request the continuation of suspension under 19 U.S.C. 1516a(g)(5)(C)(iii).

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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: Final rule.

SUMMARY: This final rule revises the regulations under the Black Lung Benefits Act (BLBA) governing authorization of self-insurers. The updated regulations 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: This rule is effective January 13, 2025.

ADDRESSES: 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 C–3520–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 BLBA 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 (the 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 BLBA 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.*

OWCP 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, OWCP 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, OWCP 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, *see* BLBA Bulletin No. 21–01 (Dec. 7, 2020).[1]

Although the revised guidelines were intended to allow 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 issued a notice of proposed rulemaking (NPRM) on January 19, 2023, proposing a revised subpart B. 88 FR 3349–3366 (Jan. 19, 2023). 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 also proposed eliminating the financial scoring process. Instead, under the proposed rule, OWCP would require all self-insured operators to post security equal to 120 percent of their projected black lung liabilities, ensuring adequate coverage regardless of an operator's financial health.[2] The Department had determined that 120 percent was an appropriate level of security because, among other things, it would protect the Trust Fund in the event an operator's actual liabilities exceed its projected liabilities. In addition, the proposal removed 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. The proposed rule also prospectively removed section 501(c)(21) trust funds, which have proven to be less reliable, as an acceptable form of security. Furthermore, the proposed rule clarified 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 proposed these changes to 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 lessens the administrative burden on OWCP to gather, review, and analyze operators' financial information, and lessens the burden on operators to collect and provide such information. The procedural changes clarify and add certainty with respect to OWCP's and operators' respective obligations in the self-insurance authorization process.

The public comment period closed on April 19, 2023, after an extension of the original March 20, 2023, deadline. 88 FR 14094–14095 (Mar. 7, 2023). The Department has fully evaluated the received comments and has determined that, with some changes in response to comments, proceeding with a final rule is in the best interests of the Trust Fund, stakeholders, and the program's administration.

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 statute.

III. Discussion of Significant Comments

The Department received 18 comments on the proposed regulations. In addition to comments received on specific sections of the proposed rule, discussed below in the Section-by-Section Explanation, a few commenters offered more general comments. A number of commenters supported the Department's promulgation of a proposed rule to clarify and reform the self-insurance program. Several commenters applauded some of the proposed rule's most significant changes, including the requirement for increased security from self-insured operators. They noted that Congress intended coal-mine operators to bear the cost of black lung disease, and that they should provide enough security to protect the Trust Fund, and ultimately, taxpayers, from any operator bankruptcy.

Other commenters argued the changes will negatively impact self-insured operators. Most of these negative comments asserted that self-insured operators would face too high a financial burden if required to post security equal to 120 percent of their projected liabilities. They also stated that the cost of surety bonds is much higher than the Department estimated. The commenters did not present any evidence of the true cost of surety bonds, however, such as actual quotes from surety bond companies.

Operators that deem surety bonds too expensive may use another form—or multiple forms—of security, *see* § 726.104(b), or obtain commercial insurance, *see* 30 U.S.C. 933(a); 20 CFR 726.1, 726.201.

Several commenters argued that in the proposed rule, the Department failed to consider operators' reliance on OWCP's historical practices in the self-insurance program. They stated that operators made business decisions based on OWCP's previous collateral requirements, and it would be arbitrary and capricious for the Department not to weigh that reliance against competing policy considerations. In addition, these commenters say, the Department neglected to offer accommodations for the operators' reliance interests, such as by grandfathering in existing self-insurance arrangements and phasing in the requirement for increased security over time.

The Department appreciates the commenters' concerns and has given them serious consideration in preparing this rule. The Department has also weighed operators' reliance interests against competing policy considerations—most importantly, the financial security of the Trust Fund. As many commenters acknowledged, OWCP's historical practices left vulnerabilities in the self-insurance program and contributed to the Trust Fund's current debt. That is why, as explained in the proposed rule's economic analysis, the Department considered but declined to maintain existing security levels. 88 FR 3356–3360 (Jan. 19, 2023). That is also why it is not a viable option to grandfather in all existing self-insurance arrangements, which would fail to adequately protect the Trust Fund.

To better balance the Department's obligation to protect the Trust Fund with the burden on self-insured operators to properly secure their liabilities, the Department has decided to revise the proposed rule in several ways. As explained more fully in the Section-by-Section Explanation, the Department is lowering the security

[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 proposal meant the applicant would have to purchase an instrument that would pay out up to 120 percent of the projected liability, not that the applicant would have to actually spend that amount on collateral.

requirement from 120 percent to 100 percent of self-insured operators' projected liabilities. Reducing the required security will lessen the financial burden on self-insured operators, while upholding the operators' obligation under the BLBA to adequately secure their liabilities in case they can no longer pay benefits directly. *See* 30 U.S.C. 932(b) (operators ''shall be liable for and shall secure the payment of benefits''). The requirement for 100 percent security also preserves congressional intent that ''individual coal operators rather than the trust fund bear the liability for claims arising out of such operators' mines to the maximum extent feasible.'' *Old Ben Coal Co.* v. *Luker,* 826 F.2d 688, 693 (7th Cir. 1987) (quoting S. Rep. No. 209, 95th Cong., 1st Sess. 9 (1977), *reprinted in* House Comm. on Educ. and Labor, *96th Cong., Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977,* 612 (Comm. Print 1979); *see also Arkansas Coals, Inc.* v. *Lawson,* 739 F.3d 309, 313 (6th Cir. 2014); *C & K Coal Co.* v. *Taylor,* 165 F.3d 254, 258 (3d Cir. 1999); 20 CFR 725.1(e) (''The purpose of the [Black Lung Disability Trust Fund] and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future.''). In addition, OWCP will also allow operators that currently use section 501(c)(21) trusts as security instruments to continue doing so, *see* § 726.104(b), and will allow operators to phase in any increased security over the course of one year, *see* § 726.104(c).

One commenter argued that the Department's concern about the financial security of the Trust Fund is not a valid reason for the proposed rule, stating that self-insured operator bankruptcies are not a major threat to the Trust Fund. The commenter cited a report by the Government Accountability Office (GAO) for this conclusion. The Department believes the commenter misunderstood the report. GAO concluded the Trust Fund ''faces financial challenges, and DOL's limited oversight of coal mine operator insurance has further strained Trust Fund finances by allowing operator liabilities to transfer to the federal government;'' it opined that ''the looming unsecured black lung benefit liabilities . . . still threaten the Trust Fund.'' *See* GAO, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed,* at 27, 29 (Feb. 2020), available at *https://www.gao.gov/products/gao-20-21.* GAO also noted that the Trust Fund faced particular risk in the self-insurance context, because ''in the past, DOL did not estimate future benefit liability when setting the amount of collateral required to self-insure.'' *Id.* at 2. The report recommended the Department change this practice. *Id.*[3]

Two commenters argued that the proposed rule would give OWCP such broad discretion to set collateral, without sufficient guidelines, that the rule would violate the Administrative Procedure Act. The Department disagrees with these comments. The rule provides clear guidelines and uniform requirements for self-insurance applications and determinations, and, as a result, limits the discretion OWCP has to set security amounts. For example, the rule requires the same documents from all applicants; provides that all operators must use the same OWCP-mandated actuarial assumptions in their actuarial reports; explains that OWCP will require the same percentage of security from all operators; and clarifies the timelines by which OWCP will process all applications and appeals.[4] Where the Department agreed with commenters that the rule should be clarified, it revised this final rule accordingly.

