

retained without modification, amended, or rescinded. This Notice commences the Commission's review of the Cooling-Off Rule.

As part of its review, the Commission seeks comment on a number of general issues, including the continuing need for the Rule, its economic impact, and the effect of any technological, economic, or industry changes on the Rule.

### III. Issues for Comment

The Commission requests written comment on any or all of the following questions. The Commission asks commenters to make their responses as specific as possible and to include both a reference to the question being answered and any references to empirical data or other evidence wherever available and appropriate.

(1) Is there a continuing need for the Rule? Why or why not?

(2) Are there practices addressed by the Rule for which regulation is no longer needed? If so, explain and provide supporting evidence.

(3) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

(4) What modifications, if any, should be made to the Rule to increase its benefits to consumers?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, and in particular for small businesses?

(5) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? What evidence supports the impact that you have identified?

(6) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

(7) Should any modifications be made to the Rule to reduce the costs imposed on consumers?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, and in particular for small businesses?

(8) Is the cancellation notice language provided in the Rule easy for consumers to read and understand? Why or why not? Should the language be modified in any way to improve consumers'

understanding of their rights and obligations under the Rule? If so, how?

(9) What benefits has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(10) Should any modifications be made to the Rule to increase its benefits to businesses, and in particular to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(11) What significant costs, including costs of compliance, has the Rule imposed on businesses, and in particular on small businesses? What evidence supports the asserted costs?

(12) Should any modifications be made to the Rule to reduce the costs imposed on businesses, and in particular on small businesses?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(13) What evidence is available concerning the degree of industry compliance with the Rule?

(14) Should the Rule be modified to reflect any technological changes in communications methods or methods for buying and selling goods and services, including, for example, changes in the use of the Internet, electronic mail, or mobile communications? If so, how? What evidence supports the proposed modification?

(15) Have there been any significant industry or economic changes since 1995 that warrant modifying the types of sellers that are exempt from the Rule?

(16) What potentially unfair or deceptive door-to-door sales practices, if any, are not covered by the Rule that should be? Provide evidence to support the assertion.

(17) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national consistency with respect to the regulation of door-to-door

sales? If so, please provide that evidence.

(18) Have there been any significant changes since 1995 in U.S. consumer credit protection laws or other laws that warrant modification of the Rule? If so, explain and provide evidence to support the proposed modification.

### List of Subjects in 16 CFR Part 429

Sales Made at Homes or at Certain Other Locations; Trade practices.

**Authority:** Sections 1-23, FTC Act, 15 U.S.C. 41-58.

By direction of the Commission.

**Donald S. Clark,**

*Secretary*

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## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

#### 29 CFR Parts 403 and 408

**RIN 1215-AB62**

#### Labor Organization Annual Financial Reports

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

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

**SUMMARY:** This Notice of Proposed Rulemaking proposes to withdraw a rule published in the **Federal Register** on January 21, 2009, pertaining to the filing by labor organizations of the Form LM-2, an annual financial report required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). On February 3, 2009, the Department's Employment Standards Administration (ESA) Office of Labor-Management Standards (OLMS) published a request for comments about issues of law and policy raised by this rule (74 FR 5899), consistent with directions from the new Administration to review all regulations that had not yet become effective. On February 20, 2009, the Department of Labor postponed the effective date of this rule until April 21, 2009, to allow additional time for the Department to review comments received pursuant to the earlier notice, which were due by March 5, 2009, and to permit labor unions to delay development and implementation of costly changes to their accounting and recordkeeping systems and procedures pending this review. A further extension of the rule's effective date and an

extension of the rule's applicability date were proposed on March 19, 2009, and the effective date is delayed until October 19, 2009 in a document published elsewhere in this issue of the **Federal Register**. Upon consideration of the comments received on questions of law and policy raised by the January 21 rule, the Department proposes its withdrawal, because the rule was issued without an adequate review of the Department's experience under the relatively recent revisions to Form LM-2 in 2003 and because the comments indicate that the Department may have underestimated the increased burden that would be placed on reporting labor organizations by the January 21 rule. Finally, the Department has concluded, based on the comments received, that the provisions related to the revocation of a small union's authorization to file a simpler form because it has been delinquent or deficient in filing that form are not based upon realistic assessments of such a union's ability to file the more complex form and are unlikely to achieve the intended goals of greater transparency and disclosure.

