

(vi) Who executes a nondisclosure agreement with the entity that provides assurances that the individual will not transfer any defense articles to persons or entities unless specifically authorized by the entity.

(4) A secondment from one entity to another meets the definitions described in paragraphs (a)(2) and (3) of this section.

(b) Nothing in this section shall be construed to provide authorization for the export, retransfer, or reexport of defense articles or defense services.

**Choo S. Kang,**

*Acting Assistant Secretary, Bureau of International Security and Nonproliferation, Department of State.*

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## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

#### 29 CFR Parts 403 and 408

RIN 1245-AA12

#### Rescission of Labor Organization Annual Financial Report for Trusts in Which a Labor Organization Is Interested, Form T-1

**AGENCY:** Office of Labor-Management Standards, Department of Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** This document proposes to withdraw the final rule published in the *Federal Register* on March 6, 2020, 85 FR 13414 (Mar. 6, 2020) (2020 Form T-1 rule), which established the Form T-1, Trust Annual Report, required to be filed by labor organizations about certain trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA). Upon further review of the 2020 Form T-1 rule, including the pertinent facts and legally relevant policy considerations surrounding that rulemaking, the Department of Labor (Department) proposes to withdraw the rule implementing the Form T-1, because it believes that the trust reporting required under the rule is overly broad and is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. Moreover, upon further consideration, the Department is concerned that the 2020 rulemaking record was insufficient to justify the separate trust reporting requirements as set forth in the 2020 Form T-1 rule.

**DATES:** The Department will consider all written comments submitted on or before July 26, 2021.

**ADDRESSES:** You may submit comments, identified by RIN 1245-AA12, only by the following method: Internet—Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. To locate the proposed rule, use RIN 1245-AA12 or key words such as “T-1,” “Labor-Management Standards” or “Trust Annual Reports” to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-5609, Washington, DC 20210, (202) 693-0123 (this is not a toll-free number), (800) 877-8339 (TTY/TDD), [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Statutory Authority

The Department’s statutory authority is set forth in section 208 of the LMRDA, 29 U.S.C. 438. Section 208 of the LMRDA provides that the Secretary of Labor “shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under [the Act] and such other reasonable rules and regulations . . . as he may find necessary to prevent the circumvention or evasion of such reporting requirements.”

The Secretary has delegated his authority under the LMRDA to the Director of the Office of Labor-Management Standards (OLMS) and permitted re-delegation of such authority. *See* Secretary’s Order 03-2012 (Oct. 19, 2012), published at 77 FR 69375 (Nov. 16, 2012).

#### II. Background

##### A. Introduction

In enacting the LMRDA in 1959, Congress sought to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers, employees, and representatives. The LMRDA’s various reporting provisions are designed to empower labor organization members by providing them the means to maintain democratic

control over their labor organizations and ensure a proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization’s financial affairs and to make informed choices about the leadership of their labor organization and its direction when labor organizations disclose financial information as required by the LMRDA.

By reviewing a labor organization’s financial reports, a member may ascertain the labor organization’s priorities and whether they are in accord with the member’s own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization’s own interests as a democratic institution and the interests of the public and the government. Furthermore, the LMRDA’s reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization’s funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

##### B. The LMRDA’s Reporting and Other Requirements

When it enacted the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields “there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.” 29 U.S.C. 401(b). The statute was designed to remedy these various ills through a set of integrated provisions aimed at labor organization governance and management. These include a “bill of rights” for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, *see* 29 U.S.C. 411-415; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, *see* 29 U.S.C. 431-436, 441; detailed

procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of labor organization officers, *see* 29 U.S.C. 481–483; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, a prohibition on certain loans by a labor organization to its officers or employees, prohibitions on employment by a labor organization of certain convicted felons, and prohibitions on payments to employees, labor organizations, and labor organization officers and employees for prohibited purposes by an employer or labor relations consultant, *see* 29 U.S.C. 501–505; and prohibitions against extortionate picketing, retaliation for exercising protected rights, and deprivation of LMRDA rights by violence, *see* 29 U.S.C. 522, 529, 530.

The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; and its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. *See generally* Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 851–55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. Similar arrangements were also found to exist between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. *See generally* *Interim Report of the Select Committee on Improper Activities in the Labor or Management Field*, S. Report No. 85–1417 (1957); *see also* William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of*

*Employee Rights*, 59 Colum. L. Rev. 96 (1959).

Financial reporting and disclosure from labor organizations were conceived as partial remedies for these improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (“The searchlight of publicity is a strong deterrent.”), aid labor organization governance (labor organizations will be able “to better regulate their own affairs” because “members may vote out of office any individual whose personal financial interests conflict with his duties to members”), facilitate legal action by members against “officers who violate their duty of loyalty to the members”, and create a record (“the reports will furnish a sound factual basis for further action in the event that other legislation is required”). S. Rep. No. 187 (1959) 16 reprinted in 1 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 412.

The Department has developed several forms for implementing the LMRDA's financial reporting requirements. The annual reports required by section 201(b) of the Act, 29 U.S.C. 431(b) (Form LM–2, Form LM–3, and Form LM–4), contain information about a labor organization's assets; liabilities; receipts; disbursements; loans to officers, employees, and business enterprises; payments to each officer; and payments to each employee of the labor organization paid more than \$10,000 during the fiscal year. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

The labor organization's president and treasurer (or its corresponding officers) are personally responsible for filing the reports and for any statement in the reports known by them to be false. 29 CFR 403.6. These officers are also responsible for maintaining records in sufficient detail to verify, explain, or clarify the accuracy and completeness of the reports for not less than five years after the filing of the forms. 29 CFR 403.7. A labor organization “shall make available to all its members the information required to be contained in such reports” and “shall . . . permit such member[s] for just cause to examine any books, records, and accounts necessary to verify such report[s].” 29 CFR 403.8(a).

The reports are public information. 29 U.S.C. 435(a). The Secretary is charged with providing for the inspection and examination of the financial reports, 29 U.S.C. 435(b). For this purpose, OLMS

maintains: (1) A public disclosure room where copies of such reports filed with OLMS may be reviewed and; (2) an online public disclosure site, where copies of such reports filed since the year 2000 are available for the public's review.

In addition to prescribing the form and publication of the LMRDA reports, the Secretary is authorized to issue regulations that prevent labor unions and others from avoiding their reporting responsibilities. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions, including “prescribing reports concerning trusts in which a labor organization is interested” as she may “find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.” 29 U.S.C. 438. In other words, the Secretary may require separate trust reporting only if: (1) The union has an interest in a trust *and* (2) reporting is determined to be necessary to prevent the circumvention or evasion of LMRDA reporting requirements. 29 U.S.C. 438.