Several supporters of the proposed rule suggested that OWCP create a public database including information about all self-insurance applications, OWCP's estimates of operators' liability amounts, the amount and type of security that operators provide, the status of any operator appeals, and OWCP's decisions on self-insurance applications. While the Department understands the value of increased transparency in the self- insurance program, it declines to create such a public database out of concern for operators' confidential business interests. The Department believes this final rule will provide greater clarity, transparency, and efficacy in the self-insurance program.

No negative comments were received on the following revised or new regulations: sections 20 CFR 726.101(c) and (d); 726.102(a) and (c); 726.107; 726.108; 726.110 through 726.113, and 726.115. Thus, the Department is promulgating these regulations as proposed.

The following regulatory provisions were not revised in the proposed rule and thus were not open to comment: 20 CFR 726.101(a), 726.103, and 726.106.

Severability. If upon judicial review any provision of this rule is deemed invalid, the Department intends that such provision(s) will be severable and the rest of the provisions will remain intact. For example, the following provisions of the rule can operate independently and are mutually severable from the other provisions of the rule: (1) the minimum requirements for self-insurance authorization under § 726.101(b); (2) the requirement that applicants submit actuarial reports using OWCP-mandated actuarial assumptions under § 726.102(b)(2); (3) the updated process that OWCP will follow in issuing written determinations on self-insurance applications under § 726.104(a); (4) the limitation of section 501(c)(21) trusts to those established before publication of the rule, and the requirement for the submission of quarterly financial statements for such trusts under § 726.104(b)(4); (5) the option for operators to phase in their initial or increased security deposits over the course of one year under § 726.104(c); (6) the requirement that operators submit security equal to 100 percent of their actuarially estimated liabilities under § 726.105; (7) the timeframes for authorization and reauthorization to self-insure under § 726.114; and (8) the appeals process set forth under § 726.116. This list is not exhaustive. Generally, the Department believes that the provisions of the rule can operate independently and will improve the effectiveness of the self-insurance program, even if other provisions are deemed invalid.

Section-by-Section Explanation

20 CFR 726.101 Who May Be Authorized To Self-Insure

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

Current paragraph (b) establishes the minimum requirements that an operator must meet to qualify for authorization to self-insure. At present, paragraphs (b)(1), (3), and (5) respectively provide that an operator must have been in the

[3] The Department now includes estimates of future liability in security calculations and requires that applicants submit those estimates in their actuarial reports. That requirement is reflected in OWCP's self-insurance application form, CM–2017, which requests ''[a] current, certified actuarial report on [the applicant's] existing and future BLBA liabilities.'' *See* CM–2017, available at *https://www.dol.gov/agencies/owcp/dcmwc/regs/compliance/blforms; see also* section 20.

[4] 20 CFR 726.102(b)(2) in this rule (applicants must submit an actuarial report using OWCP-mandated actuarial assumptions). In addition, the rule provides that self-insurers will be required to ''submit security equal to 100 percent of the actuarially estimated liabilities (all present and future liabilities).'' *See* 20 CFR 726.105.

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 (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. The Department proposed removing paragraphs (b)(1), (3), and (5) because they would no longer be necessary when all self-insurers are required to post security that fully covers their projected black lung liabilities.

(2) Three commenters expressed concern that by no longer evaluating companies' financial health, OWCP is applying a ''one-size-fits-all'' approach that will harm financially sound companies. In their view, more profitable companies will present less risk to the Trust Fund and OWCP should therefore require less security (or no security) to cover their liabilities. Another commenter suggested OWCP maintain at least enough financial review to ensure companies could fulfill their self-insurance obligations. Other commenters questioned whether the financial review process would truly burden OWCP, and suggested that OWCP ought to be able to conduct a financial review because other federal agencies do so.

(3) The Department declines to revise the regulation in response to these comments. As explained in the proposed rule, the Department is eliminating the financial review process to reduce administrative burdens and avoid the ever-present challenge of predicting which operators are at risk of experiencing financial difficulties. Importantly, the requirement that self-insured operators post security equal to their projected black lung liabilities will adequately cover the Trust Fund regardless of an operator's continuously changing financial status, making the financial review process unnecessary. The commenters have not shown that these changes will cause any particular harm to companies that are financially stronger than others. In fact, those companies will arguably be able to meet a higher security requirement more easily than less financially secure companies. Similarly, the requirement to post 100 percent security addresses a commenter's concern that operators will not be able to fulfill their self-insurance obligations; if they default, the Trust Fund will have enough security to cover the operators' projected liabilities.

(4) For these reasons, as proposed in the NPRM, the Department is removing paragraphs (b)(1), (3), and (5). The Department is renumbering current paragraph (b)(2) as paragraph (b)(1), and paragraph (b)(4) as paragraph (b)(2).

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

(1) The Department is revising 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.

(2) The Department is adding a new paragraph (b)(2) to require an applicant to include with its application an actuarial report using OWCP-mandated actuarial assumptions. OWCP has previously required such an actuarial report from applicants, as indicated on OWCP's self-insurance application form CM–2017 (Application or Renewal of Self-Insurance Authority), available on OWCP's website at *https://www.dol.gov/agencies/owcp/dcmwc/regs/compliance/blforms.* In that form, OWCP requires ''[a] current, certified actuarial report on [the applicant's] existing and future BLBA liabilities,'' unless renewal applicants have provided one in the previous three years. The proposed rule explained that form CM–2017 would still be required under the new regulations, and it requests much of the information required in current paragraphs (b)(1), (2), (3), and (5). In this new paragraph (b)(2), the Department is adding the actuarial report requirement to the regulatory text, including that an operator must submit a new actuarial report every three years. The new paragraph (b)(2) also allows an operator to submit an additional actuarial report using alternative assumptions.

(3) Several commenters objected to the requirement to use OWCP actuarial assumptions in their reports. They argued that OWCP's actuarial assumptions differ from the operators' assumptions, which are based on the operators' experiences in paying benefits. The Department declines to revise the regulation in response to these comments, but provides the following clarification. Requiring operators to use OWCP's actuarial assumptions, rather than their own, more accurately projects the Trust Fund's potential liability and promotes fairness and uniformity across operators. As noted in the proposed rule and again above, OWCP has previously required companies to provide actuarial reports that include data for different elements of actuarial analysis, such as the discount rate, claim cost trends, and the probability of awards. *See* 88 FR 3350 (Jan. 19, 2023). A numerical value is assigned to each element. This numerical value is called an actuarial assumption. Operators then apply those values in determining their liability. OWCP sets actuarial assumptions for the various elements of actuarial analysis every year, accounting for changing interest rates, medical costs, and other relevant fluctuations. Commenters have not challenged the elements of actuarial analysis that are to be included in their reports. Instead, commenters have argued that the numerical values that OWCP assigns to these elements—the actuarial assumptions themselves—differ from the values that operators would use based on their individual experiences, and are therefore improper. OWCP bases its actuarial assumptions on data from claims in which the Trust Fund is responsible for paying benefits. If a self-insured operator goes bankrupt and the Trust Fund absorbs its responsibility for paying benefits, it will cost the Trust Fund a different amount to pay those benefits than it would have cost the operator. For example, medical costs differ for the Trust Fund and operators because operators may use different payment formulas than the Trust Fund and may have arrangements with providers that result in lower medical costs that the Trust Fund does not have. For these reasons, OWCP must estimate how much it will cost the Trust Fund to bear responsibility for benefits that were formerly the responsibility of the operator. Further, using one set of actuarial assumptions, rather than different assumptions for each operator, promotes consistency and fairness.