**DATES:** Comments must be received on or before May 21, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 1215-AB62, only by the following methods:

*Internet*—Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. To locate the proposed rule, use key words such as "Labor-Management Standards" or "Labor Organization Annual Financial 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.

*Delivery:* Comments should be sent to: Denise M. Boucher, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877-8339 (TTY/TDD). Only those comments submitted through <http://www.regulations.gov>,

hand-delivered, or mailed will be accepted. Comments will be available for public inspection at <http://www.regulations.gov> and during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-1185 (this is not a toll-free number), (800) 877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Authority**

This proposed rescission of the January 21, 2009 rule is issued pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. Section 208 also provides that the Secretary shall establish simplified reports for labor organizations or employers for whom [s]he finds that by virtue of their size a detailed report would be unduly burdensome, and to revoke this authorization to file simplified reports for any labor organization or employer if the Secretary determines, after such investigation as she deems proper and due notice and opportunity for a hearing, that the purposes of section 208 would be served by revocation. Secretary's Order 01-2008, issued May 30, 2008, and published in the **Federal Register** on June 6, 2008 (73 FR 32424), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority.

**II. Background**

**A. Introduction**

The proposal to rescind the January 21, 2009 rule is part of the Department's continuing effort to fairly effectuate the reporting requirements of the LMRDA. The LMRDA's various reporting provisions are designed to empower labor organizations and their members by providing the means and information to ensure a proper accounting of labor organization funds. The Department believes that a fair and transparent government regulatory regime must consider and balance the interests of labor organizations, their members, and the public. Any change to a union's recordkeeping, accounting, and reporting practices must be based on a

demonstrated and significant need for additional information, consideration of the burden associated with such reporting, and any increased costs associated with reporting additional information.

On January 21, 2009, OLMS published in the **Federal Register** (74 FR 3677) a rule revising the Form LM-2 (used by the largest labor organizations to file their annual financial reports). The rule would require labor unions to report additional information on Schedules 3 (Sale of Investments and Fixed Assets), 4 (Purchase of Investments and Fixed Assets), 11 (All Officers and Disbursements to Officers) and 12 (Disbursement to Employees). The rule also would add itemization schedules corresponding to categories of receipts, and establish a procedure and standards by which the Secretary of Labor may revoke a particular labor organization's authorization to file the simplified annual report, Form LM-3, where appropriate, after investigation, due notice, and opportunity for a hearing. The rule was scheduled to take effect on February 20, 2009, and apply to labor unions whose fiscal years began on or after July 1, 2009.

Consistent with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review" and the memorandum of January 21, 2009, from the Director of the Office of Management and Budget (OMB), entitled "Implementation of Memorandum Concerning Regulatory Review," on February 3, 2009, OLMS published a request for comments (74 FR 5899) on a proposed 60-day extension of the effective date of the January 21 rule and requesting comment on legal and policy questions relating to the rule, including the merits of rescinding or retaining the rule.

On February 20, 2009 (74 FR 7814), OLMS extended the effective date of the January 21 rule until April 21, 2009, to allow additional time for the Department to review questions of law and policy concerning the regulations, for the public to comment on the merits of the rule, and, meanwhile, to permit unions to delay costly development and implementation of any necessary new accounting and recordkeeping systems and procedures pending this further consideration. On March 19, 2009, OLMS published a proposed rule to further extend the effective date until October 19, 2009 and to extend the applicability date until January 1, 2010. The effective date is delayed until October 19, 2009 in a document

published elsewhere in this issue of the **Federal Register**.