### III. Proposal To Rescind the March 6, 2020 Final Rule Establishing the Form T–1

#### A. History of the Form T–1

The Form T–1 report was first proposed on December 27, 2002, as one part of a proposal to extensively change the Form LM–2. 67 FR 79280 (Dec. 27, 2002). The rule was proposed under the authority of Section 208, which permits the Secretary to issue such rules “prescribing reports concerning trusts in which a labor organization is interested” as he may “find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.” 29 U.S.C. 438. Following consideration of public comments, on October 9, 2003, the Department published a final rule enacting extensive changes to the Form LM–2 and establishing a Form T–1. 68 FR 58374 (Oct. 9, 2003) (2003 Form T–1 rule). The 2003 Form T–1 rule eliminated the requirement that unions report on subsidiary organizations on the Form LM–2, but it mandated that each labor organization filing a Form LM–2 report also file a separate report to “disclose assets, liabilities, receipts, and of a significant trust in which the labor organization is interested,” increasing labor organizations' reporting requirements generally and expanding the types of trusts for which reporting would be required. 68 FR at 58477. The reporting labor organization would make this disclosure by filing a separate

Form T-1 for each significant trust in which it was interested. *Id.* at 58524.

To support the assertion that trust reporting was “necessary to prevent the circumvention or evasion of [the LMRDA’s] reporting requirements,” the 2003 Form T-1 rule developed the “significant trust in which the labor organization is interested” test. It used the section 3(l) statutory definition of “a trust in which a labor organization is interested” coupled with an administrative determination of when a trust is deemed “significant.” 68 FR at 58477–78. The LMRDA defines a “trust in which a labor organization is interested” as:

A trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries. *Id.* (quoting 29 U.S.C. 402(l)).

The 2003 Form T-1 rule set forth an administrative determination that stated that a “trust will be considered significant” and therefore subject to the Form T-1 reporting requirement under the following conditions:

(1) The labor organization had annual receipts of \$250,000 or more during its most recent fiscal year, and (2) the labor organization’s financial contribution to the trust or the contribution made on the labor organization’s behalf, or as a result of a negotiated agreement to which the labor organization is a party, is \$10,000 or more annually. *Id.* at 58478.

The portions of the 2003 rule relating to the Form T-1 were vacated by the D.C. Circuit in *AFL-CIO v. Chao*, 409 F.3d 377, 389–391 (D.C. Cir. 2005). The court held that the form “reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union’s contribution of funds to an independent organization could circumvent or evade union reporting requirements by, for example, permitting the union to maintain control of the funds.” *Id.* at 389. The court also vacated the Form T-1 portions of the 2003 rule because its significance test failed to establish reporting based on domination or managerial control of assets subject to LMRDA Title II jurisdiction.

The court reasoned that the Department failed to explain how the test—*i.e.*, selection of one member of a board and a \$10,000 contribution to a trust with \$250,000 in receipts—could give rise to circumvention or evasion of Title II reporting requirements. *Id.* at 390. In so holding, the court

emphasized that Section 208 authority is the only basis for LMRDA trust reporting, that this authority is limited to preventing circumvention or evasion of Title II reporting, and that “the statute doesn’t provide general authority to require trusts to demonstrate that they operate in a manner beneficial to union members.” *Id.* at 390.

However, the court recognized that reports on trusts that reflect a labor organization’s financial condition and operations are within the Department’s rulemaking authority, including trusts “established by one or more unions or through collective bargaining agreements calling for employer contributions, [where] the union has retained a controlling management role in the organization,” and also those “established by one or more unions with union members’ funds because such establishment is a reasonable indicium of union control of that trust.” *Id.* The court acknowledged that the Department’s findings in support of its rule were based on particular situations where reporting about trusts would be necessary to prevent evasion of the related labor organizations’ own reporting obligations. *Id.* at 387–88. One example included a situation where “trusts [are] funded by union members’ funds from one or more unions and employers, and although the unions retain a controlling management role, no individual union wholly owns or dominates the trust, and therefore the use of the funds is not reported by the related union.” *Id.* at 389 (emphasis added). In citing these examples, the court explained that “absent circumstances involving dominant control over the trust’s use of union members’ funds or union members’ funds constituting the trust’s predominant revenues, a report on the trust’s financial condition and operations would not reflect on the related union’s financial condition and operations.” *Id.* at 390. For this reason, while acknowledging that there are circumstances under which the Secretary may require a report, the court disapproved of a broader application of the rule to require reports by any labor organization simply because the labor organization satisfied a reporting threshold (a labor organization with annual receipts of at least \$250,000 that contributes at least \$10,000 to a section 3(l) trust with annual receipts of at least \$250,000). *Id.*

In light of the decision by the D.C. Circuit and guided by its opinion, the Department issued a revised Form T-1 final rule on September 29, 2006. 71 FR 57716 (Sept. 29, 2006) (2006 Form T-1 rule). The U.S. District Court for the

District of Columbia vacated this rule due to a failure to provide a new notice and comment period. *AFL-CIO v. Chao*, 496 F. Supp. 2d 76 (D.D.C. 2007). The district court did not engage in a substantive review of the 2006 rule, but the court noted that the AFL-CIO demonstrated that “the absence of a fresh comment period. . . constituted prejudicial error” and that the AFL-CIO objected with “reasonable specificity” to warrant relief vacating the rule. *Id.* at 90–92.

The Department issued a proposed rule for a revised Form T-1 on March 4, 2008. 73 FR 11754 (Mar. 4, 2008). After notice and comment, the 2008 Form T-1 final rule was issued on October 2, 2008. 73 FR 57412. The 2008 Form T-1 rule took effect on January 1, 2009. Under that rule, Form T-1 reports would have been filed no earlier than March 31, 2010, for fiscal years that began no earlier than January 1, 2009.

Pursuant to *AFL-CIO v. Chao*, the 2008 Form T-1 rule stated that labor organizations with total annual receipts of \$250,000 or more must file a Form T-1 for those section 3(l) trusts in which the labor organization, either alone or in combination with other labor organizations, had management control or financial dominance. 73 FR at 57412. For purposes of the rule, a labor organization had management control if the labor organization alone, or in combination with other labor organizations, selected or appointed the majority of the members of the trust’s governing board. Further, for purposes of the rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the trust’s receipts during the annual reporting period. Significantly, the rule treated contributions made to a trust by an employer pursuant to CBA as constituting contributions by the labor organization that was party to the agreement.

Additionally, the 2008 Form T-1 rule provided exemptions to the Form T-1 filing requirements. No Form T-1 was required for a trust: (1) Established as a political action committee (PAC) fund if publicly available reports on the PAC fund were filed with Federal or state agencies; (2) established as a political organization for which reports were filed with the IRS under section 527 of the IRS code; (3) required to file a Form 5500 under ERISA; or (4) constituting a federal employee health benefit plan that was subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), 5 U.S.C. 8901 *et seq.* Similarly, the rule clarified that no

Form T-1 was required for any trust that met the statutory definition of a labor organization, 29 U.S.C. 402(i), and filed a Form LM-2, Form LM-3, or Form LM-4 or was an entity that the LMRDA exempts from reporting. *Id.*

In the Spring 2009 and Fall 2009 Regulatory Agendas, the Department notified the public of its intent to initiate rulemaking proposing to rescind the Form T-1 and to require reporting of wholly owned, wholly controlled, and wholly financed (“subsidiary”) organizations on their Form LM-2 or LM-3 reports. See <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75> and <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75>.

Due to the proposed rescission, on December 3, 2009, the Department issued a notice of proposed extension of filing due date to delay for one calendar year the filing due dates for Form T-1 reports required to be filed during calendar year 2010. 74 FR 63335. On December 30, 2009, following comment, the Department published a rule extending for one year the filing due date of all Form T-1 reports required to be filed during calendar year 2010. 74 FR 69023.