Still, the Department acknowledges an operator could, under unusual circumstances, have a compelling reason to use different actuarial assumptions than those required by OWCP. Therefore, the rule permits operators, as part of the application process, to submit reports using their own actuarial assumptions and explain why they should be used instead, and OWCP will consider each submission. *See* Section-by-Section Explanation for 20 CFR 726.104.

(4) Commenters raised concerns that while the proposed rule allows operators to submit an additional actuarial report and explain why alternate assumptions are appropriate, it does not specify that OWCP will consider that report or how OWCP would choose between or reconcile the two reports. The Department agrees the regulation should state that OWCP will review and consider an operator's

additional report and, as stated below, is amending § 726.104(a) to clarify this. The Department is also clarifying the circumstances in which OWCP might use the actuarial assumptions an operator submits. For any alternative actuarial report OWCP receives, it will evaluate each of the operator's arguments about why alternative actuarial assumptions should apply. Some, but not all, of OWCP's considerations may include whether the operator's circumstances would persist if the Trust Fund took over benefit payments and whether sufficient and reliable data support the operator's arguments. For instance, if an operator's claimant population differs markedly from that of the Trust Fund, it may be reasonable to use one or more of an operator's actuarial assumptions. However, the Department expects this situation will be rare. In most cases it will be more appropriate to apply OWCP's assumptions based on the Trust Fund's experience. Again, using OWCP's assumptions in most cases will help ensure fairness and uniformity across operators.

(5) Commenters also claimed the proposed rule did not identify OWCP's actuarial assumptions (the numerical values), or explain how they were derived and whether they comply with generally accepted actuarial standards. OWCP provides its actuarial assumptions to the public on its website.[5] OWCP uses the same assumptions in reporting on the Trust Fund for the Department's Agency Financial Report and the U.S. Government's tracking of significant social insurance programs, which are also publicly available and prepared in accordance with Generally Accepted Accounting Principles (GAAP) and the financial reporting requirements of Office of Management and Budget (OMB) Circular A–136.[6] OWCP's actuaries review the assumptions annually, including peer review by other actuaries. OWCP determines the value for each assumption using actuarial judgment, by considering historical experience adjusted to current conditions, expected future trends, and the reliability of the available historical data as a predictor of future experience. Each of the assumptions represents values that, in the actuaries' professional judgment, are internally consistent and have no known significant bias to underestimation or overestimation. OWCP's assumptions comply with the Actuarial Standards of Practice as promulgated by the Actuarial Standards Board (ASB), available at *http://www.actuarialstandardsboard.org.*

(6) Some commenters asserted that OWCP's actuarial assumptions should have been included in the proposed rule and subject to notice and comment. The Department disagrees for several reasons. As the commenters made clear, one of their major objections was to the requirement to use OWCP's actuarial assumptions at all. This requirement was open for comment in the proposed rule, and the Department received and responded to related comments above. The actuarial assumptions themselves, though, were not included in the rule because, as explained above, the numerical values will vary from year to year as needed to adapt to new data and circumstances.

20 CFR 726.104 Action by OWCP Upon Application of Operator

(1) The Department proposed 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.

Commenters noted that while the proposed regulatory text allows operators to submit a report using actuarial assumptions other than those mandated by OWCP, it did not require OWCP to consider such reports. The Department agrees the regulation should state that OWCP will review and consider any relevant evidence the operator submits. To clarify this, the Department is amending section 104(a) to explain that OWCP will consider all relevant evidence and include its reasoning when issuing a written determination denying an application.

(2) The Department proposed 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. As explained in the proposed rule, few self-insured operators use section 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 and for other allowed purposes.

One commenter asserted that the Department cannot remove section 501(c)(21) trusts as an optional form of security. The commenter states the Department does not have the authority to disallow section 501(c)(21) trusts, arguing Congress intended such trusts would be available for black lung self-insurance security deposits. It also argues that even if the Department has the authority to disallow the use of section 501(c)(21) trusts, it has no valid reason to do so, because such trusts pose no greater risk than other forms of security. Finally, the commenter urges the Department to accept any existing section 501(c)(21) trusts, because they are irrevocable and cannot be repurposed; operators would be prejudiced if no longer allowed to use the funds in such trusts toward their self-insurance security deposits.

The Department disagrees that it must offer section 501(c)(21) trusts as a form of security for self-insurance. The BLBA does not specify the form in which an operator must ''secure the payment of benefits for which he is liable.'' 30 U.S.C. 933(a). Moreover, the Internal Revenue Code does not require that OWCP accept section 501(c)(21) trusts as security for self-insurance. Section 501(c)(21) specifies the circumstances under which an entity may establish such trusts, but does not direct OWCP to allow them for self-insurance security.

The Department also disagrees that section 501(c)(21) trusts are no riskier than other forms of security. In arguing this, the commenter noted that such trusts can only hold qualified investments such as U.S., state, and municipal bonds. However, the Department is not concerned about the riskiness of the investments in the trust, but about the risk that the money in the trust may fall below the necessary security amount, given that the trust can also be used for paying claims and other expenses. 26 U.S.C. 501(c)(21)(A).

[5] OWCP provides information on the black lung program to operators and insurance carriers, available at *https://www.dol.gov/agencies/owcp/dcmwc/operators-insurers.*

[6] *See* Treasury's reporting on financial statements for significant social insurance programs, available at *https://www.fiscal.treasury.gov/reports-statements/financial-report/statements-of-social-insurance.html.* The Department's most recent Agency Financial Report is also available on that website. OMB Circular A–136, on Financial Reporting Requirements, is available at *https://www.whitehouse.gov/omb/information-for-agencies/circulars/.*

Because trust assets can be (and are) used for a number of purposes other than security for a self-insurance arrangement, the trust assets are subject to continual erosion. As a result, use of the trusts as self-insurance security would place the Trust Fund at greater risk than the use of other forms of security. And unlike other forms of security, the Trust Fund does not have direct access to 501(c)(21) trust assets or even have ready access to the trusts' financial reports.

Nevertheless, the Department has determined that existing section 501(c)(21) trusts should be permitted to continue as self-insurance security, even though new trusts will not be allowed. As the commenter noted, 501(c)(21) trusts are irrevocable, and the Department agrees that it would prejudice those operators currently using this form of security if they are no longer allowed to do so. Rather than remove the option entirely, then, the Department is revising paragraph (b)(4) to provide that section 501(c)(21) trusts established before the publication of this rule can continue to be used as self-insurance security. However, to protect the Trust Fund, operators continuing to use existing section 501(c)(21) trusts must submit quarterly financial statements to OWCP documenting the value of the trust. This will allow OWCP to monitor the financial status of a trust, the value of which may decrease in the period between annual reviews. If, for any reason, the trust value decreases below the amount of the operator's required security, OWCP may require an increase in the operator's security under § 726.109. The Department is adding the requirement for quarterly financial reports to paragraph (b)(4).

(3) Several commenters expressed concern that a greatly increased security requirement would be difficult to fulfill immediately. These commenters suggested that OWCP collect the increased security over a period of years instead of all at once.