### *B. The LMRDA's Reporting Requirements*

In enacting the LMRDA in 1959, a bipartisan 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 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. The LMRDA addressed various ills through a set of integrated provisions aimed at labor-management relations governance and management. These provisions include financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. See 29 U.S.C. 431–36, 441.

The Department has developed several forms for implementing the LMRDA's union 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 and 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.

Forms LM–3 and LM–4 were developed by the Secretary to meet the LMRDA's charge that she develop "simplified reports for labor organizations and employers for whom [s]he finds by virtue of their size a detailed report would be unduly burdensome," 29 U.S.C. 438. A labor organization not in trusteeship that has total annual receipts of less than \$250,000 for its fiscal year may elect to file Form LM–3 instead of Form LM–2. See 29 CFR 403.4(a)(1). The Form LM–3 is a five-page document requiring labor organizations to provide particularized information by certain categories, but in less detail than Form LM–2. A labor organization not in trusteeship that has total annual receipts less than \$10,000 for its fiscal year may elect to file Form LM–4 instead of Form LM–2 or Form LM–3. 29 CFR

403.4(a)(2). The Form LM–4 is a two-page document that requires a labor organization to report only the total aggregate amounts of its assets, liabilities, receipts, disbursements, and payments to officers and employees.

In 2003, the Department enacted extensive changes to the Form LM–2, the largest regulatory change to that form in the history of the LMRDA ("2003 rule," 68 FR 58374 (Oct. 9, 2003)). As a result of the changes, labor organizations with annual receipts of \$250,000 or more are required to file a Form LM–2 report electronically and to itemize receipts and disbursements of \$5,000 or more, as well as receipts not reported elsewhere from, or disbursements to, a single entity that total \$5,000 or more in the reporting year. Such disbursements are required to be reported in specific categories such as "Representational Activities," and "Union Administration." The changes eliminated a category entitled "Other Disbursements" and, overall, sought much more detailed reporting. Labor organizations were permitted to report sensitive information for some categories that might harm legitimate union or privacy interests with other non-itemized receipts and disbursements, provided the labor organization indicated that it has done so and offered union members access to review the underlying data upon request pursuant to the statute (29 U.S.C. 436).

The 2003 rule also included schedules for reporting information regarding delinquent accounts payable and receivable, and it required labor organizations to report investments with a book value of over \$5,000 and exceed 5% or more of the union's investments. Another new schedule required labor organizations to report the number of members by category, and allowed each labor organization to define the categories used for reporting. Finally, the 2003 rule required reporting labor organizations to estimate the proportion of each officer's and employee's time spent in each of the functional categories on the Form LM–2 and report that percentage of gross salary in the relevant schedule.

### **III. Proposal To Rescind**

For the reasons discussed below, the Department is proposing to rescind the January 21, 2009 rule (74 FR 3678). Rescission of the January 21 rule would not affect the filing of the Form LM–2 as prescribed by the 2003 rule or the Form LM–3, thereby ensuring disclosure of financial information to union members and the public as required under the LMRDA. The Department

invites comments on its proposal to rescind the January 21 rule.

### *A. Proposal To Rescind the 2009 Changes to Form LM–2*

#### **1. Background**

The January 21, 2009 rule modified Form LM–2 by requiring labor organizations to disclose additional information about their financial activities to their members, this Department, and the public. On the revised form, labor organizations would provide additional information in Schedule 3 ("Sale of Investments and Fixed Assets") and Schedule 4 ("Purchase of Investments and Fixed Assets"), which the rule justified by stating that the changes would allow verification that these transactions were performed at arm's length and without conflicts of interest. 74 FR at 3684–87. Schedules 11 and 12 were also revised to require reporting of the value of benefits paid to and on behalf of officers and employees. 74 FR at 3687–91. The preamble to the rule stated that this change would provide a more accurate picture of total compensation received by labor organization officers and employees. 74 FR at 3689. Labor organizations would report on Schedules 11 and 12 travel reimbursements indirectly paid on behalf of labor organization officers and employees. 74 FR at 3687–88. The Form LM–2 changes also included additional schedules corresponding to the following categories of receipts: Dues and Agency Fees; Per Capita Tax; Fees, Fines, Assessments, Work Permits; Sales of Supplies; Interest; Dividends; Rents; On Behalf of Affiliates for Transmittal to Them; and From Members for Disbursement on Their Behalf. 74 FR at 3691–93. These new schedules would require the reporting of additional information, by receipt category, of aggregated receipts of \$5,000 or more. *Id.*