Subsequently, on February 2, 2010, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to rescind the Form T-1. 75 FR 5456. After notice and comment, the Department published the final rule on December 1, 2010. In its rescission, the Department stated that it considered the reporting required under the rule to be overly broad and not necessary to prevent circumvention or evasion of Title II reporting requirements. The Department concluded that the scope of the 2008 Form T-1 rule was overbroad because it covered many trusts, such as those funded by employer contributions, without an adequate showing that reporting for such trusts is necessary to prevent the circumvention or evasion of the Title II reporting requirements. See 75 FR 74936.

In the Spring and Fall Regulatory Agendas for 2017 and 2018, the Department notified the public of its intent to initiate rulemaking reinstating the Form T-1 Trust Annual Report. See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201704&RIN=1245-AA09>, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1245-AA09>, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1245-AA09>, and

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1245-AA09>. On May 30, 2019 the Department proposed to establish a Form T-1 Trust Annual Report to capture financial information pertinent to “trusts in which a labor organization is interested” (“section 3(l) trusts”). See 84 FR 25130. After notice and comment, the Department published the final Rule on March 6, 2020. 85 FR 13414.

Under this rule, and similar to the 2008 rule, the Department requires a labor organization with total annual receipts of \$250,000 or more (and, which therefore is obligated to file a Form LM-2 Labor Organization Annual Report) to also file a Form T-1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l) (defining “trust in which a labor organization is interested”). 85 FR 13417. Such labor organizations must file where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust’s governing board or (2) contributes more than 50 percent of the trust’s receipts. *Id.* When applying this financial or managerial dominance test, contributions made pursuant to a collective bargaining agreement (CBA) shall be considered the labor organization’s contributions. *Id.* In its final rule, the Department stated that the rule helped bring the reporting requirements for labor organizations and section 3(l) trusts in line with contemporary expectations for the disclosure of financial information and prevent the circumvention or evasion of the LMRDA’s reporting requirements through funds over which labor organizations exercise domination. 85 FR 13415.

Like the 2008 rule, exemptions are provided for a trust that is a political action committee (“PAC”) or a political organization (the latter within the meaning of 26 U.S.C. 527). No T-1 form is required for federal employee health benefit plans subject to the provision of the Federal Employees Health Benefits Act (FEHBA), any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843, or credit unions. 85 FR 13418. Similar to the 2008 rule, but unlike the 2003 or 2006 rules, the 2020 T-1 rule includes an exemption for section 3(l) trusts that are part of employee benefit plans that file a Form 5500 Annual Return/Report under the Employee Retirement Income Security Act of 1974 (“ERISA”). *Id.* Additionally, a partial exemption is provided for a

trust for which an audit was conducted in accordance with prescribed standards and the audit is made publicly available. A labor organization choosing to use this option must complete and file the first page of the Form T-1 and a copy of the audit. *Id.*

Unlike the 2008 rule, the 2020 rule exempts unions from reporting on the Form T-1 their subsidiary organizations, retaining the requirement that unions must report their subsidiaries on the union’s Form LM-2 report. *Id.* Also unlike the 2008 rule, the 2020 rule permits the parent union (*i.e.*, the national/international or intermediate union) to file the Form T-1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test. *Id.* The affiliates must continue to identify the trust in their Form LM-2 report, and also state in their Form LM-2 report that the parent union will file a Form T-1 report for the trust. *Id.* The 2020 rule also allows a single union to voluntarily file the Form T-1 on behalf of itself and the other unions that collectively contribute to a multiple-union trust, relieving the Form T-1 obligation on other unions. *Id.*

#### *B. Reasons for the Proposal To Rescind the March 6, 2020 Form T-1 Final Rule*

The Department is proposing to rescind the 2020 Form T-1 rule for two reasons. First, the Department believes that the trust reporting required under the rule is overly broad, as it includes exclusively employer-funded trusts. Employer-funded trusts are not funds of a labor organization, subject to the LMRDA’s Title II reporting requirements. Accordingly, required reporting of such employer-funded trusts is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. Second, the Department has reviewed the 2020 rulemaking record and is concerned that the separate reporting requirements set forth in the 2020 Form T-1 rule are not justified in light of the burden they impose.

#### *The 2020 Form T-1 Rule Is Overbroad*

Under the Act, the Secretary has the authority to “issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.” 29 U.S.C. 438. The Secretary’s regulatory authority thus includes the reporting mandated by

the Act and discretionary authority to require reporting on trusts falling within the statutory definition of a trust “in which a labor organization is interested.” 29 U.S.C. 402(l). The Secretary’s discretion to require separate trust reporting applies to trusts if: (1) The union has an interest in a trust as defined by 29 U.S.C. 402(l) and (2) reporting is determined to be necessary to prevent the circumvention or evasion of Title II reporting requirements. 29 U.S.C. 438. As both the Department and the court recognized, this is a two part requirement. *See AFL-CIO v. Chao*, 409 F.3d 377, 386–87 (D.C. Cir. 2005) (discussion of two-part test).

A key feature of the Secretary’s discretionary authority to require trust reporting is the requirement that the Secretary conclude that such reporting is “necessary” to prevent circumvention or evasion of a labor organization’s requirement to report on its finances under the LMRDA. The Department now believes that the 2020 Form T–1 rule was overly broad, requiring financial reporting by many trusts, including trusts funded by employers pursuant to collective bargaining agreements, without an adequate showing that such a change is necessary to prevent circumvention or evasion of the reporting requirements.

In particular, the rule provided that, for purposes of evaluating whether payments to a trust indicate that the union is financially dominant over the trust, payments made by employers to set up trusts under Section 302(c) of the LMRA, 29 U.S.C. 186(c) (Taft-Hartley funds) should be treated as funds of the union. Taft-Hartley funds are created and maintained through employer contributions paid to a trust fund, pursuant to a collective bargaining agreement, and must have equal numbers of union and management trustees, who owe a duty of loyalty to the trust. Taft-Hartley funds are established for the “sole and exclusive benefit of the employees” and are exempt from the statutory prohibition against an employer paying money to employees, representatives, or labor organizations. *See* 29 U.S.C. 186(a) and (c)(5).

The Department recognizes that section 3(l) “trusts in which a union is interested” term is sufficiently broad to encompass Taft-Hartley plans funded by employer contributions. However, as explained above, this is only the first part of the section 208 analysis. The second part of the analysis requires that the Secretary determine that the reporting is necessary to prevent circumvention or evasion of the

reporting of union money subject to Title II.

As explained in the 2020 Form T–1 rule, section 201 of the LMRDA requires that unions “file annual, public reports with the Department, detailing the union’s cash flow during the reporting period, and identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving \$10,000 or more in aggregate from the union, direct or indirect loans (in excess of \$250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements.” 85 FR at 13414 (citing 29 U.S.C. 431(b)). Further, section 201 requires that such information shall be filed “in such detail as may be necessary to disclose [a labor organization’s] financial condition and operations.” 85 FR at 13414 (citing *Id.*). Significantly, each financial transaction to be reported is one that reflects upon the union’s financial condition and operations, not the financial condition and operations of another entity.

