

SUPPORTING STATEMENT

**APPLICATION FOR SELF-INSURANCE UNDER
THE BLACK LUNG BENEFITS ACT
1240-0NEW**

This new Information Collection Request (ICR) would provide information sufficient for the Office of Workers' Compensation Programs (OWCP) to determine whether a coal mine operator should be (or continue to be) authorized to self-insure its liabilities under the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.* The information will also allow OWCP to determine the security amount a coal mine operator must deposit to guarantee that it will be able to meet its BLBA liabilities.

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collections. Attach a copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information

OWCP administers the BLBA, which provides both disability and medical benefits to coal miners who are totally disabled due to pneumoconiosis (commonly called black lung disease) arising out of coal mine employment, and survivor's benefits to certain miners' dependent survivors. These benefits are generally paid by a coal mine operator who employed the miner.

To secure benefit payments, the BLBA requires covered coal mine operators to purchase insurance from a carrier authorized by the Secretary of Labor to write BLBA insurance, or to become an authorized self-insured operator in accordance with the Secretary's regulations. 30 U.S.C. § 933. OWCP determines whether a coal mine operator should be authorized to self-insure and, if so, the amount of any security the operator must post to guarantee payment of its BLBA liabilities. To make these determinations, OWCP must evaluate the operator's financial capacity and potential claims liability. This involves analyzing the nature of the operator's business, the business' structure, detailed financial information, actuarial predictions, historic rates of payments, and current claims information. The regulations implementing the self-insurance provision allow OWCP to collect this information from operators applying for (or

renewing) authorization to self-insure their BLBA liabilities.
(20 CFR 726.102, 726.112).

All of the information sought with this collection is in the control of the coal mine operator and, for new self-insurance applicants, its commercial insurance carriers.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information collected will be used by OWCP staff to determine whether a coal mine operator should be authorized (or continue to be authorized) to self-insure its BLBA liabilities and to determine the amount of security an authorized self-insurer must deposit. **Forms CM-2017** (Application or Renewal of Self-Insurance Authority) and **CM-2017a**(Financial Summary for Self-Insured Operators)request basic information about the applicant's business including financial information, subsidiaries it wants to cover under its self-insurance authority, basic historical claims information, how it intends to administer claims as a self-insurer, and an actuarial analysis of projected BLBA liabilities. This information allows OWCP to assess the operator's current financial health, evaluate the operator's qualifications to self-insure, and estimate its future liabilities. If this information were not collected, self-insurance authorizations could not be granted (or renewed) as required by the statute.

Form CM-2017b (Report of Claims Information for Self-Insured Operators) requests a report showing all outstanding claims against the applicant and its subsidiaries, and the particulars of each case. OWCP sets the operator's security deposit amount relative to its outstanding liabilities. If the information were not collected, there would be no way to set a new self-insurer's security deposit amount or determine whether a current self-insurer's security deposit was adequate to provide for the continued payment of benefits if the self-insurer were to become insolvent or bankrupt.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic

submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

In accordance with the Government Paperwork Elimination Act, Forms CM-2017, CM-2017a, and CM-2017b will be available in an electronically interactive format on OWCP's website. Once completed and executed, the operator will have two methods for submission: (1) print the forms and required attachments in hard copy and send them to OWCP by mail or other delivery method; or (2) e-mail the forms and required attachments to OWCP. The instructions for each form specify a mailing address and e-mail address for these purposes. In addition, the instructions for Form CM-2017b (Report of Claims Information for Self-Insured Operators) advise the respondent to contact OWCP if it wishes to submit the requested information in a format other than the form (e.g., an electronic spreadsheet format). OWCP intends to accept this claims information in any format convenient for the respondent so long as the data can be extracted by OWCP's own computer systems.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.

The information requested in this ICR is not duplicative of any information available elsewhere.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection contains only that information required for OWCP to make a self-insurer or security-deposit decision. Generally, the respondents are large coal mine operators. In any event, this collection does not impose additional burdens on small businesses or other small entities because coal mine operators routinely maintain the information requested in the normal course of business as part of their usual business practices or as part of self-insuring its liabilities.

6. Describe the consequence of Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Please refer to Nos. 1 and 2 (see pages 1 & 2). If this information were not collected, OWCP would be unable to determine whether a coal mine operator has the financial capacity to qualify as a self-insurer or to determine the amount of security an operator must deposit to assure prompt payment of its BLBA obligations if the operator defaults or becomes insolvent. Because a coal mine operator's BLBA obligations change from year-to-year (e.g., new claims are filed, previously filed claims are paid in full) annual evaluation of the required security deposit amount is necessary.

7. Explain any special circumstances required in the conduct of this information collection.

There are no special circumstances for the collection of this information.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments.