The preamble to the rule published on January 21, 2009, explained these changes to the Form LM–2 as an attempt to ensure that information is reported in such a way as to meet the objectives of the LMRDA by providing labor organization members with useful data that will enable them to be responsible and effective participants in the democratic governance of their labor organizations. 74 FR at 3680–81. The modifications were intended as enhancements designed to provide members of labor organizations with additional and more detailed information about the financial activities of their labor organization that

had not previously been available through the Form LM-2 reporting. Id.

## 2. Reasons for Rescission of the Changes to Form LM-2

Numerous labor organizations responded to the Department's February 3, 2009 notice proposing to delay the effective date of the January 21 rule and requesting comments on the merits of the rule, urging the Department to rescind the rule and claiming that the Department underestimated its costs. Several labor organizations identified what they viewed as two fundamental flaws with the 2009 regulations. First, they argued that the regulations had been promulgated without any meaningful review of the effect of the 2003 rule, leaving unverified the assumptions underlying the 2003 revision that union members would benefit from the itemization and other changes introduced in 2003. The commenters also noted that the 2009 rule came only a few reporting cycles after the significant changes associated with the 2003 rule. Second, they argued that the Department's burden estimates for the 2009 rule were based on estimates used in the 2003 rulemaking rather than the actual costs incurred by labor unions in reshaping their recordkeeping and accounting systems to comply with the changes associated with the 2003 rule.

The Department's revised Form LM-2 reporting and recordkeeping requirements were published in 2003, but labor organizations did not file initial reports under this revised system until 2005. The Department agrees with the commenters and now believes that it was a mistake to propose further changes to the Form LM-2 reporting requirements so soon after the 2003 rule, without proper consideration of the effects of these changes, both in terms of benefits and costs. Without undertaking such review, the Department could not adequately weigh the competing interests of transparency and union autonomy.

A federation of labor organizations and an international labor organization each stated that the Department had failed to demonstrate that the revised form would aid in the detection or prevention of corruption, noting its view that internal controls established by unions are the more effective approach. This commenter also asserted that the Department's annual reports fail to demonstrate that enhanced reporting has assisted the Department's compliance efforts. The Department acknowledges that the January 21 rule did not adequately consider the effects of the 2003 changes, particularly

regarding the assumed potential benefits of the changes. Further, the Department agrees that additional review would be beneficial to determine how the 2003 rule helped identify financial corruption before deciding that additional regulatory changes would facilitate this purpose.

The Department also received comments from individuals and public policy groups that opposed the rescission of the rule, explaining their views that the regulations enhanced the transparency and accountability of labor unions. One of these groups urged the Department to discount any claims by labor unions that the regulations would entail substantial financial burden, stating that labor unions had consistently overstated costs associated with the Department's 2003 revision to the Form LM-2. This policy group argued that the January 21 rule will provide increased financial disclosure that will benefit union members, and it provided cites to legislative history and recent examples of union financial wrongdoing to illustrate the necessity of more stringent reporting laws. This group went on to present what it thought was the key policy issue related to this rule: Whether the Department should have imposed even more stringent disclosure requirements for labor organizations, which would prevent, in its view, the concealment of expenditures made by union officials. It urged the Department to err on the side of increased disclosure, arguing, without further support, that the increased disclosure outweighed the burden.