Thus, under the Act, the Secretary may require trust reporting when he concludes it is necessary to prevent the circumvention or evasion of labor organization’s Title II reporting requirements. *See* 29 U.S.C. 208. The Title II reporting requirements for a labor organization require it “to disclose its financial condition and operations.” 29 U.S.C. 201(b)(emphasis added). Consequently, trust reporting is permissible to prevent a labor union from using a trust to circumvent reporting of the *labor union’s* finances.

Like the 2008 Form T–1 rule, the 2020 Form T–1 rule did not adequately address the “need” part of the two-part test when it presumed that employer contributions establish labor union financial domination of a trust. Indeed, after review, the Department proposes that the money contributed by the employer to a Taft-Hartley fund not be considered the property of the union, and thus its disclosure would not “disclose [the union’s] financial condition and operations.” 29 U.S.C. 201(b). Conversely, a union’s nondisclosure of such funds would not be an evasion of the union’s reporting requirement. The Department now proposes that such ordinary employer funds, not within the control of the union, would in no instance be reported by a union under the LMRDA reporting requirements. Such payments are generally paid by the employer to the Taft-Hartley trust for the sole and exclusive benefit of the employees, and it appears that the payment and use of

these moneys would not ordinarily relate to the condition and operations of the union. And in addition, by definition, Taft-Hartley funds may not have union managerial dominance because “employees and employers are equally represented in the administration of such fund[s], together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon.” *See* 29 U.S.C. 186(c)(5)(B). Disclosure of such funds is thus unnecessary to ensure that unions comply with their own financial reporting requirements under the LMRDA. Consequently, the Department now proposes to rescind the 2020 Form T–1 rule as overly broad, as it applies to Taft-Hartley plans, by requiring reporting in instances where a union is not in a position to use a trust to circumvent or evade its reporting requirement.

In an apparent acknowledgement that the 2020 Form T–1 rule, as it relates to the Taft-Hartley plans, was premised upon policies in addition to preventing circumvention of Title II reporting, the final rule stated that, “[b]y establishing reporting for their trusts comparable to that for their own funds, the Form T–1 will prevent the unions from circumventing or evading their reporting requirements, ensuring financial transparency for all funds dominated by the unions.” 85 FR at 13419. By emphasizing that the 2020 Form T–1 would establish reporting for “trusts” comparable to the reporting for “union funds,” the rule appears to have provided for more general reporting than would be “necessary to prevent” the circumvention of LMRDA reporting requirements. Therefore, since the statute calls for trust reporting just to prevent the circumvention or evasion of the union’s reporting requirements, the financial transparency goal here exceeds what the statute demands.

The 2020 final rule states that the Form T–1 “will make it more difficult for a labor organization to avoid, simply by transferring money from the labor organization to a trust, the basic reporting obligation that applies if the funds had been retained by the labor organization.” 85 FR 13418. However, the rule provided no evidence that labor organizations were transferring their own funds to Taft-Hartley trusts, and, by definition, Taft-Hartley funds do not have union managerial dominance. Thus, it is not apparent how such funds would meet the Form T–1 dominance test. In an apparent acknowledgment of this dilemma, the Department argued in the 2020 Final Rule that “the money an employer contributes to such trusts

pursuant to a CBA might otherwise have been paid directly to a labor organization's members in the form of increased wages and benefits, the members on whose behalf the financial transaction was negotiated have an interest in knowing what funds were contributed, how the money was managed, and how it was spent." 85 FR 13418. Assuming this is so, these underlying wages and benefits would not have been reported on a Form LM-2. Therefore, it is not apparent that payment of these potential wages and benefits to a trust involves the circumvention or evasion of Title II reporting. Thus, with respect to these funds, it is not clear from the final rule how the Form T-1 will "close a reporting gap where *labor organization finances* related to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department." (emphasis added) 84 FR 25416.

In *AFL-CIO v. Chao*, the Court of Appeals for the D.C. Circuit held that the 2003 Form T-1 "reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade union reporting requirements." *AFL-CIO v. Chao*, 409 F.3d at 389. The Department proposes that the 2020 Form T-1 rule may be overly broad in the same manner, requiring many labor organizations to file the Form T-1 for independent Taft-Hartley trusts, even where there is no apparent means by which the union could use the trust as a means of circumventing or evading its Title II reporting requirements.

Furthermore, the Department rescinded the Form T-1 in 2010 for the same lack of statutory authority. See 75 FR 74938. While the 2020 rule acknowledged this issue, the rule did not adequately address this legal concern. Indeed, in an acknowledgment that employer contributions to a trust do not constitute the circumvention or evasion of *labor organization* funds, the 2020 rule argued that Form T-1 reporting for Taft-Hartley trusts could prevent the circumvention of employer or labor organization officer or employee reporting under LMRDA Sections 202 and 203. See 85 FR 13422. However, the 2020 rule provided no support for this conclusion. Moreover, the logical conclusion of such argument is that the employer should file the trust report, not the labor organization.

Rulemaking Record Does Not Support 2020 Form T-1 Rule in Light of Burden Imposed

The 2020 rule imposed significant burdens on Form LM-2 filing labor organizations. The Department estimated that there will be at least 810 Form LM-2 organizations filing a Form T-1 report. 85 FR 13437. In the first year of reporting Form T-1 filers would spend approximately 121.38 hours per report, which results in a total of 251,256.6 burden hours. 85 FR 13433. In subsequent years, Form T-1 filers would spend approximately 84.12 hours per report, which would result in 174,128.4 additional burden hours. *Id.* The total expected first-year costs of the Form T-1 are \$15,009,801, and in subsequent years the total cost would be \$10,385,820.<sup>1</sup> 85 FR 13437. These burdens add to existing Form LM-2 recordkeeping and reporting burdens, and the union members ultimately bear these costs. Despite the burden imposed by the 2020 rule, the Department did not engage in an in-depth study into whether the Form T-1 would provide needed or desired information to labor organization members or help detect or deter labor-management fraud. Upon review, the Department is concerned that the 2020 rule's record did not provide sufficient evidentiary support to justify the significant reporting burden imposed on labor organizations. The Department invites comment on this point.

First, in issuing the 2020 rule the Department did not undertake a study to determine whether the 2020 rule was necessary to prevent circumvention or evasion of Title II reporting obligations, whether the Form T-1 would detect or deter fraud, or whether the 2020 rule's rulemaking record established what members may want or need or even offer suggestions as to how members would use the information to self-govern their unions.<sup>2</sup> In terms of benefits to union members, they will continue to receive detailed information about their union's finances, including the identity and contact information of the union's trusts, through the annual Form LM-2 report available on the OLMS website. In particular, members will see whether the trust already files

<sup>1</sup> The 10-year annualized cost of the rule would be \$10,285,704 at a 3 percent discount rate and \$9,608,788 at a 7 percent discount rate. 85 FR 13438.

