



DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

[Docket No. WCPO-2020-0002]

Guidance on Black Lung Benefits Act Self-Insurance

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing publication of a preliminary program bulletin titled "DCMWC Self-Insurance Process Guidelines" describing the agency's updated process for evaluating self-insurance applications under the Black Lung Benefits Act (BLBA). The BLBA requires coal mine operators to secure the payment of benefits by either purchasing commercial insurance or obtaining the Department's authorization to self-insure those liabilities. Authorization to self-insure may be granted or denied at the Department's discretion. OWCP is making the programmatic changes and preliminary bulletin available for public comment pursuant to the Department of Labor's PRO Good Guidance Rule.

DATES: The Department invites written comments on the self-insurance program and the bulletin from interested parties. Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments electronically by the following method:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.

Instructions. Include the docket number WCPO-2020-0002 in your comments. All comments received will be posted without change to <http://www.regulations.gov>. Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

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, N.W., Room N-3464, Washington, D.C. 20210. Telephone: 1-800-347-2502. This is a toll-free number. TTY/TDD callers may dial toll-free 1-800-877-8339 for further information.

SUPPLEMENTARY INFORMATION:

I. Overview

The BLBA provides benefits to coal miners who are totally disabled by pneumoconiosis (commonly known as black lung disease) and to certain of their survivors. The BLBA requires coal mine operators to secure the payment of benefits by either purchasing commercial insurance or obtaining the Department's authorization to self-insure those liabilities. 30 U.S.C. 933(a). Authorization to self-insure may be granted or denied at the Department's discretion. 20 CFR 726.101(a). When a self-insurer is unable (or unwilling) to meet its payment obligations, the Black Lung Disability Trust Fund (Trust Fund) makes those payments. Although the Trust Fund acts as a backstop, Congress intended "to ensure that individual coal operators rather than the trust fund bear the liability for [black lung] claims arising out of such operators' mines to the maximum

extent feasible.” *See 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)); 20 CFR 725.1(e). To help ensure that self-insured operators’ liabilities do not fall on the Trust Fund, OWCP created new forms CM-2017, CM-2017a, and CM-2017b and now seeks to update its process for evaluating the information collected through those forms to determine whether a coal mine operator should be allowed to self-insure and to determine the security amount each operator must provide to guarantee payment of current and future liabilities. OWCP has set forth the updated process in its preliminary bulletin titled “DCMWC Self-Insurance Process Guidelines.” OWCP now seeks public comment on the bulletin and the process discussed in the bulletin.

II. Bulletin Publication

Out of an abundance of caution, OWCP is requesting comments on the bulletin and its underlying programmatic changes, in line with the requirements of the Department’s PRO Good Guidance Rule, *see* 29 CFR part 89, and also because OWCP believes the public’s input on the self-insurance process could be very helpful to the program’s administration. OWCP’s request for comments is also consistent with the openness and transparency goals of the Department’s guidance regulations; E.O. 13891, 84 FR 55235 (Oct. 15, 2019); and OMB’s Final Bulletin for Agency Good Guidance Practices, 72 FR 3432 (Jan. 25, 2007).

III. Internet Availability

Persons with internet access may view the preliminary bulletin at <https://www.dol.gov/sites/dolgov/files/OWCP/dcmwc/blba/indexes/BL21-01OCR.pdf> or at <http://www.regulations.gov>. The relevant forms are available at: <https://www.dol.gov/sites/dolgov/files/owcp/regs/compliance/cm-2017.pdf>; <https://www.dol.gov/sites/dolgov/files/owcp/regs/compliance/cm-2017a.pdf>; <https://www.dol.gov/sites/dolgov/files/owcp/regs/compliance/cm-2017b.pdf>. Additional information about the programmatic changes are available on the OWCP website at: <https://www.dol.gov/sites/dolgov/files/owcp/dcmwc/ActuarialAssumptions.pdf>. Persons who do not have electronic access to the bulletin, forms, and other information may request a copy using the contact information above.

Dated: January 4, 2021.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.
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