The Department agrees the burden on operators could be lessened by staggering the collection of security over a reasonable period of time. While commenters suggested phasing in the collection over a period of years, the Department believes this would leave the Trust Fund inadequately secured for too long. However, the Department will allow operators to post security in phases over the course of one year, which the Department has determined will properly balance the interests in providing operators more time while limiting the Trust Fund's risk of inadequate security. To further limit the Trust Fund's risk of delay in receiving adequate security, the Department is requiring that operators phase in their payments in quarterly installments. Thus, the Department is adding a new paragraph (c) to provide that operators may submit their increased security requirements in equal portions quarterly, to be complete in one year: operators opting for phased posting must deposit at least 25 percent of the increased security amount within 30 days of OWCP issuing the notification provided in newly redesignated paragraphs (d) and (e), followed by at least 50 percent of their increased security amount within four months of that notification, at least 75 percent within eight months, and 100 percent within one year. If an operator fails to timely pay any of one of these installments, it will be deemed non-compliant with its self-insurance authorization, and OWCP will revoke that authorization. The civil money penalty provisions of 20 CFR part 726, subpart D, will apply to any operator that fails to timely secure its benefits under this regulation. Accordingly, any operator that disagrees with the penalties imposed must follow the procedures at 20 CFR 726.307 for contesting penalties, and not the self-insurance authorization appeals process outlined below in the new 20 CFR 726.116.

In light of these changes, the Department is redesignating new paragraphs (c), (d), and (e) to paragraphs (d), (e), and (f), respectively. The Department is also revising paragraphs (d) and (e) to provide that self-insurance authorization or reauthorization will be effective upon OWCP's receipt of a completed agreement and undertaking, along with either the applicant's full security amount or its first quarterly installment.

20 CFR 726.105 Fixing the Amount of Security

(1) 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 Department proposed replacing current § 726.105 with the requirement that any operator approved to self-insure must submit security equal to 120 percent of its actuarially estimated liabilities (all present and future liabilities) as determined by OWCP based on the actuarial report or reports submitted by the applicant with their application (or on file with OWCP), other information submitted with the operator's application, or any other materials or information that OWCP deems relevant. As noted in the proposed rule, this meant applicants would have to purchase an instrument that would pay out up to 120 percent of the projected liability, not that the applicant would have to actually spend that amount on collateral. The Department estimated that premiums on surety bonds would cost anywhere from 2 percent to 12 percent of the security amount and solicited comments on this estimation.

(2) Some commenters supported this proposed change. They stated that in keeping with congressional intent, the increased security amount would help avoid shifting liability from bankrupt operators to the Trust Fund and, ultimately, to taxpayers. One commenter noted that the requirement for increased security is all the more important now that severe forms of black lung disease are on the rise, meaning that operators' future liabilities would rise too. The commenters also believed the requirement would not unduly burden operators, who could secure their liability for benefits through other instruments or purchase commercial insurance instead of self-insuring.

(3) By contrast, several coal-mine operators and their associations commented that requiring security at 120 percent of projected liability would be too great an expense. As explained above, the Department has decided to lower the required security amount from 120 to 100 percent of an operator's projected liability. The Department has weighed the interests of protecting the Trust Fund and of reducing the burden on operators, and determined that 100 percent security is the proper balance. The new § 726.105 will provide that operators approved to self-insure must submit 100 percent of the actuarially estimated liabilities. This requirement comports with the BLBA's requirement that operators secure their liability (30 U.S.C. 932(b), 933(a)). The natural reading of this requirement is that operators must secure their full liability, not merely a portion of it. The requirement also harmonizes the treatment of self-insured operators with that of commercially insured operators, as an insurance policy for Federal black lung claims must cover all of an operator's liability—present and future. 20 CFR 726.202 and 726.203(c)(1)(ii).

(4) Some commenters asserted that the Department erred in expecting that operators could obtain surety bonds for an annual premium of 2 to 12 percent of the covered bond amount. These commenters highlighted that this range was based on general surety bonds, not

those specific to the coal industry. Instead, they posited that in addition to premiums, operators would need to post collateral for the surety bonds, up to and including 100 percent of the bond amount.

In the proposed rule, the Department invited comment on the cost of surety bonds. The Department explained that the range of 2 to 12 percent of security was based on a review of public data from surety companies. While commenters alleged the cost would be far greater, they did not submit any direct evidence of the asserted cost, such as actual surety bond quotes. Notably, no surety company submitted comment on the proposed rule. Therefore, the Department has no basis on which to change its estimation.

(5) Some commenters complained that surety bonds are also harder for coal companies to obtain in today's market but did not submit evidence of this assertion. These commenters stated that they are aware of only three surety bonds used as security for self-insurance since 1980, and only one that is still active. These numbers are inaccurate. Over ten currently active self-insured operators have security in the form of surety bonds, and some of them have more than one; these operators have submitted proof of their surety bonds to OWCP as part of their participation in the self-insurance program. As the Department noted in the proposed rule, surety bonds are the most common form of security that current self-insured operators use. The Department recognizes, as these commenters noted, that coal companies and coverage of black lung benefits might be considered high risk in the surety industry. That is one reason the Department is acting to better protect the Trust Fund and ensure that self-insured operators are properly secured. The Trust Fund should not be subject to enhanced risk so that operators may self-insure. Rather, Congress intended that coal operators, and not taxpayers, bear responsibility for paying black lung benefits to the miners who worked for them. Furthermore, as stated above, operators have security options other than surety bonds. They may use other forms—or multiple forms—of security for self-insurance (negotiable securities and letters of credit) or purchase commercial insurance to satisfy their obligations under the BLBA.

(6) Several commenters argued that the Department could not require an operator to secure its future liabilities, and instead could only require security for current claims in award status. The Department finds no merit in this argument. The BLBA requires every operator to secure the payment of benefits for which it may be found liable. *See* 30 U.S.C. 932(b) (''each such operator shall be liable for and shall secure the payment of benefits''), 933(a) (''each operator of a coal mine . . . shall secure the payment of benefits for which he is liable under section 932 of this title by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) [purchasing commercial insurance]''); 20 CFR 726.1 (''[the BLBA] requires each coal mine operator who is operating or has operated a coal mine . . . to secure the payment of benefits for which he may be found liable'').

Further, the BLBA and its implementing regulations [7] provide that liability extends to claims filed in the future. *See* 30 U.S.C. 932(i) (operators that acquire a mine or its assets ''shall be liable for and shall . . . secure the payment of all benefits which would have been payable by the prior operator.''); 20 CFR 725.494(a) (''[a]n operator may be considered a 'potentially liable operator' . . . if . . . [t]he miner's disability or death arose at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator, or by a person with respect to which the operator may be considered a successor operator.''); 20 CFR 724.494(e)(2) (an operator that ''qualified as a self-insurer . . . during the period in which the miner was last employed by the operator'' is ''deemed capable of assuming its liability for a claim[.]'').

By necessity, an operator's liability extends to future claims. As various commenters noted, black lung claims may be filed long after miners stopped working, due to the progressive nature of black lung disease; it may disable miners even years after their exposure to coal-mine dust ends. *See* 20 CFR 718.201(c) (black lung disease is ''a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.''). As a result, a significant portion of operators' liability involves claims that are incurred but not reported (IBNR). In other words, these claims involve situations in which the miner has suffered or will suffer an injury (exposure to coal-mine dust), but has not yet filed a claim or received an award. The only accurate way of securing an operator's black lung liability, then, is to account for future claims.

Further, reading the BLBA as the commenters proposed would lead to untenable results, such as OWCP being unable to require a new operator to secure the payment of benefits at all, as it would have no claims currently in award status.

To support their arguments against securing future liability, several commenters asserted that state workers' compensation programs only require security for present claims in award status. This is not accurate. Although states vary in how they determine an employer's estimated liability, some states require actuarial reports estimating the total liability from all present and future claims. *See, e.g.,* Minn. Stat. sec. 79A.04, subd. 2 (''The minimum deposit is 110 percent of the private self-insurer's estimated future liability . . . as determined by an Associate or Fellow of the Casualty Actuarial Society[.]''). Even the commenters acknowledge that a high percentage of black lung liability consists of IBNR claims. Thus, the Department believes that it must take IBNR claims into account when setting security amounts.