The Department agrees with the contention that financial transparency is necessary to protect against union fraud and corruption, enhance accountability among union officials, and that it is necessary for members to effectively engage in union self-governance. A review of the usefulness of the information that has been reported since the Form LM-2 was revised in 2003, as well as an examination of data regarding the burden placed on unions by that revision, will provide a better basis for determining whether additional changes are necessary in order to properly balance the need for transparency with the need to protect unions from excessive burdens imposed by reporting and disclosure requirements.

A failure to consider the utility of increased reporting and its attendant burdens can result in a reporting regime not intended by the Congressional authors of the LMRDA. The Department is obliged to consider the intent of Congress to "strike a balance between too much and too little legislation in

this field." 105 Cong. Rec. 816 (daily ed. Jan. 20, 1959) (quoting Senator John F. Kennedy), reprinted in 2 *NLRB Leg. Hist. of the LMRDA*, at 969. A federation of labor unions pointed out that Congress expressed a preference that "the major recommendations of the [McClellan] select committee [be implemented] within a general philosophy of legislative restraint." S. Rep. No. 187 (1959), reprinted in 1 *NLRB Leg. Hist. of the LMRDA*, at 403). Another federation of labor unions noted that the Department's Form LM-2 rulemaking failed to take into account what it sees as an imperative underlying the LMRDA, i.e., that restraint and great care must be shown in regulating union internal affairs so as not to undermine union self government by the union's members. A similar point was raised by another commenter, explaining that Congress expressed a preference to avoid impeding legitimate unionism, citing to remarks by Senator Frank Church (105 Cong. Rec. 6024 (daily ed. Apr. 25, 1959), reprinted in 2 *NLRB Leg. Hist. of the LMRDA*, at 1233), and again by another commenter, citing to remarks by Senator John F. Kennedy, who observed that Congress intended "to permit responsible unionism to operate without being undermined by either racketeering tactics or bureaucratic controls." 105 Cong. Rec. 816 (daily ed. Jan. 20, 1959), reprinted in 2 *NLRB Leg. Hist. of the LMRDA*, at 969).

The Department now believes that the January 21 rule failed to appropriately consider the experience of reporting under the 2003 Form LM-2 rule, including the burden of the reporting requirements. Further consideration of that experience will enable the Department to determine whether the Form LM-2, as revised by the 2003 rule, reflects a proper balance of the need for transparency and union autonomy. For these reasons, the Department proposes rescission of the January 21 rule.

## B. Proposal To Rescind the Procedure To Revoke the Form LM-3 Filing Authorization

### 1. Background

The Department also proposes to rescind the part of the January 21 rule that established standards and procedures for revoking the simplified report filing authorization provided by 29 CFR 403.4(a)(1) for those labor organizations that are delinquent in their Form LM-3 filing obligation, fail to cure a materially deficient Form LM-3 report after notification by OLMS, or where other situations exist where revoking the Form LM-3 filing

authorization furthers the purposes of LMRDA section 208.

Under the revocation procedure, when there appear to be grounds for revoking a labor organization's authorization to file the Form LM-3, the Department could conduct an investigation to confirm the facts relating to the delinquency or other possible ground for revocation. If the Department after investigation found grounds for revocation, the Department could send the labor organization a notice of the proposed Form LM-3 revocation stating the reason for the proposed revocation and explaining that revocation, if ordered, would require the labor organization to file the more detailed Form LM-2. The letter would provide notice that the labor organization has the right to a hearing if it chooses to challenge the proposed revocation, and that the hearing would be limited to written submissions due within 30 days of the date of the notice. In its written submission, the labor organization would be required to present relevant facts and arguments that address, in part, whether the circumstances concerning the delinquency or other grounds for the proposed revocation were caused by factors reasonably outside the control of the labor organization; and any factors exist that mitigate against revocation.

After review of the labor organization's submission, the Secretary would issue a written determination, stating the reasons for the determination, and, as appropriate based on neutral criteria, inform the labor organization that it is required to file the Form LM-2 for such reporting periods as he or she finds appropriate.

