evidence is not in compliance with OWCP's requirements.

(b) The applicant will thereafter be notified that they may give security in the amount fixed by OWCP (see § 726.105):

(1) In the form of an indemnity bond with sureties satisfactory to OWCP;

(2) By a deposit of negotiable securities with a Federal Reserve Bank in compliance with §§ 726.106(c) and 726.107; or

(3) In the form of a letter of credit issued by a financial institution satisfactory to OWCP (except that a letter of credit is not sufficient by itself to satisfy a self-insurer's obligations under this part).

(c) If the applicant is receiving authorization to self-insure for the first time, OWCP will notify the applicant that:

(1) its authorization to self-insure is contingent upon submitting the required security and completed agreement and undertaking; and

(2) the applicant's authorization to self-insure is effective for 12 months from the date such security and completed agreement and undertaking are received by OWCP.

(d) If OWCP renews the applicant's authorization to self-insure, OWCP will notify the applicant that:

(1) If there are no changes in the required security amount, the applicant's authorization to self-insure is granted and effective for 12 months from the date the applicant's completed agreement and undertaking is received by OWCP or

(2) If changes are needed to the existing security amount, the applicant's

authorization to self-insure is not granted until the applicant has submitted the required security and signed agreement and undertaking. The applicant's authorization to self-insure will be effective for 12 months from the date such updated security and completed agreement and undertaking are received by OWCP.

(e) Any applicant who cannot meet the security deposit requirements imposed by OWCP should proceed to obtain a commercial policy or contract of insurance and submit proof of such coverage within 30 days after OWCP notifies the applicant of its decision. Any applicant for authorization to self-insure whose application has been denied or who believes that the security deposit requirements imposed by OWCP are excessive may appeal such determination in the manner set forth in § 726.116.

§ 726.105 Fixing the Amount of Security.

Any operator approved to self-insure must submit 120 percent of the actuarial estimated liabilities (all present and future liabilities), as determined by OWCP based on the actuarial report or reports submitted with the operator's application or on file with OWCP, other information submitted with the operator's application, or any other materials or information that OWCP deems relevant.

§ 726.106 Type of Security.

(a) OWCP will determine the type or types of security which an applicant must or may procure. An operator may not provide any form of security other than those provided for in § 726.104(b).

(b) In the event the indemnity bond option is selected, the bond must be in such form and contain such provisions as OWCP prescribes: *Provided* that only corporations may act as sureties on such indemnity bonds. In each case in which the surety on any such bond is a surety company, such company must be one approved by the U.S. Treasury Department under the laws of the United States and the applicable rules and regulations governing bonding companies (see Department of Treasury's Circular–570).

(c) If the form of negotiable securities is selected, the operator must deposit the amount fixed by OWCP in any negotiable securities acceptable as security for the deposit of public moneys of the United States under regulations issued by the Secretary of the Treasury. (See 31 CFR part 225.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 726.107 How Negotiable Securities Are Handled.

(a) Deposits of securities provided for by the regulations in this part must be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by OWCP, or the Treasurer of the United States, and must be held in the name of the Department of Labor.

(b) If the self-insurer defaults on its obligations under the Act, OWCP has the power, in its discretion, to:

(1) collect the interest as it may become due;

(2) sell any or all of the securities; and

(3) apply the collected interest or proceeds from the sale of securities to the payment of any benefits for which the self-insurer may be liable.

(c) If a self-insurer with deposits of securities has neither defaulted nor appealed from a determination made by OWCP under § 726.104, OWCP may allow the self-insurer to collect interest on the security deposit.

§ 726.108 Withdrawal of Securities.

(a) Withdrawal of any form of security (indemnity bonds, negotiable securities, and/or letters of credit) is prohibited except upon express written authorization by OWCP.

(b) If a self-insurer wishes to withdraw securities, it must submit a written request, and must submit either an updated actuarial report using OWCP-mandated actuarial assumptions to support why the existing security levels are no longer applicable or replacement securities in the amount and form approved by OWCP. If OWCP approves the operator's request to withdraw and replace its securities, the operator must provide the replacement securities before it withdraws its existing securities.

§ 726.109 Increase in the Amount of Security.

OWCP may, at its discretion, increase the amount of security a self-insurer is required to post whenever it determines that the amount of security on deposit is insufficient to secure the payment of benefits and medical expenses under the Act.

§ 726.110 Filing of Agreement and Undertaking.

(a) In addition to the requirement that adequate security be procured as set forth in this subpart, the applicant for the authorization to self-insure must, as a condition precedent to receiving such authorization, execute and file with OWCP an agreement and undertaking in a form prescribed and provided by OWCP in which the applicant must agree:

(1) To pay when due, as required by the Act, all benefits payable on account of total disability or death of any of its employee-miners;

(2) To furnish medical, surgical, hospital, and other attendance, treatment, and care as required by the Act;

(3) To provide security in a form approved by OWCP (see § 726.104) and in an amount established by OWCP (see § 726.105);

(4) To authorize OWCP to sell any negotiable securities so deposited or any part thereof, and to pay from the proceeds thereof such benefits, medical, and other expenses and any accrued penalties imposed by law as OWCP may find to be due and payable.