In its study of insurance in the black lung program, the GAO concluded that future liabilities should be factored into security amounts, and explained that not doing so in the past contributed to inadequate protection of the Trust Fund. *See* GAO, *Federal Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance is Needed,* at 18, 19 (Feb. 2020), available at *https://www.gao.gov/products/gao-20-21.* The GAO reported that ''[e]stimating future costs based on sound actuarial practice is essential to the integrity of the insurance and the risk financing system and is key to fulfilling the promises embodied in insurance contracts, according to Actuarial Standards Board standards.'' *Id.* at 19 (internal citation omitted)). Providing for future liability also serves Congress's intent that operators bear the burden of paying benefits to the ''maximum extent feasible. *Luker,* 826 F.2d at 693 (quoting S. Rep. No. 209, 95th Cong., 1st Sess. 9 (1977), *reprinted in* House Comm. on Educ. and Labor, *96th Cong., Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977,* 612 (Comm. Print 1979).

[7] The Secretary has authority to promulgate regulations directing the payment of benefits by operators and apportioning liability among them. 30 U.S.C. 932(a) (''the Secretary is authorized to prescribe in the **Federal Register** such additional provisions . . . as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto[.]''); 30 U.S.C. 932(h) (''The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one *operator,* where such apportionment is appropriate.'').

(7) The Department will not lower the required amount of security below 100 percent of an operator's liability. As noted above, the BLBA requires that operators secure their full liability. Moreover, as explained in the proposed rule, the Department decided to require 120 percent security in part because of the challenges in accurately estimating liabilities, and the possibility that an insolvent operator's actual liabilities could be greater than OWCP expected. Some of the factors that could increase an operator's actual liabilities over their estimated liabilities could include pneumoconiosis becoming more prevalent, or the costs of medical treatment increasing faster than expected. However, for the reasons discussed above, the Department is modifying the final rule to require only 100 percent security rather than the proposed 120 percent security.

(8) One commenter argued that the proposed rule would allow OWCP to disregard an operator's actuarial report(s) and rely instead on any other information it deems relevant. This was not the Department's intent. OWCP will review and consider all relevant information that operators submit with their application, including any information not identified in § 726.105 that would be pertinent. To clarify that OWCP will not disregard any submissions, the Department is revising the regulation to exchange the word ''and'' for ''or'' in the following: ''Any operator approved to self-insure must submit 100 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, *and* any other materials or information that OWCP deems relevant'' (emphasis added).

20 CFR 726.109 Increase in the Amount of Security

(1) The Department proposed deleting and replacing 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 BLBA. This allows OWCP to require a correction in security if, between annual renewals, a self-insured operator's security has fallen below the requirement for 100 percent of their liability.

(2) Several commenters expressed concern that OWCP would increase an operator's security without a known reason or prescribed grounds, and could increase an operator's security beyond the percentage of collateral initially required.

(3) As stated in the proposed rule, OWCP could decide that the amount of an operator's security on deposit is insufficient if, for example, 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. The Department believes the ability to increase security for reasons like this is necessary to protect the Trust Fund, consistent with Congress's intent that the coal operators who expose coal miners to coal dust be responsible for paying black lung benefits, not taxpayers. Further, 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.

However, the Department agrees with the commenters that the regulation should clarify that OWCP will provide a written explanation of the reasons and grounds for increasing an operator's security. The Department, however, will not increase the required liability beyond 100 percent of the operator's actuarially estimated liability. The regulation has been revised to make this clear.

20 CFR 726.114 Authorization and Reauthorization Timeframes

(1) The Department proposed deleting and replacing current § 726.114 to substantially revise the timeframe for authorizations and reauthorizations.

(2) Several commenters noted that legacy operators (those who have ceased mining operations but remain liable for black lung claims) should continue to be authorized for self-insurance. In revising § 726.114(a) and (b), the Department inadvertently omitted paragraph (c). Section 726.114(c) provides that self-insured operators must continue to reapply for self-insurance reauthorization after ceasing their mining operations. This regulation is consistent with other parts of the black lung regulations dealing with the requirement for operators to secure the payment of benefits after they cease coal-mining operations. *See, e.g.,* 20 CFR 726.1, 726.4, and 726.302(c)(2)(ii). The Department intends to keep the current paragraph (c) as part of the new regulation.

(3) Therefore, the Department is clarifying that current § 726.114(c) is retained in its entirety. The Department is making stylistic changes to § 726.114(c). No alteration in meaning either results from or is intended by these changes.

20 CFR 726.116 Appeal Process

(1) Section 726.116 is new. It establishes and clarifies the process for an operator to appeal a self-insurance determination made by the Division of Coal Mine Workers' Compensation (DCMWC). The proposed rule provided that a self-insurance applicant would submit a request for review of the initial determination within 30 days to DCMWC. Within 30 days of submitting the request, the applicant would have to submit any evidence and/or briefing on which they intended to rely. In its briefing, the applicant could request an informal conference with DCMWC. The conference would be limited to the issues identified in the applicant's written materials. Upon review, the Director of DCMWC would issue a supplemental decision. The proposed rule then provided that an applicant aggrieved by a supplemental decision could request further review by the Director of OWCP, who would review the evidence of record and not accept any new evidence or arguments. The Director of OWCP would then issue a final agency decision.

(2) Several commenters expressed concern about operators remaining under-secured during a potentially lengthy appeals process. One commenter requested that OWCP include timeframes for its decision-making, to ensure appeals do not drag on while the Trust Fund lacks sufficient security. Several commenters asserted that operators should post the required security during the pendency of their appeals, to protect the Trust Fund from inadequate funding if operators declare bankruptcy while contesting their security requirements. Expressing the opposite view, some commenters requested that the security requirement be stayed pending appeals and argued that operators would be irreparably harmed if forced to provide the security before their appeals were decided.

(3) The Department agrees that the timeline of the appeals process needs to be clear and limited, to ensure operators do not remain under-secured for too long, increasing the risk to the Trust Fund in case of bankruptcy. However, the Department is concerned that, as some commenters indicated, operators would be harmed if forced to post the required security during the pendency of their appeals. Therefore, the Department has decided to address the risk to the Trust Fund by streamlining the appeals process and setting clear deadlines for OWCP decision-making.

(4) The new regulation will provide a one-step—rather than two-step—appeals process. Instead of appealing to the Director of DCMWC first and, if unsatisfied, to the Director of OWCP, applicants will be able to appeal DCMWC's initial determination directly to the Director of OWCP. The Director of OWCP will not accept any new evidence, and instead review only the applicants' arguments about an error in the initial DCMWC determination. This is consistent with general appellate practices and provides an applicant with an adequate opportunity to be heard on its appeal.

The Director of OWCP will have 60 days to take up the appeal and issue a final agency decision. At this time, if the applicant had been authorized to self-insure and was seeking a renewal that OWCP denied, their self-insurance will end and they will need to secure commercial insurance or face civil penalties for failure to secure benefits. 30 U.S.C. 933(d)(1), 20 CFR 726.300. These changes are reflected in new paragraphs (a) through (d).

(5) Paragraph (a) sets forth the process to file an appeal. It provides that any applicant who wishes to appeal a determination made by DCMWC must submit an appeal to the Director of OWCP within 30 days after DCMWC issues 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.