## 2. Reasons for Rescission of the Revocation Procedure

After further review and consideration of the public comments received on this point, the Department believes that the January 21 rule establishing the revocation procedure and standards did not adequately assess the burden on the smaller labor organizations and the realistic likelihood that, in light of that burden, the rule will accomplish the intended results of increased transparency and more disclosure. Rather, the Department believes that there is no realistic likelihood that most small unions would have the information or means to file the more detailed Form LM-2. Further, as discussed above, the LMRDA requires a balancing of transparency and union autonomy. Therefore, the Department proposes to rescind the January 21 rule establishing the revocation procedure and standards.

Section 208 mandates that the Secretary shall issue simplified reports for labor organizations for which she finds that "by virtue of their size a detailed report would be unduly burdensome," but also permits the Secretary to revoke such filing authorization if "the purposes of this section would be served thereby." Therefore, the "purposes" of section 208 must include ensuring that a more detailed report for a smaller union would not be "unduly burdensome" by virtue of its size, as the Secretary is required to issue less detailed reports for smaller unions under these circumstances. The Department thus needed to create a balance between the need for financial transparency with the need to limit the burden and intrusion upon smaller labor organizations.

The January 21 rule did not adequately address this balance, and it did not explain why a more detailed financial disclosure report for a smaller union would not be "unduly burdensome." The rule calculated burden based on a projection that 96 filers would be required to file the Form LM-2. This burden is necessarily understated. Form LM-3 filers, not merely those whose right to file a Form LM-3 is revoked, will be burdened to some extent. In order to file a Form LM-2, steps must be taken at the start of the fiscal year. Accounting systems and procedures must be in place that will track and maintain the data required by the Form LM-2. In this regard, the comments of an international union are instructive. It explained the difficulty it has experienced in converting the financial records of its affiliates to enable compliance with the Form LM-2 reporting requirements in circumstances involving trusteeship. (Under the labor organization reporting requirements an international union must file a Form LM-2 for any affiliate in trusteeship, regardless of its receipt size.) This commenter advised that the international's auditors face an "almost impossible" task in retroactively converting financial records for use on Form LM-2 reporting. The difficulty for an LM-3 filer filing on its own behalf would be greater.

Based on consideration of these comments, the Department now concludes that there is no realistic likelihood that most small unions would have the information or means to file the more detailed Form LM-2 and that the revocation procedures established by the January 21 rule will be unlikely to result in more disclosure. Moreover, the Department does not believe that it provided sufficient support in the final rule for the

conclusion that revocation will reduce delinquency and deficiencies in reporting. Rather, the Department believes that its final rule was counter-intuitive, because there is no justification in the rulemaking record that counters the logical conclusion that Form LM-3 filers required to file Form LM-2 reports pursuant to revocation may also fail to submit timely and accurate Form LM-2 reports.

Several commenters voiced support for a compliance-based approach, including the Department's use of international unions to aid in compliance, rather than what they viewed as a more punitive approach in the January 21 rule. One international union also commented that, in its experience, small local unions fail to file timely or complete Form LM-3 reports because of inadequate staff to prepare the forms or the lack of finances to hire an accountant, which, the commenter noted, are in addition to the similar reasons offered by the Department in its NPRM. See 73 FR 27354. Another commenter added to the rule's list of reasons for delinquent and deficient filings the following: part-time officers, who are full-time employees outside of the union and lack accounting knowledge; few personnel and a lack of financial resources because of size; and simplified accounting systems. Given the above, the commenter asked how a typical Form LM-3 filer could be expected to file the more detailed and time-consuming Form LM-2, with aggregation, itemization, functional categorization, and a more complicated accounting system. The commenter added that Form LM-3 filers would not have enough time to change systems, and it believed it is not possible to recreate some of the records that would be necessary to accurately submit a Form LM-2 report. This filer concluded that the revocation procedure, which focused on isolated occurrences, was punitive and did not advance the interests of members or the LMRDA, and it advocated a compliance-based system that used international unions, as this process has worked in the past.