<sup>2</sup> See the Department's rescission of Form LM-2 changes, in 2009, based, in part, on the lack of a study into the potential benefits and burdens of earlier, 2003 Form LM-2 changes prior to promulgating even more expansive Form LM-2 reporting requirements in 2009. See 74 FR 52406-09.

a report with another agency. Indeed, the 2020 rule discusses primarily apprenticeship and training and similar Taft-Hartley funds. However, such trusts typically already file detailed disclosure reports, such as the Form 5500 with the Department's Employee Benefits Security Administration (EBSA) and Form 990 with the Internal Revenue Service (IRS), which provide comparable reporting to the Form T-1.<sup>3</sup> Both IRS Form 990 and EBSA form 5500 require comprehensive reporting of financial information such as assets, liabilities, officer and director payments, leases, and other financial transactions.<sup>4</sup> These forms provide the type of financial information that interested parties such as union members could use to monitor the use of trust funds in order to prevent circumvention or evasion of Title II reporting obligations and to detect and deter fraud. Thus, the Department now believes that the Form T-1 may have established a largely redundant reporting regime.

Further, the 2020 rule did not adequately explain why the Form T-1 exempted the EBSA Form 5500 and certain IRS filings, such as those filed by political organizations under 26 U.S.C. 527, but not trusts that file the Form 990 with the IRS. The 2020 rule focused on the unique nature of the union reporting required under the LMRDA, and the Department continues to hold that IRS Form 990 by labor organizations does not provide a substitute for Form LM-2, LM-3, and LM-4 reporting by labor organizations. However, trusts are not labor organizations, and the Department is, therefore, concerned that the 2020 rule did not provide a justification as to why such reporting—as well as the other types of reporting exemptions that the 2020 rule provided—is not a sufficient substitute for Form T-1 reporting. See 85 FR 13425-26.

Second, adding to the burden on the filing unions, the information necessary to complete the report is in the control of the trust, not the reporting union, notwithstanding that many if not most of the trusts on which they are required to report are operated jointly with employers. Furthermore, trusts are under no legal obligation to provide their records to the union for the sake of the union's reporting requirement. The 2020 rule offered no factual support suggesting that trusts, whose trustees may have a fiduciary obligation to the

<sup>3</sup> See <https://www.irs.gov/charities-non-profits/annual-filing-and-forms>

<sup>4</sup> See *id.*; see also <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500>.

trust, would agree to provide their records to the union. Compiling such records and providing them to the union would constitute a significant annual expense and a significant amount of lost time that should be devoted to the administration of the trust. It is unclear how a union could compel a trust that refuses to provide records, and thus it is equally unclear why trustees would approve complying with union requests.

Additionally, upon further review, the Department now considers the Form T-1 reporting regime as almost unworkable from the perspective of the filing labor unions and the Department, since it may result in multiple unions filing for a single trust or determining which union would file for the others, thereby taking on the legal obligations associated with the form. The 2020 rule acknowledged this problem by including a provision allowing one union to file the Form T-1 report for the other unions, but the Department now considers this solution as unworkable. The Department invites comment on this point, as well as the points of the preceding paragraphs.

Third, in terms of detecting and deterring fraud or preventing the circumvention and evasion of Title II reporting obligations, the 2020 rule did not sufficiently demonstrate how the Form T-1 would further these goals. Initially, as explained above, because of the redundant nature of much of this reporting, it is not apparent that the Form T-1 would provide any additional information necessary for OLMS to track fraud. Existing reporting regimes already provide valuable information. Further, OLMS has a well-established history of effectively enforcing the LMRDA and combatting labor-management fraud. See the OLMS enforcement results: <https://www.dol.gov/agencies/olms/enforcement>. Indeed, in recent years and as discussed in the 2020 rule, the Department played a key role in securing over a dozen indictments and convictions in the UAW-Fiat Chrysler of America (FCA) National Training Center (NTC) scandal, without the Form T-1. See 85 FR 13421. While the 2020 rule relies heavily on these UAW-Fiat Chrysler of America convictions as grounds for adopting the Form T-1, after consideration, the Department now believes that those cases do not provide support for the 2020 rule and that, instead, the ability to obtain such results without the Form T-1 undercuts the “need” for imposing a new reporting burden. Working jointly with the Department of Justice and others, the Department of Labor secured convictions of management and union

officials associated with the NTC, pursuant to the Taft-Hartley Act, for unlawful employer payments to UAW officials. See 29 U.S.C. 186. Since the LMRDA Section 202 and 203 reporting requirements would require disclosure of these payments, and require the parties to file reports pursuant to the Department’s Form LM-30 Labor Organization Officer and Employee Report and Form LM-10 Employer Report, the Department already had investigatory authority and access to necessary financial information to effectively investigate this matter. See 29 U.S.C. 432-433 and 531. Additionally, the general public, including members of labor organizations, already has access to reports containing similar, if not identical, information that would be included on the Form T-1, and the Department already has the necessary investigatory authority to identify and eradicate the specific fraud that the Form T-1 is meant to combat. For example, the NTC filed a Form 990 that listed three of the six UAW officials who took unlawful payments from FCA under Part VII (Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Individuals, and Independent Contractors), and the trust should have reported payments to two other UAW officials’ sham charities on Schedule I (Grants and Other Assistance to Organizations, Governments, and Individuals in the United States).<sup>5</sup> Moreover, the 2020 rule also cited examples of fraud involving apprenticeship and training plans and other ERISA-covered entities, which EBSA uncovered with its existing enforcement authority pursuant to ERISA. See 85 FR 13419-20.

The 2020 rule provided other examples and hypothetical situations as purportedly demonstrating the need of the Form T-1 to detect and deter fraudulent activity. However, upon additional review, these examples do not seem to demonstrate a need for the Form T-1. For example, the 2020 rule offered a hypothetical example of a trust making a \$15,000 payment to a printing company owned by a union official. In such a situation, the ownership of the printing company would not actually appear on the Form T-1, but the 2020 rule postulated that members or the

<sup>5</sup> See OLMS FY 18 Annual Report. While the Form 990s filed by the trust did not properly report these payments, the Department of Justice secured indictments covering conspiring to defraud the United States by preparing and filing false tax returns for the NTC that concealed millions of dollars in prohibited payments directed to UAW officials.

public would notice the connection. See 85 FR 13418-19. It is just as likely, however, that union members or the public may already recognize this financial connection more directly via the IRS Form 990, Schedule L (Transactions with Interested Persons).<sup>6</sup> Thus, the Form 990 actually provides greater transparency in this regard than would the Form T-1, which undercuts this rationale as a basis for supporting a Form T-1 reporting requirement.

Additionally, the 2020 rule reviewed Form LM-2 reports from FY 17 and offered examples purportedly justifying the rule, but after careful consideration, the Department believes that such examples do not adequately support the rulemaking. See 85 FR 13419. For example, the 2020 rule cited a local union that made expenditures to a credit union. However, the 2020 rule exempted credit unions from the Form T-1 reporting requirements because existing law already provides detailed transparency and oversight. The 2020 rule also mentioned a local union making payments to a trust that constitutes an information technology (IT) service corporation established by the local union to provide it with IT services. But after further review, the local union reported on its Form LM-2 that the trust already files the IRS Form 1065. Another example discussed payments from a union to a labor college; but the labor college files a Form 990, which provides the necessary transparency the Form T-1 sought.

Further, the Department believes that full implementation and enforcement of the Form T-1 would actually deprive the Department of resources needed to administer and enforce effectively the LMRDA, since the Department would need to expend significant resources creating and maintaining an electronic Form T-1; provide compliance assistance to unions and trusts on such filing and related recordkeeping requirements; and pursue delinquent Form T-1 reports, particularly for unions unable to obtain timely (if at all) the necessary information from the trust. The Department invites comment on this point and the points of the preceding paragraphs.