On October 30, 2017, OWCP published a Notice in the Federal Register that provided a 60-day period for the public to comment on this collection of information. 82 FR 50166. OWCP received five comments from industry trade associations and three from individual industry members.

Topic 1: Several comments state that OWCP is attempting to rewrite the self-insurance regulations with this information collection. These comments contend that the collection violates the Administrative Procedure Act and that the regulations already control the information self-insurance applicants must submit.

Response: OWCP's self-insurer regulations fully support collection of this information. The regulations require self-insurance applicants to provide certain specific information to OWCP:

(b) *Information to be submitted.* Each application for authority to self-insure shall contain:

- (1) A statement of the employer's payroll report for each of the preceding 3 years;
- (2) A statement of the average number of employees engaged in employment within the purview of the Act for each of the preceding 3 years;
- (3) A list of the mine or mines to be covered by any particular self-insurance agreement. Each such mine or mines listed shall be described by name and reference shall be made to the Federal Identification Number assigned such mine by the Bureau of Mines, U.S. Department of the Interior;
- (4) A certified itemized statement of the gross and net assets and liabilities of the operator for each of the 3 preceding years in such manner as prescribed by the Office;
- (5) A statement demonstrating the applicant's administrative capacity to provide or procure adequate servicing for a claim including both medical and dollar claims[.]

20 CFR 726.102(b)(1)-(5). The regulations also broadly authorize OWCP to collect from self-insurance applicants "such further information or such evidence as [OWCP] may deem necessary to have in order to enable it to give adequate consideration to such application." 20 CFR 725.102(a)(6).

For operators who have been approved by OWCP to self-insure, the regulations similarly require that they "submit to [OWCP] reports containing such information as [OWCP] may from time to time require or prescribe." 20 CFR 726.112(a). The regulations also authorize OWCP to inspect the operator's records to verify any financial statement or other information the operator submits to OWCP. 20 CFR 726.112(b). OWCP may, within its discretion, choose to "accept an adequate report of a certified public accountant" in lieu of inspection. *Id.* Finally, an operator's "[f]ailure to submit or make available any report or information requested by [OWCP under] this section may, in appropriate circumstances, result in a revocation of the authorization to self-insure." 20

CFR 726.112. The requirements in both sections 726.102 and 726.112 have been in place since 1973, when they were first promulgated.

The proposed information collections fit well within these regulatory bounds. The form CM-2017 application requests the applicant's payroll and average employee numbers for the past three years, a list of mines and subsidiaries covered by the application, certified financial statements for the past three years (or one year if the applicant is seeking to renew its authority), and claims-administration information. For new applicants, the regulations explicitly require submission of this information. 20 CFR 726.102(b)(1)-(5). For renewal applicants, the regulations broadly require submission of information required by OWCP, 20 CFR 726.112(a), and envision the submission of additional financial data, 20 CFR 726.112(b). In both instances, OWCP deems the requirements for an actuarial report and outstanding claims data necessary for OWCP to fully evaluate the application and determine the security deposit amount the applicant must post to secure payment of existing and potential claims throughout their lifetimes. 20 CFR 726.102(b)(6), 726.112. Thus, these information collections do not go beyond OWCP's existing and longstanding regulatory authority.

Topic 2: Several comments object to particular pieces of information requested through the Form CM-2017 application. These include the applicant's payroll data, collateral amounts securing the applicant's state workers' compensation liabilities, and the "Parental Guarantee" letter stating that the applicant guarantees payment for its indicated subsidiaries' liabilities under the BLBA.

Response: OWCP concurs that it does not need to collect state workers' compensation information with every application and has also removed the Parental Guarantee request. OWCP has amended the Form CM-2017 application to reflect these two changes. However, OWCP has not removed the request for payroll data because its submission is required under 20 CFR 726.102(b)(1).

Topic 3: Several comments object to the requirement that operators seeking initial self-insurance authority or renewing that authority submit actuarial projections of their BLBA claims liabilities. They state that conducting an annual review of self-insurers and security deposits would be an adequate replacement for actuarial reports. One comment states that requiring yearly

actuarial reports from renewal applicants would be unduly burdensome and suggests that OWCP exempt operators who do not have future excessive BLBA exposures from the requirement.

Response: Actuarial reports are crucial to determining security deposit amounts. Projecting future liabilities for long-tail BLBA claims is prudent financial management for self-insurers. In OWCP's experience, authorized BLBA self-insurers have voluntarily supplied actuarial reports to OWCP. Without these projections, OWCP cannot determine future payouts with any degree of certainty and set an adequate security deposit amount. Recent events have also highlighted the importance of setting a sufficient security deposit amount. In the past several years, self-insured operators' bankruptcies have shifted liability for approximately \$325 million in benefit payments to the Black Lung Disability Trust Fund because the operators' security deposits were insufficient to cover their future liabilities.