The Department agrees with comments that advocated a compliance assistance approach, particularly one drawing upon the cooperative efforts of national and international unions, rather than a revocation procedure. For the reasons stated, a revocation procedure is not likely to improve delinquency and deficiencies in Form LM-3 reporting, and it could actually decrease these statistics since filers may have greater difficulty successfully meeting the Form LM-2 reporting

requirements. The Department instead believes that a compliance assistance approach is more likely to increase proper reporting than a revocation approach that is counter-intuitive and likely to damage compliance assistance efforts.

One public policy organization commented that the effects of the revocation had been inflated by some commenters, and that until the Secretary is given the authority to issue civil monetary penalties to delinquent and deficient filers, the revocation procedure should serve as that penalty. The commenter went on to state that the approach seemed harmless and thus not problematic. The Department disagrees with this commenter. The purposes for which the Secretary may revoke an organization's authorization to file a simpler form are the purposes of transparency and enhanced disclosure, not punishment. As shown above, those purposes are not served by imposing a requirement that there is no realistic expectation that most small labor organizations will be able to meet.

Other commenters listed several possibly detrimental consequences of the revocation procedure, such as the diversion of union officials from grievance handling and other core business; the resignation of union officials; and the merger and imposition of trusteeships by international unions. The Department believes that the January 21 rule did not adequately address these comments, as it failed to appropriately balance the need for transparency with the need to limit burden and intrusion upon smaller unions. Further, the Department does not believe that it can justify revocation by merely lessening or playing down the acknowledged increased burden imposed by the Form LM-2 reporting requirements. As a matter of policy, the Department does not intend to encourage or discourage the participation of union members from running and serving in union office, nor does it otherwise desire to unnecessarily interfere in the internal affairs of unions. The Department intends to implement the LMRDA with as little interference as possible, with the overarching goal of empowering members to govern their unions democratically. Compliance assistance is a vital aspect of this approach, as are audit and enforcement options and both are better approaches than a revocation procedure that is viewed as punitive to Form LM-3 filers.

#### IV. Regulatory Procedures

##### *Executive Order 12866*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation.

##### *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 does not believe that this proposed rule will have a significant economic impact on a substantial number of small entities, as the rule contains no collection of information and relieves the additional burden imposed upon labor organizations through the rescission of the regulations published on January 21, 2009. 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 will 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*

This proposed rule contains no new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The January 21, 2009 rule would increase the burden of reporting under OMB No. 1215-0188, if the Department determines rescission is inappropriate and the January 21, 2009 rule become effective. Under the January 21, 2009 rule the total burden hours per Form LM-2 respondent would be increased by approximately 60.06 hours, and the total burden hours will be increased by 274,539. The average cost per Form LM-2 respondent would be increased by \$1,939 and the total cost would be increased by \$8,863,038. If this proposed rule is adopted these increases in reporting burden under OMB No. 1215-0188 will not occur. The Department will seek OMB approval of any revisions of the existing information collection requirements, in accordance with the PRA.

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

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This 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 in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

#### Text of Proposed Rule

Accordingly, for the reasons stated herein, the Secretary proposes to withdraw the rule published on January 21, 2009 (74 FR 3677) and retain the text of the regulations prior to that date.

Signed in Washington, DC, this 16th day of April 2009.

**Shelby Hallmark,**

*Acting Assistant Secretary for Employment Standards.*

**Andrew D. Auerbach,**

*Deputy Director, Office of Labor-Management Standards.*

[FR Doc. E9-9175 Filed 4-20-09; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2007-1045; FRL-8893-9]

### Approval and Promulgation of Air Quality Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a site-specific revision to the Minnesota sulfur dioxide (SO<sub>2</sub>) State Implementation Plan (SIP) for the Olmsted Waste to Energy Facility (OWEF), located in Rochester, Olmsted County, Minnesota. In its September 28, 2007, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain conditions contained in OWEF's revised Federally enforceable Title V operating permit into the Minnesota SO<sub>2</sub> SIP. The request is approvable because it satisfies