Therefore, in light of the foregoing concerns, the Department proposes to rescind the rule implementing the Form T-1 because it believes that, as it concerns Taft-Hartley plans, the trust reporting required under the rule is overly broad and thus not necessary to prevent the circumvention and evasion of the Title II reporting requirements.

<sup>6</sup> See: <https://www.irs.gov/forms-pubs/about-schedule-l-form-990>.



Further, the Department also proposes rescission, as it has reviewed the 2020 rulemaking record and no longer views the separate reporting requirements as set forth in the 2020 Form T-1 rule as justified in light of the burden they impose. The Department invites comments on its proposal to rescind the 2020 Form T-1 rule.

#### IV. Specific Proposed Changes to the Form LM-2 Instructions and the LMRDA Regulations

##### A. Changes to the Form LM-2

To implement the rescission of the Form T-1, the Department proposes to make the following changes to the Form LM-2 Labor Organization Annual Report:

1. Section IX—Labor Organizations In Trusteeship: The Department proposes to revise this section to remove any reference to the Form T-1.

2. Section XI—Completing Form LM-2: The Department proposes changes to the instructions to Item 10 (Trusts or Funds). The instructions for Item 10 would be changed to remove any reference to the Form T-1, although basic information about the trust would still be required, as would a cite to any report filed for the trust with another government agency, such as the Department's Employee Benefits Security Administration (EBSA) or the Internal Revenue Service (IRS).

The public can view the proposed Form LM-2 changes in the accompanying ICR, pursuant to the PRA. See Part V (Regulatory Procedures), PRA section.

##### B. Changes to the LMRDA Regulations

As described in the below regulatory procedures section, and in order to implement the rescission of the 2020 Form T-1 rule, the Department proposes to remove the references to the Form T-1 located in the Department's LMRDA regulations at 29 CFR part 403. Additionally, as described in the below regulatory procedures section, the Department proposes to require mandatory electronic filing for labor organizations that submit simplified annual reports pursuant to 29 CFR 403.4(b). The Department's experience with Form LM-2, LM-3, and LM-4 reporting demonstrates that labor organizations can submit such reports electronically with little difficulty and with burden reductions for the labor organization filers and the Department. Further, the public benefits from more timely disclosure on the OLMS website. The Department anticipates such benefits for electronic simplified annual reports, as well.

#### V. Regulatory Procedures

##### *Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Review)*

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of E.O. 12866 and OMB review.<sup>7</sup> Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. OMB has determined that this rule is significant under section 3(f) of E.O. 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as not a 'major rule', as defined by 5 U.S.C. 804(2).

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

##### A. Costs of the Form T-1 for Labor Organizations

As described in the 2020 Form T-1 final rule, the Form T-1 is filed by Form LM-2 filing labor organizations with trusts that meet the dominance test, if those labor organizations are not otherwise exempted from filing. Cost savings discussed below concern the

costs incurred by labor organizations to file the Form T-1 reports in subsequent years (assuming that filers have already incurred many of the first year costs discussed in the 2020 Final Rule). If the Department rescinds the Form T-1, as proposed, the affected labor organizations would save these future costs. Using data from LM-2 filings, the Department estimated, in the 2020 Form T-1 final rule, that there are at least 810 total affected labor organizations (*i.e.*, LM-2 filers with trusts for which they must submit at least 1 Form T-1). The Department estimated in the 2020 final rule that each affected labor organization would be responsible for an average of 2.56 Form T-1 filings. Additionally, each affected labor organization would spend approximately 84.12 hours in each subsequent year to fill out the Form T-1.<sup>8</sup> The average hourly wage for Form T-1 filers, as with Form LM-2 filers, includes: \$37.89 for an accountant, \$20.25 for a bookkeeper or clerk, \$25.15 for a Form LM-2 filing union secretary-treasurer or treasurer, and \$29.21 for the Form LM-2 filing president, respectively.<sup>9</sup> The weighted average hourly wage is \$36.53.<sup>10</sup> To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been multiplied by 1.63, so the fully loaded hourly wage is \$59.54 ( $\$36.53 \times 1.63 = \$59.54$ ).<sup>11</sup>

Therefore, the cost for each Form T-1 filer in subsequent years would be \$12,822 ( $2.56 \times 84.12 \times \$59.54 = \$12,822$ ), which would be eliminated if the Department rescinds the Form T-1, as proposed.

<sup>8</sup> For more details, see the Paperwork Reduction Act section below.

<sup>9</sup> Wage rates are derived from 2018 data; more specifically, the president and treasurer wage rates are determined from FY 19 Form LM-2 report filings, while the accountant and bookkeeper wage rates come from 2018 Bureau of Labor Statistics (BLS) data available at: [https://www.bls.gov/oes/2018/may/oes\\_nat.htm](https://www.bls.gov/oes/2018/may/oes_nat.htm).

<sup>10</sup> The weighted average calculates the wage rate per hour weighted according to the percentage of time that the Form T-1's completion will demand of each official/employee: 90 percent of the Form T-1 burden hours will be completed by an accountant, 5 percent by the bookkeeper, 4 percent by the union's treasurer/secretary-treasurer, and 1 percent by the union president.

<sup>11</sup> The use of 1.63 accounts for 17 percent for overhead and 46 percent for fringe. In the case of the 46 percent for fringe, see the following link to BLS data showing that wages and salaries represent 68.6 percent (.686) of compensation (<https://www.bls.gov/news.release/eccec.t02.htm>). Dividing total compensation by the 68.6 percent represented by wages and salaries is equivalent to a 1.46 multiplier. Adding a 17 percent multiplier (.17) for overhead equals 1.63.

<sup>7</sup> See 58 FR 51735 (September 30, 1993).



### B. Summary of Costs

The proposed rule would save 810 Form LM–2 filers a total of \$10,385,820 annually. The 10-year annualized cost is expected to be \$10,285,704 at a 3 percent discount rate and \$9,608,788 at a 7 percent discount rate.

### C. Benefits

As explained more fully in the preamble to this proposed rule, the Department proposes to rescind the Form T–1, as it proposes that the 2020 Form T–1 rule does not prevent the circumvention or evasion of the LMRDA reporting requirements, nor does it detect or deter labor-management fraud or corruption. Rather, the Department believes that existing reporting requirements adequately address these concerns. Further, rescission of the 2020 Form T–1 rule would provide labor organizations with additional resources to devote to existing reporting requirements.

### D. Alternatives

As potential alternatives to rescinding the Form T–1, the Department could maintain the existing Form T–1 or propose a scaled back version. The retention of the Form T–1 would retain the burdens discussed in the 2020 Form T–1 rule, and the Department now considers that these burdens are not justified by the purported benefits. Rather, the Department now believes that existing reporting provides much if not all of the potential benefits of the Form T–1. Further, while a scaled back Form T–1 would reduce such burdens, the Department did not consider this approach, since the current Form T–1 already contains multiple exemptions and burden-reduction components.

### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as the proposed rule contains no collection of information and relieves the additional burden imposed upon labor organizations through the rescission of the regulations published on March 6, 2020. Additionally, the 2020 Form T–1 rule's Final Regulatory Flexibility Analysis stated that subsequent year costs would place a significant impact on 8.94% of small unions, which is below the threshold to

constitute a “substantial” number of small entities. See 85 FR 13439. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

### Unfunded Mandates Reform

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of \$100 million or more, or in increased expenditures by the private sector of \$100 million or more.

### Paperwork Reduction Act

#### A. Summary of the Proposed Rule

The following is a summary of the need for and objectives of the proposed rule. A more complete discussion of various aspects of the proposal is found in the preamble.

The proposed rule would rescind the Form T–1 Trust Annual Report established by final rule on March 6, 2020.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations and others as set forth in Title II of the Act. See 29 U.S.C. 431–36, 441. Under Section 201(b) of the Act, 29 U.S.C. 431(b), labor organizations are required to file for public disclosure annual financial reports, which are to contain information about a labor organization's assets, liabilities, receipts, and disbursements.

The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. The Form LM–2 Annual Report is the most detailed of the annual labor organization reports, and is required to be filed by labor organizations with \$250,000 or more in annual receipts. The Form LM–2 requires certain receipts and disbursements to be reported by functional categories, such as representational activities; political activities and lobbying; contributions, gifts, and grants; union administration;

and benefits. Further, the form requires labor organizations to allocate the time their officers and employees spend according to functional categories, as well as the payments that each of these officers and employees receive, and it requires the itemization of certain transactions totaling \$5,000 or more. It must include reporting of loans to officers, employees and business enterprises; existence of any trusts; payments to each officer; and payments to each employee of the labor organization paid more than \$10,000, in addition to other information. The Secretary also has prescribed simplified annual reports for smaller labor organizations. Form LM–3 may be filed by unions with \$10,000 or more, but less than \$250,000 in annual receipts, and Form LM–4 may be filed by unions with less than \$10,000 in annual receipts. A local union that has no assets, liabilities, receipts, or disbursements, and which is not in trusteeship, is not required to file an annual report if its parent union files a simplified annual report on its behalf. In order to be eligible for this simplified annual reporting, the local must be governed solely by a uniform constitution and bylaws filed with OLMS by its parent union and its members must be subject to uniform fees and dues applicable to all members of the local unions for which the parent union files simplified reports. The parent union must submit annually to OLMS certain basic information about the local, including the names of all officers, together with a certification signed by the president and treasurer of the parent union.

On March 6, 2020, the Department issued a final rule establishing the Form T–1 Trust Annual Report, which prescribes the form and content of annual reporting by unions concerning entities defined in Section 3(l) of the LMRDA as “trusts in which a labor organization is interested.” 85 FR 13414. The objective of this proposed rule is to rescind the Form T–1 Trust Annual Report, as the Department has determined that it is overbroad and not necessary to prevent the circumvention and evasion of the Title II requirements.

Further, the Department has reviewed the 2020 rulemaking record and no longer views the separate reporting requirements as set forth in the 2020 Form T–1 rule as justified in light of the burden they impose. The rescission of the Form T–1 would constitute a decrease in reporting burdens for those labor organizations associated with reportable trusts. As detailed in the 2020 Form T–1 rule, the Form T–1 represented a total burden, for the

estimated 810 Form LM-2 filers affected by the rule, of approximately 251,257 hours in the first year and 174,128 in the subsequent years. 85 FR at 13433. Additionally, the projected total cost on filers in the first year was approximately \$15 million in the first year and approximately \$10.4 million in subsequent years. 85 FR at 13437. The proposed rule eliminates these burdens and costs for future years. The proposed rule would also eliminate any first-year costs that unions have not yet incurred.

#### B. Overview of Trust Reporting on Form T-1

Every labor organization whose total annual receipts are \$250,000 or more and those organizations that are in trusteeship must currently file an annual financial report using the current Form LM-2, Labor Organization Annual Report, within 90 days after the end of the labor organization's fiscal year, to disclose their financial condition and operations for the preceding fiscal year. The current instructions state that receipts of an LMRDA section 3(l) trust in which the labor organization is interested (as described in Information Item 10) should not be included in the total annual receipts of the labor organization when determining which form to file, unless the 3(l) trust is a subsidiary organization of the union. See Form LM-2 Instructions, Part II: What Form to File.

The current Form LM-2 consists of 21 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities (Statement A); a statement of receipts and disbursements (Statement B); and 20 supporting schedules (Schedules 1-10, Assets and Liabilities related schedules; Schedules 11-12 and 14-20, receipts and disbursements related schedules; and Schedule 13, which details general membership information).

The Form LM-2 requires such information as: Whether the labor organization has any trusts (Item 10); whether the labor organization has a political action committee (Item 11); whether the labor organization discovered any loss or shortage of funds (Item 13); the number of members (Item 20); rates of dues and fees (Item 21); the dollar amount for seven asset categories, such as accounts receivable, cash, and investments (Items 22-28); the dollar amount for four liability categories, such as accounts payable and mortgages payable (Items 30-33); the dollar amount for 13 categories of receipts such as dues and interest (Items 36-49);

and the dollar amount for 16 categories of disbursements such as payments to officers and repayment of loans obtained (Items 50-65).

Schedules 1-10 requires detailed information and itemization on assets and liabilities, such as loans receivable and payable and the sale and purchase of investments and fixed assets. There are also nine supporting schedules (Schedules 11-12, 14-20) for receipts and disbursements that provide members of labor organizations with more detailed information by general groupings or bookkeeping categories to identify their purpose. Labor organizations are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Form T-1 provides similar but not identical reporting and disclosure for section 3(l) trusts, currently including subsidiaries, of Form LM-2 filing labor organizations. The Form T-1 requires information such as: Losses or shortages of funds or other property (Item 16); acquisition or disposal of any goods or property in any manner other than by purchase or sale (Item 17); whether or not the trusts liquidated, reduced, or wrote-off any liabilities without full payment of principal and interest (Item 18); whether the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates (Item 19); whether the trust liquidated, reduced, or wrote-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest (Item 20); and the aggregate totals of assets, liabilities, receipts, and disbursements (Items 21-24). Additionally, the union must report detailed itemization and other information regarding receipts in Schedule 1, disbursements in Schedule 2, and disbursements to officers and employees of the trust in Schedule 3.

Although the Form T-1 has a higher reporting threshold for receipts and disbursements than does the Form LM-2, it provides nearly identical information regarding receipts and disbursements as does the Form LM-2. For example, unions must itemize receipts of trusts with virtually identical detail on Form T-1, Schedule 1, as does the Form LM-2 on its Schedule 14. Further, the information required on Form T-1 Schedules 2 and 3 correspond almost directly to the information required on Form LM-2 Schedules 15-20 and 11-12, respectively, although the format does not directly correlate. However, as discussed earlier, Form T-

1 does not provide as much detail regarding assets and liabilities of trusts as the Form LM-2 requires. For example, although Form T-1 Items 16 and 17 correspond directly to Form LM-2 Items 13 and 15, and the information required in Form T-1 Items 18-20 is required in a different format in Form LM-2, Schedules 2 and 8-10, there is also significant information required on the Form LM-2 and not on the Form T-1. Chief of the material excluded on the Form T-1 is the detailed information regarding assets and liabilities required by Form LM-2, Schedules 1-10. In sum, under the proposed rule unions would need to report such information on the Form LM-2, while they would not need to do so under the existing Form T-1.