OWCP does not, however, wish to impose any unnecessary burdens on operators. OWCP has thus revised the annual actuarial-report requirement it originally proposed. Once an operator provides an actuarial report and is approved to self-insure, OWCP will require a new actuarial report at three-year intervals thereafter unless there is a significant change in circumstances. These circumstances may include substantial increases in the number of covered miners the operator or its subsidiaries employ, or major, unanticipated changes in BLBA benefits rates, claim approval rates, or rules governing BLBA liability.

OWCP believes this three-year interval is reasonable and will adequately project each self-insured's potential BLBA liabilities. OWCP will reevaluate this requirement when it renews this information collection to determine whether the time interval for submitting actuarial reports can be extended while still adequately projecting self-insureds' liabilities and protecting the Black Lung Disability Trust Fund.

OWCP has revised the Form CM-2017 application to reflect this change.

Topic 4: Several comments state that OWCP is using this information collection to force operators into using commercial

insurance rather than self-insuring. They contend that the data requests are intended to reject self-insurance applicants.

Response: OWCP's only goal in collecting this information is to determine whether a coal mine operator should be authorized to self-insure and to set an adequate security amount to ensure that each operator it authorizes to self-insure has the financial ability to meet its present and future liabilities arising under the BLBA. Without proper resources and security, financially incapacitated operators' liabilities fall on the Black Lung Disability Trust Fund, which the Department administers, rather than borne by the operators as Congress intended.

Topic 5: One comment states that requiring certified financial statements will increase both time and money costs for the applicant. This requirement is contained in the Form CM-2017 application. The comment suggests that the financial information collected on Form CM-2017b should be sufficient.

Response: OWCP must collect accurate financial information to fully evaluate the applicant's request for self-insurance authorization. The collection of certified financial information is supported by OWCP's regulations. 20 CFR 726.102(a)(4), 726.112(a)-(b). Without certified financial statements, OWCP would have no way to verify the accuracy of the information either contained in the statements or reported on Form CM-2017b. OWCP anticipates that in many instances, operators will have created certified financial reports in the routine course of business. In those instances, operators will incur only the additional cost of providing a copy to OWCP.

Topic 6: One comment suggests that OWCP develop a fully automated system for submitting this information to lessen the burden on operators especially when seeking to renew self-insurance authority.

Response: OWCP has been moving towards electronic case files and electronic filing over the past several years and will continue to do so in the future. OWCP's limited financial resources have been focused on claims processing because of the large volume of paper records. Eventually, OWCP hopes to adopt a fully automated system for self-insurance applications as well. In the meantime, OWCP is happy to work with each operator on submission methods to lessen the operator's time and cost burdens whenever possible.

Topic 7: Two comments state that responding to this information collection would impose additional administrative burdens and costs, particularly with respect to obtaining a certified financial statement and an actuarial report.

Response: OWCP is requesting the minimum information necessary to determine whether a coal mine operator should be authorized to self-insure its BLBA liabilities and to set an adequate security amount. The majority of this information should be readily available to the operator. As noted, many operators will have obtained certified financial reports in the usual course of business. OWCP has also sought to minimize costs by requiring submission of an actuarial report at three-year intervals (rather than annually) absent a significant change in circumstances, and by eliminating the parental guarantee requirement.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are made to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The information collected from respondents is exempt from public disclosure to the extent provided in 5 U.S.C. § 552(b) and the Department of Labor's implementing regulations. 20 CFR 726.113. OWCP may share the information with contractors it employs to manage data or analyze the information collected for purposes of determining whether a coal mine operator should be authorized to self-insure or the amount of the required security deposit.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary; the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature in this information collection.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special surveys to obtain information on which to base burden estimates. Consultation with a sample of potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden and explain the reason for the variance. Generally, estimates should not include burden hours for customary and usual business practices. Provide estimates of the hour burden of the collection of information.**

Estimated Annualized Respondent Cost and Hour Burdens

To calculate the burdens, OWCP has used a number of respondents that is larger than anticipated. While OWCP has records for 53 self-insured operators, only 22 are currently engaged in coal production. Others have left the mining business (but still exist and should respond to the information collection) or have gone out of business entirely. OWCP does not expect those companies that have gone out of business to respond. OWCP has used this number only to be sure the burdens are not underestimated.