(6) Paragraph (b) sets forth the process for submitting briefs containing any arguments that DCMWC erred in its initial determination. It provides that, within 30 days of submitting an appeal, the applicant must submit any briefing on which the applicant intends to rely. It also provides that the Director of OWCP may, at their discretion, extend this deadline for up to 30 days upon a showing of good cause by the applicant. No more than two extensions will be granted. Examples of good cause may include the applicant representative's personal illness or an unusual circumstance prohibiting their access to necessary documents. The applicant must document an inability to comply or extreme hardship in complying on a timely basis.

(7) 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 appeal. Paragraph (c)(2) provides that, if an applicant requests a conference, the Director of OWCP will hold a conference with OWCP, the Office of the Solicitor, and the applicant's representatives. Paragraph (c)(3) provides that, if the applicant does not request a conference, the Director of OWCP may either decide the appeal on the record or schedule a conference on their 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.

(8) Paragraph (d) sets forth the Director of OWCP's obligations in the appeal process. Paragraph (d)(1) provides that the Director of OWCP will review the initial determination, evidence of record, and arguments submitted on appeal, and that the applicant may not submit any new evidence to the Director of OWCP. Paragraph (d)(2) provides that the Director of OWCP will have 60 days from receipt of the appeal to take up the appeal and issue a final agency decision. 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. Paragraph (d)(3) explains that if the Director of OWCP issues a final agency decision denying self- insurance, and the operator's self-insurance application is one for renewal (they have previously been approved for self-insurance), their self-insurance authorization will end and they must secure commercial insurance or face civil penalties for their failure to secure benefits.

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 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 contained information collections within the meaning of the PRA (*see* proposed § 726.102), these collections related to the self- insurance application forms 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 are not changed in this final rule; therefore, the overall burdens imposed by the information collections are reduced.

One commenter argued that an operator's information collection burden would increase under the new regulation's requirement to submit actuarial reports with OWCP- mandated actuarial assumptions. The Department disagrees with this contention. OWCP has required applicants to submit actuarial reports with OWCP-mandated actuarial assumptions since 2019. Further, OWCP already considered and requested public comment on the information collection burden of producing these actuarial reports. Along with the self-insurance application forms, OWCP explained in the notice to the public that applicants would need to submit actuarial reports, and estimated that twenty operators would have to submit actuarial reports they did not otherwise prepare in the course of business.[8] The main application form, CM–2017, approved under OMB Control Number 1240–0057, provides that applicants' actuarial reports ''must comply with the standards specified by OWCP, which are posted on the black lung program's website: *https://www.dol.gov/agencies/owcp/dcmwc/operators-insurers.*'' The website, in turn, provides OWCP's current actuarial assumptions. Because applicants' information collection burden with respect to forms CM–2017 and CM–2017b will not increase under this regulation, OWCP will proceed with the burden estimates contained in the NPRM for these forms.

This final rule provides a minimal burden in requiring quarterly financial statements for section 501(c)(21) trusts. *See* § 726.104(b)(4). OWCP estimates this will add a minimal burden to the

[8] The Supporting Statement is available on OMB's website at *https://omb.report/icr/202201-1240-003/doc/122887700.*

public, totaling under two hours per year for all statement submissions. Similarly, OWCP estimates this requirement will add a minimal burden to OWCP in reviewing the statements, amounting to 1.67 hours of review time and $85.47 in wages.

OMB Control Number: 1240–0057.
Affected Public: Business or other for-profit.
Number of Respondents: 61.
Frequency: Annually for Forms CM–2017 and CM–2017b, and quarterly for Section 501(c)(21) trust statements.
Number of Responses: 142.
Annual Burden Hours: 246.
Annual Respondent or Recordkeeper Cost: $34,000.
Federal Government Cost: $15,695.
OWCP Collections: OWCP Forms CM–2017 (Application or Renewal of Self- Insurance Authority) and CM–2017b (Report of Claims Information for Self- Insured Operators); Quarterly Financial Reports on Section 501(c)(21) Trusts.

B. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review; and Executive Order 14094: Modernizing Regulatory Review

Under Executive Order (E.O.) 12866, as amended by E.O. 14904, the Office of Information and Regulatory Affairs (OIRA) 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 E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that may (1) have an annual effect on the economy of $200 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise legal or policy issues ''for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order.'' *See* E.O. 12866, 58 FR 51735 (Oct. 4, 1993), as amended by E.O. 14094, 88 FR 21879 (Apr. 11, 2023).

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.'' *See* E.O. 13563, 76 FR 3821 (Jan. 21, 2011).

OIRA has determined that this rule is a significant regulatory action. *See* E.O. 12866, 58 FR 51735, as amended by E.O. 14094, 88 FR 21879.

Economic Considerations

This final rule will have an economic impact on coal mine operators that currently participate in the self-insurance program, as well as any new applicants. This final rule nevertheless is 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* GAO, *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 final 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' 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.

This final rule eliminates the financial scoring process and requires all self-insured operators to post security equal to 100 percent of their projected black lung liabilities. By requiring sufficient security based simply on projected liabilities, the Trust Fund will be better protected and the financial scoring process is no longer needed. This final rule also removes certain minimum requirements that are now 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 this final rule, both on the economy as a whole and on individual operators.

a. Data Considered

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

i. OWCP

This final rule does not impose additional demands on OWCP resources and in fact will result in a reduction in administration costs.[9] It 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. This final rule will 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

This final 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, this final 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. This final rule will require security deposits that are 100 percent of the operators' 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 that do not secure 100 percent of their black lung liabilities under existing guidelines. Moreover, a number of operators have

[9] 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 is expected to save the agency this cost.

securities on deposit with OWCP that are substantially less than those required even under the existing guidelines.

Requiring a 100 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). This final rule requires 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

This final rule will not impose additional costs on operators that secure their BLBA liabilities through commercial insurance. This final 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

This final 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.

This final rule will 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 existing guidelines, and future security requirements under this final rule.

TABLE 1—SELF-INSURED COAL MINE OPERATORS ACTUARIAL LIABILITIES AND SECURITY DEPOSITS

[All dollar amounts in thousands (,000)]

Coal mine operator			Operator reported black lung actuarial liability	Present—on deposit		Existing guidelines		Final rule	
ID No.	Name	Status		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	$162,939	100
2	Company 2	Active	111,518	6,900	6	78,063	70	111,518	100
3	Company 3	Active	93,826	2,500	3	65,678	70	93,826	100
4	Company 4	Legacy	57,730	8,400	15	40,411	70	57,730	100
5	Company 5	Legacy	56,802	21,000	37	39,761	70	56,802	100
6	Company 6	Active	49,382	1,500	3	34,567	70	49,382	100
7	Company 7	Active	29,581	20,330	69	20,707	70	29,581	100
8	Company 8	Legacy	23,935	12,412	52	16,755	70	23,935	100
9	Company 9	Active	21,400	14,079	66	14,980	70	21,400	100
10	Company 10	Legacy	3,297	3,301	100	3,297	100	3,297	100
11	Company 11	Legacy	1,364	1,364	100	1,159	85	1,364	100
12	Company 12	Legacy	1,333	1,133	85	1,133	85	1,333	100
13	Company 13	Legacy	1,230	1,046	85	1,046	85	1,230	100
14	Company 14	Active	746	634	85	634	85	746	100
15	Company 15	Active	656	558	85	558	85	656	100
16	Company 16	Active	205	400	195	174	85	205	100
Self-Insured Operators Total			615,944	119,957	19	432,980	70	615,944	100

This final 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 BLBA. If anything, this final 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.