Additionally, the Department provided the public with separate burden analyses for the Form LM-2 and the Form T-1, in addition to the other forms required to be filed with the Department under the LMRDA. These analyses include the time for reviewing the respective set of instructions, searching existing data sources, gathering and maintaining data needed, creating needed accounting procedures, purchasing software, and completing and reviewing the collection of information. This proposed rule eliminates the need for a Form T-1 burden analysis, as it proposes to eliminate that form and its separate reporting regime. Thus, many of the areas analyzed in other LMRDA reporting and disclosure burden analyses are not relevant to this discussion, as the existence and basic structure and procedures of the present Form LM-2 reporting regime is not amended by this proposed rule.

#### C. Methodology for the Burden Estimates

Initially, as stated above, this document proposes a reduction of burden hours for respondents included within ICR 1245-0003, as a result of the proposed rescission of the Form T-1. The proposed rescission of the Form T-1 would result in a reduction of 174,128.4 hours in future years that an estimated 2,292 Form LM-2 filers would incur. 85 FR 13433. Additionally, the proposed rule would eliminate the total cost to filers of \$10,385,820 in subsequent years. See 85 FR at 13437.

The accompanying ICR discusses changes to the other LMRDA forms and instructions included within ICR 1245-0003, such as proposed mandatory electronic filing for Forms LM-15, 15A, 16, 30, and Form S-1 as well clarification concerning the OLMS use of email addresses for the signatories of each of the forms included within the

ICR. As explained in the ICR, the Department does not believe that such revisions will result in a change to the burden estimates, since electronic filing does not result in greater burden than paper filing and filers already provide email addresses as part of the electronic filing process.

#### D. Conclusion

As the proposed rule requires a revision to an existing information collection, the Department is submitting, contemporaneous with the publication of this document, an ICR to remove the Form T-1 and its associated burden from OMB Control Number 1245-0003. A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at <https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1245-0003> or from the Department by contacting Andrew Davis on 202-693-0123 (this is not a toll-free number)/email: [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov).

*Agency:* DOL—Office of Labor-Management Standards (OLMS).

*Type of Review:* Revision of a currently approved collection.

*OMB Control Number:* 1245-0003.

*Title of Collection:* Labor Organization and Auxiliary Reports.

*Affected Public:* Private Sector—businesses or other for-profits and not-for-profit institutions.

*Estimated Number of Respondents:* 33,021.

*Estimated Number of Annual Responses:* 35,297.

*Frequency of Response:* Varies.

*Estimated Total Annual Burden*

*Hours:* 4,644,849.

*Estimated Total Annual Other Burden Cost:* \$0.

The Department invites comments on all aspects of the PRA analysis. Written comments must be submitted on or before July 26, 2021. The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, and the agency's estimates evaluate associated with the annual burden cost incurred by

respondents and the government cost associated with this collection of information;

- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments submitted in response to this document will be considered, summarized and/or included in the ICR the Department will submit to OMB for approval; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (*e.g.*, confidential business information or personally identifiable information such as a social security number).

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed rule would not constitute a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

#### List of Subjects

##### *29 CFR Part 403*

Labor unions, Reporting and recordkeeping requirements, Trusts.

##### *29 CFR Part 408*

Labor unions, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, the Department proposes to amend part 403 of 29 CFR Chapter IV as set forth below:

#### **PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS**

- 1. The authority citation for part 403 continues to read as follows:

**Authority:** Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012.

##### **§ 403.2 [Amended]**

- 2. In § 403.2, remove paragraph (d).

- 3. Amend § 403.4 by revising paragraphs (b)(3) and (6) introductory text to read as follows:

##### **§ 403.4 Simplified annual reports for smaller labor organizations.**

\* \* \* \* \*

(b) \* \* \*

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of a statement filed electronically, through the electronic filing system made available on the Office of Labor-Management Standards website, covering each local labor organization covered by § 403.4(b) and containing the following information with respect to each local organization:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The names and titles of the president and treasurer or corresponding principal officers as of the end of the reporting period;

\* \* \* \* \*

(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its simplified annual reports filed electronically pursuant to § 403.4(b)(3) for the affiliated local labor organizations, the following certification properly completed and signed by the president and treasurer of the national organization:

##### **§ 403.5 [Amended]**

- 4. In § 403.5, remove paragraph (d).

##### **§ 403.8 [Amended]**

- 5. In § 403.8, remove paragraph (b)(3).

#### **PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS**

- 6. The authority citation for part 408 continues to read as follows:

**Authority:** Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012.

- 7. Revise § 408.5 to read as follows:

##### **§ 408.5 Annual financial report.**

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization the annual financial

report required by part 403 of this chapter, signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship, and the trustees of the subordinate labor organization on Form LM-2.

Signed in Washington, DC, this 19th day of May 2021.

**Jeffrey R. Freund,**

*Director, OLMS.*

[FR Doc. 2021-10975 Filed 5-26-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2021-0292]

RIN 1625-AA08

#### Special Local Regulation; Back River, Baltimore County, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD, during activities associated with an air show event from July 9, 2021, through July 11, 2021. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 11, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0292 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, email [D05-DG-SectorMD-NCR-MarineEvents@uscg.mil](mailto:D05-DG-SectorMD-NCR-MarineEvents@uscg.mil).

## SUPPLEMENTARY INFORMATION:

### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
PATCOM Patrol Commander  
§ Section  
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

On April 21, 2021, Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows LLC of Clearfield, PA, notified the Coast Guard that they will be conducting the 1st Annual Shootout on the River Airshow—Sparrows Point from 2 p.m. to 3 p.m. on July 10, 2021, and July 11, 2021. The event also includes a practice demonstration from 3 p.m. to 4 p.m. on July 9, 2021. High speed, low-flying civilian and military aircraft air show performers will operate within a designated, marked aerobatics box located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being held adjacent to Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Details of the event were provided to the Coast Guard by the sponsoring organization on May 5, 2021, changing the practice demonstration from 5 p.m. to 6 p.m. on July 9, 2021. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and near or actual contact among participants and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating near a designated navigation channel, as well as operating adjacent to waterside residential communities. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the air show would be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD, operating in or near the event area.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the more typical 30 days for this notice of proposed rulemaking. The Coast Guard believes the 15-day comment period still provides for a reasonable amount of time for interested parties to review the proposal and provide informed comments on it while also ensuring that the Coast Guard has time to review and

respond to any significant comments and has final rule in effect in time for the scheduled event.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish special local regulations from 4 p.m. on July 9, 2021 through 4 p.m. on July 11, 2021. There is no alternate date planned for this event. The regulated area would cover all navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W, thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include "Aerobatics Box" and "Spectator Area."

The proposed size of the regulated area is intended to ensure the safety of life on these navigable waters before, during, and after activities associated with the air show, scheduled from 5 p.m. to 6 p.m. on July 9, 2021, and from 2 p.m. to 3 p.m. both days on July 10, 2021, and July 11, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 1st Annual Shootout on the River Airshow—Sparrows Point participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before