(b) When an applicant has provided the requisite security, it must submit to OWCP a completed agreement and undertaking, together with satisfactory proof that its obligations and liabilities under the Act have been secured.

(c) Any operator authorized to self-insure must notify OWCP of any changes to its business structure, including the purchase, sale, or lease of any coal mining operations, that could affect the operator's liability for benefits under the Act. The operator must provide such notification to OWCP within 30 days of such change. In all events, however, an operator's liability following a change or sale is governed by Subpart G of these regulations, 20 CFR 725.490–725.497.

(d) OWCP may, at its discretion, require an operator to provide any information that may affect the operator's liability for benefits under the Act.

§ 726.111 Notice of Authorization to Self-Insure.

Upon receipt of a completed agreement and undertaking and satisfactory proof that adequate security has been provided, OWCP will notify an applicant for authorization to self-insure in writing that it is authorized to self-insure to meet the obligations imposed upon such operator by section 415 and part C of title IV of the Act. OWCP will also notify the applicant of the date on which its authorization is effective, the date on which such authorization will expire, and the date by which the applicant must apply to renew such authorization if the applicant intends to continue self-insuring its liabilities under the Act.

§ 726.112 Reports Required of Self-Insurer; Examination of Accounts of Self-Insurer.

(a) Each operator who has been authorized to self-insure under this part must submit to OWCP reports containing such information as OWCP may from time to time require or prescribe.

(b) Whenever it deems it to be necessary, OWCP may inspect or examine the books of account, records, and other papers of a self-insurer for the purpose of verifying any financial statement submitted to OWCP by the self-insurer or verifying any information furnished to OWCP in any report required by this section, or any other section of the regulations in this part, and such self-insurer must permit OWCP or its duly authorized representative to make such an inspection or examination as OWCP may require. In lieu of this requirement OWCP may in its discretion accept an adequate report of a certified public accountant.

(c) Failure to submit or make available any report or information requested by OWCP from an authorized self-insurer pursuant to this section may, in appropriate circumstances, result in a revocation of the authorization to self-insure.

§ 726.113 Disclosure of Confidential Information.

Any financial information or records, or other information relating to the business of an authorized self-insurer or applicant for the authorization of self-insurance obtained by OWCP is exempt from public disclosure to the extent provided in 5 U.S.C. 552(b) and the applicable regulations of the Department of Labor promulgated thereunder. (See 29 CFR part 70.)

§ 726.114 Authorization and Reauthorization Timeframes.

(a) No initial or renewed authorization to self-insure may be granted for a period in excess of 12 months unless OWCP determines that extenuating circumstances exist to allow an extension.

(b) If an applicant is seeking to renew its authority to self-insure, the applicant must file its application no later than 90 days before its existing authorization period ends.

§ 726.115 Revocation of Authorization to Self-Insure.

OWCP may suspend or revoke the authorization of any self-insurer for good cause, including but not limited to:

(a) failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or with any lawful order or request made by OWCP;

(b) the failure or insolvency of the surety on its indemnity bond, if such bond is used as security, or any other financial institution holding any form of security provided by an operator; or

(c) impairment of financial responsibility of such self-insurer.

§ 726.116 Appeal Process.

(a) How to appeal. Any applicant that wishes to appeal OWCP's determination on an application must submit a written request for review to OWCP in the form and manner prescribed by OWCP within 30 days of such determination. This deadline may not be extended.

(b) What to submit. Within 30 days after filing written request for review, the applicant must submit any evidence and/or briefing on which it intends to rely. OWCP may, at its discretion, extend this deadline at the applicant's request upon a showing of good cause.

(c) Conferences.

(1) The applicant may request an informal conference to present its position. Such request must be made in writing when the applicant submits evidence and briefing in support of its request for review.

(2) If the applicant requests a conference, OWCP will hold one with the applicant's representatives.

(3) If the applicant does not request a conference, OWCP may either decide the appeal on the record or, at its discretion, schedule a conference on its own initiative.

(4) The conference will be limited to the issues identified in the applicant's written materials.

(d) OWCP's review. OWCP will review the previous determination in light of any new evidence or additional information submitted and issue a supplemental determination.

(e) Further appeals.

(1) Any applicant aggrieved by a supplemental determination made by OWCP may request further review by the Director of OWCP within 30 days of such supplemental determination.

(2) The Director of OWCP will review the supplemental decision and evidence of record only. The applicant may not submit new evidence or arguments to the Director of OWCP.

(3) The Director of OWCP will issue a final agency decision.

Signed at Washington, DC.

Christopher J. Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2023–00534 Filed 1–18–23; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0927]

RIN 1625–AA08

Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations, Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending and updating its special local regulations for recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This proposed rulemaking would update the current list of recurring special local regulations with revisions, additions, and removals of events that no longer take place in the Sector Ohio Valley AOR. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 21, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0927 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Bryan Crane, Sector Ohio Valley, U.S. Coast Guard; telephone (502)-779–5334, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of responsibility
CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port Sector Ohio Valley (COTP) proposes to update the current list of recurring special local