This final rule requires self-insured operators to adjust the amount of their security deposits to reach 100 percent of their reported actuarial black lung liability. Table 1 reflects that 13 of the 16 current self-insured operators will 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 the 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 final 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.[10] As noted above, commenters did not provide alternative data on the cost of bonds. 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. If operators do not wish to use surety bonds, however, they may obtain a different form—or multiple forms—of security, or commercial insurance. *See* 20 CFR 726.104(b), 30 U.S.C. 933(a), and 20 CFR 726.1 and 726.201.

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 7.7 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. 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 the most recent revenue available to OWCP, 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 0.422 percent to less than one thousandth of a percent (including one negative value).[11]

TABLE 2—ESTIMATED ANNUAL COST OF INCREASED SECURITY DEPOSIT IN THE FORM OF INDEMNITY BONDS

[All dollar amounts in thousands (,000)]

Coal mine operator		Required security deposit = 100%				Minimum estimated cost of change in securities	Maximum estimated cost of change in securities	Average estimated cost of change in securities	Annual revenue	Year of annual revenue	Estimated operator impact as a percent of revenue
ID No.	Name	Operator reported black lung actuarial liability	Operator securities on deposit	Operator securities required: final rule	Change in required secured position [1]						
1	Company 1	$162,939	$24,400	$162,939	$138,539	$2,771	$16,625	$9,698	$2,296,100	2022	0.422
2	Company 2	111,518	6,900	111,518	104,618	2,092	12,554	7,323	3,703,100	2022	0.198
3	Company 3	93,826	2,500	93,826	91,326	1,827	10,959	6,393	4,101,600	2022	0.156
4	Company 4	57,730	8,400	57,730	49,330	987	5,920	3,453	1,972,500	2022	0.175
5	Company 5	56,802	21,000	56,802	35,802	716	4,296	2,506	1,738,700	2022	0.144
6	Company 6	49,382	1,500	49,382	47,882	958	5,746	3,352	2,406,500	2022	0.139
7	Company 7	29,581	20,330	29,581	9,251	185	1,110	648	4,981,900	2022	0.013
8	Company 8	23,935	12,412	23,935	11,523	230	1,383	807	1,603,500	2018	0.050
9	Company 9	21,400	14,079	21,400	7,321	146	879	512	14,918,500	2022	0.003
10	Company 10	3,297	3,301	3,297	(4)	(0)	(1)	(0)	241,700	2022	0.000
11	Company 11	1,364	1,364	1,364	(0)	(0)	(0)	(0)	636,657	2018	0.000
12	Company 12	1,333	1,133	1,333	200	4	24	14	11,080,000	2018	0.000
13	Company 13	1,230	1,046	1,230	184	4	22	13	22,989,000	2022	0.000
14	Company 14	746	634	746	112	2	13	8	68,545	2018	0.011
15	Company 15	656	558	656	98	2	12	7	70,826	2018	0.010
16	Company 16	205	400	205	(195)	(4)	(23)	(14)	2,551,800	2022	−0.001
Self-Insured Operators Total.		615,944	119,957	615,944	495,987	9,920	59,518	34,719	75,360,928	.....	0.046
Commercially Insured Operators Total [2].		.....	.....	.....	.....	.....	.....	.....	.....	.....	0.000
Coal Mine Industry Total (Self-Insured + Commercially Insured).		.....	.....	.....	.....	.....	.....	.....	.....	.....	0.024

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

[10] 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.

[11] 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.

b. Economic Impact Summary

Operator securities on deposit are estimated to change by nearly $500 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 $500 million in securities on deposit will not exceed $30 million in any given year.

Furthermore, OWCP estimates ranges from approximately $10 million to $60 million on an annual basis, with a mid-range estimate of $35 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 a half of a 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.

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 for regulations that will have ''a significant economic impact on a substantial number of small entities'' or to certify that the regulations will have no such impact.

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

1. North American Industry Classification System (NAICS) code 212114, Bituminous Coal and Lignite Surface Mining—1,250 employees.

2. NAICS 212115, Bituminous Coal Underground Mining—1,500 employees.

For purposes of this analysis, operators were classified as Surface operations (NAICS = 212114) or Underground (NAICS = 212115) depending on their predominant method of coal mining. The SBA classification of small entities was applied according to the operator's NAICS code type of operations.

According to the SBA criteria, 6 of the 16 self-insured operators, or 38 percent, are considered small firms. Tables 3A and 3B show the impact on small and large self- insured operators. As explained 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.

The combined impact on these 6 operators ranges from $0 to $3.5 million, which translates to 0 percent to 0.18 percent of annual revenues. These impacts are very small, and for that reason the 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 0.01 percent of annual revenues.[12]

TABLE 3A—SMALL SELF-INSURED COAL MINE OPERATORS

ID No.	Name	Operations type	Dollars in thousands (,000)				Rule change impact (%)	Employee counts [1]			
			Minimum estimated cost of change in securities	Maximum estimated cost of change in securities	Average estimated cost of change in securities	Annual revenue		2020	2021	2022	3 Yr average
4	Company 4	Underground	987	5,920	3,453	1,972,500	0.175	1,133	1,127	1,172	1,144
5	Company 5	Underground	716	4,296	2,506	1,738,700	0.144	1,401	704	854	986
10	Company 10	Surface	−0.1	−0.5	−0.3	241,700	−0.000	500	500	500	500
11	Company 11	Surface	0	0	0	636,657	0.000	950 est	950 est	950 est	950
14	Company 14	Surface	2	13	8	68,545	0.011	142 est	142 est	142 est	142
15	Company 15	Surface	2	12	7	70,826	0.010	180	180	180	180

[1] Employee counts reflects all employees for each company. It is not limited to coal mining employees.

[12] 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 27106, 27151 (May 12, 2014).

TABLE 3B—LARGE SELF-INSURED COAL MINE OPERATORS

ID No.	Name	Operations type	Dollars in thousands (,000)				Rule change impact (%)	Employee counts [1]			
			Minimum estimated cost of change in securities	Maximum estimated cost of change in securities	Average estimated cost of change in securities	Annual revenue		2020	2021	2022	3 Yr average
1	Company 1	Underground	2,771	16,625	9,698	2,296,100	0.422	1,494	1,575	1,860	1,643
2	Company 2	Underground	2,092	12,554	7,323	3,703,100	0.198	3,203	3,303	3,404	3,303
3	Company 3	Underground	1,827	10,959	6,393	4,101,600	0.156	3,250	3,500	3,730	3,493
6	Company 6	Underground	958	5,746	3,352	2,406,500	0.139	2,902	2,990	3,371	3,088
7	Company 7	Surface	185	1,110	648	4,981,900	0.013	4,600	4,900	5,500	5,000
8	Company 8	Underground	230	1,383	807	1,603,500	0.050	6,000 est	6,000 est	6,000 est	6,000
9	Company 9	Surface	146	879	512	14,918,500	0.003	16,787	16,688	16,974	16,816
12	Company 12	Surface	4	24	14	11,080,000	0.000	11,300	11,300 est	11,300 est	11,300
13	Company 13	Surface	4	22	13	22,989,000	0.000	25,000	25,500	27,000	25,833
16	Company 16	Surface	−4	−23	−14	2,551,800	−0.001	3,011	2,884	2,982	2,959
Large Self-Insured Operators Total			8,213	49,278	28,745	70,632,000	0.008	77,547	78,640	82,121	79,436

[1] Employee counts reflects all employees for each company. It is not limited to coal mining employees.

Based on these facts, the Department certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, the Department has made a final determination that a regulatory flexibility analysis is not required. 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 were classified as Surface operations (NAICS = 212114) or Underground (NAICS = 212115) depending on their predominant method of coal mining. 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 U.S. Energy Information Administration (''EIA'') criterion of producing more than 5 million short tons of coal per year.