Form	Number of Respondents	Number of Responses per Respondent	Total Number of Responses	Avg. Burden per Response (In Hrs.)	Total Burden Hours	Hourly Wage Rate*	Total Burden Costs
CM-2017 Application /Renewal	53	1	53	2	106	\$36.89	\$3,910.34
CM-2017a Financial Summary	53	4	212	20/60	71	\$64.58	\$4,585
CM-2017b Report of Claims Information	53	1	53	2	106	\$67.17	\$7,120.02
Duplicated Total	53	--	318	--	283	--	\$15,615.36

*The hourly wage of \$36.89 for accountants, taken from the May 2016 National Occupational Employment and Wage Estimates, published by the Bureau of Labor Statistics at <https://www.bls.gov/oes/current/oes132011.htm>

*The hourly wage of \$67.17 for Financial Managers, taken from the May 2016 National Occupational Employment and Wage Estimates, published by the Bureau of Labor Statistics at <https://www.bls.gov/oes/current/oes113031.htm>.

13. Annual Costs to Respondents (capital/start-up & operation and maintenance).

There will be no design or software needed in order to provide the information requested on forms CM-2017, CM-2017a and CM-2017b. The information requested is contained in the respondents' current data bases in the normal course of business and is readily available.

From the 53 respondents, each will complete and submit forms CM-2017, CM-2017a and CM-2017b.

CM-2017 and CM-2017b will be completed and submitted annually (2 X 53 = 106).

CM-2017a will be completed and submitted quarterly by the 53 respondents (53 X 4 = 212). It is estimated that half of these respondents will submit their completed forms by electronic method (212 / 2 = 106)

CM-2017a requires that the operator submit with the form an actuarial report on their projected BLBA liabilities once every three years (unless special circumstances require a report sooner). Some of the 53 operators will already have prepared these reports in the normal course of business. As noted above, other self-insured operators who are out of business will not be respondents. Thus, OWCP has based this burden calculation on approximately one-half of the potential pool, or 27 respondents. OWCP estimates, based on the charges it has recently incurred for actuarial reports (which range from approximately \$4,000 to \$6,000), that a coal-mine operator would pay an average of \$5,000 per report. Since submission of a report would, in general, only be required once every three years, the annual cost is an average of \$1,667. Thus, OWCP estimates the annual burden at \$45,009 (27 x \$1,667 = \$45,009)

The remaining half (106) of the respondents will submit their completed forms by mailing them.

CM-2017 27 (rounded up from 26.5) \$2.53 (\$2.50 postage + .03 envelope) = \$68.31
CM-2017a 106 .58 (\$.55 postage + .03 envelope) = \$61.48
CM-2017b 27 (rounded up from 26.5) .58 (\$.55 postage + .03 envelope) = \$15.66

The total annual costs to respondents is \$45,154.45

14. Provide estimates of annualized cost to the Federal Government.

The total Federal cost estimate for the three forms is estimated at \$15,351.60.

CM-2017

The Federal cost estimate of \$7,239.46 was determined for an average annual usage of 53 forms as follows:

- o mailing 34 x \$.58 per form = \$19.72
(\$.55 postage plus \$.03 envelope)
The remaining 19 forms will be sent to the respondent electronically.
- o processing A GS-13/1 (\$45.42 per hour) spends 180 minutes processing each of the 53 forms.

https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf

53 X 180 = 159 hours X \$45.42 = \$7,221.78

CM-2017a

The Federal cost estimate of \$3,279.94 was determined for an average annual usage of 212 forms as follows:

- o mailing 106 x \$.58 per form = \$61.48
(\$.49 postage plus \$.03 envelope)
The remaining 106 forms will be sent to the respondent electronically.
- o processing A GS-13/1 (\$45.42 per hour) spends 20 minutes processing each of the 212 forms.

[https://www.opm.gov/policy-data-](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf)

[oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf)

$212 \times 20 = 4,240 \text{ min} / 60 = 71$ (70.667
rounded up) hours \times \$45.42 = \$3,224.82

CM-2017b

The Federal cost estimate of \$4,832.20 was determined for an average annual usage of 53 forms as follows:

- o mailing 34 x \$.58 per form = \$19.72
(\$.55 postage plus \$.03 envelope)
The remaining 19 forms will be sent to the respondent electronically.
- o processing A GS-13/1 (\$45.42 per hour) spends 120 minutes processing each of the 53 forms.
https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB_h.pdf
 $53 \times 120 = 106 \text{ hours} \times \$45.42 = \$4,814.52$

Federal Cost Summary

CM-2017	\$7,239.46
CM-2017a	\$3,279.94
CM-2017b	\$4,832.20
Total Federal Cost	\$15,351.60

15. Explain the reasons for any program changes or adjustments.

This is a new data collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection information, completion of report, publication dates, and other actions.

There are no plans to publish data collected under this request.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This information collection request does not seek a waiver from the requirement to display the expiration date.

18. Explain each exception to the certification statement in ROCIS.

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Statistical methods are not used in these collections of information.