TABLE 4—COAL PRODUCTION BY OPERATOR

Coal mine operator			Coal production (thousand short tons)				% of U.S. production	Business size
ID No.	Name	Major U.S. coal producer	2020	2021	2022	3 Yr average		
1	Company 1	Yes	18,790	23,963	24,103	22,285	3.9	Large.
2	Company 2	Yes	61,705	71,854	78,364	70,641	12.4	Large.
3	Company 3	Yes	13,897	15,835	15,867	15,200	2.7	Large.
4	Company 4	No	0	0	0	0	0.0	Small.
5	Company 5	Yes	7,864	5,605	6,315	6,595	1.2	Small.
6	Company 6	Yes	26,900	32,218	35,477	31,532	5.5	Large.
7	Company 7	Yes	104,814	105,383	101,929	104,042	18.3	Large.
8	Company 8	No	0	0	0	0	0.0	Large.
9	Company 9	No	456	0	0	152	0.0	Large.
10	Company 10	Yes	30,801	27,852	28,899	29,184	5.1	Small.
11	Company 11	Yes	8,146	6,845	6,425	7,139	1.3	Small.
12	Company 12	No	0	0	0	0	0.0	Large.
13	Company 13	No	1,612	1,443	1,437	1,498	0.3	Large.
14	Company 14	No	115	121	143	126	0.0	Small.
15	Company 15	No	1,741	2,065	1,685	1,831	0.0	Small.
16	Company 16	No	3,737	3,503	3,735	3,658	0.6	Large.
Self-Insured Operators Total			280,578	296,687	304,380	293,882	51.6	
Coal Mine Industry Total			535,434	577,431	594,155	569,007	100.0	

TABLE 4—COAL PRODUCTION BY OPERATOR—Continued

Coal mine operator			Coal production (thousand short tons)				% of U.S. production	Business size
ID No.	Name	Major U.S. coal producer	2020	2021	2022	3 Yr average		
							% of production	
Major US Coal Producer: Self Insured			272,917	289,555	297,379	286,617	57.8	
Major US Coal Producer: Commercially Insured			185,690	221,208	220,174	209,024	42.2	
Total Major US Coal Producers			458,607	510,763	517,553	495,641	100.0	
Non-Major Self Insured			7,661	7,132	7,001	7,265	9.9	
Non-Major Commercially Insured			69,166	59,536	69,601	66,101	90.1	
Total Non-Major US Coal Producers			76,827	66,668	76,602	73,366	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.'' This 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 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 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.'' *Id.*

F. Executive Order 12988 (Civil Justice Reform)

This 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

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, 5 U.S.C. 801 *et seq,* OIRA has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

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, OWCP amends 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. Revise subpart B to read 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 is denied 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 actuarial assumptions, unless the applicant has submitted such a report within the preceding 3 years. The operator may submit an additional actuarial report using alternate assumptions with an explanation of 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 must be described by name and reference must be made to the Mine Identification Number assigned such mine by the Mine Safety and Health Administration, U.S. Department of Labor.

(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 information required in paragraphs (b)(1) through (6) of this section, 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, 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 regulations in this part 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 review and consider all relevant information submitted in the application and 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 in this subpart.

(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;

(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); or

(4) In the form of a trust pursuant to section 501(c)(21) of the Internal Revenue Code (26 U.S.C. 501(c)(21)) established prior to December 12, 2024. Operators using such trusts must submit quarterly financial statements to OWCP documenting the value of the trust every ninety days, beginning with ninety days from the date on which OWCP's authorization or reauthorization of the operator's self-insurance becomes effective under paragraphs (d) and (e) of this section.

(c) Operators that are required to submit an initial or increased security deposit may do so in quarterly increments over the course of one year. Such operators must deposit at least 25 percent of the newly required security amount within thirty days of OWCP issuing the notification provided in paragraphs (d) and (e) of this section, followed by at least 50 percent of their required security within four months, at least 75 percent within eight months, and 100 percent within one year. If an operator fails to timely submit any one of these security installments, OWCP will revoke its self-insurance authorization and the operator will be subject to the civil penalty provisions in subpart D of this part.

(d) 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 (either the full amount or first quarterly installment under paragraph (c) of this section) and completed agreement and undertaking are received by OWCP.

(e) 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 (either the full amount or first quarterly installment under paragraph (c) of this section) 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.

(f) Any applicant who cannot meet the security deposit requirements imposed by OWCP in this subpart should proceed to obtain a commercial policy or contract of insurance and submit proof of such coverage within 30 days after OWCP issues notification to 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 in this subpart 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 security equal to 100 percent of the actuarially 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, and 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 in 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.

(a) 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 100 percent of the self-insurer's liability for payment of benefits and medical expenses under the Act. OWCP will provide a written explanation for the increase.

(b) OWCP will not require an operator to post greater than 100 percent of its estimated liabilities, based on the information prompting the increase in security.

§ 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); and

(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 20 CFR 725.490 through 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 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 in 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.

(c) Each operator authorized to self-insure under this part must apply for reauthorization for any period during which it engages in the operation of a coal mine and for additional periods after it ceases operating a coal mine. Upon application by the operator, accompanied by proof that the security it has posted is sufficient to secure all benefits potentially payable to miners formerly employed by the operator, OWCP will issue a certification that the operator is exempt from the coal mine operator insurance requirements of this part based on its prior operation of a coal mine. The civil money penalty provisions of subpart D of this part will be applicable to any operator that fails to apply for reauthorization in accordance with the provisions of this section.

§ 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 DCMWC's determination on an application must submit a written appeal to the Director of OWCP in the form and manner prescribed by OWCP within 30 days of DCMWC issuing such determination. This deadline may not be extended.

(b) *What to submit.* Within 30 days after filing a written appeal, the applicant must submit any briefing on which it intends to rely, including any arguments that DCMWC's initial determination was erroneous. The applicant is not entitled to submit any further evidence at this time; all evidence must be submitted to DCMWC with the initial application. OWCP may, at its discretion, extend this deadline at the applicant's request for up to 30 days upon a showing of good cause. No more than two extensions will be granted.

(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 briefing in support of its appeal.

(2) If the applicant requests a conference, the Director of OWCP will hold one with the applicant's representatives and the Department's Office of the Solicitor.

(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 and issue a final agency decision.

(1) The Director of OWCP will review the initial decision, evidence of record, and arguments submitted on appeal. The applicant may not submit new evidence to the Director of OWCP.

(2) The Director of OWCP will have 60 days from receipt of the appeal to take up the appeal and issue a final agency decision.

(3) If the Director of OWCP issues a final agency decision denying self-insurance, any existing self-insurance authorization of the applicant will end. The applicant will have 30 days from the issuance of the final agency decision to obtain and submit proof of commercial insurance or begin facing civil penalties for failure to secure benefits.

Signed at Washington, DC, this 3rd day of December 2024.

Christopher J. Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2024–28848 Filed 12–11–24; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA–2019–0003]

RIN 1218–AD25

Personal Protective Equipment in Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is finalizing a revision to its personal protective equipment standard for construction to explicitly require that the equipment must fit properly.

DATES: This final rule is effective January 13, 2025.

ADDRESSES: *Docket:* To read or download comments or other information in the docket, go to *https://www.regulations.gov.* All comments and submissions are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2500 (TDY number 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Frank Meilinger, Director, OSHA Office of Communications, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

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SUPPLEMENTARY INFORMATION: