

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Deputy Chief of Operations, Office of Diversion Control.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-5331-F-01]

RIN 2501-AD47

Use of Project Labor Agreements for Federal Construction Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule removes a HUD regulation that prohibits the use of project labor agreements in HUD-assisted construction contracts. Executive Order 13502, entitled "Use of Project Labor Agreements for Federal Construction Projects," and signed by President Obama on February 6, 2009, revoked Executive Order 13202, which had prohibited federal agencies from requiring or prohibiting project labor agreements as a condition for award of any federally funded contract or subcontract for construction. Executive Order 13502, which applies to direct federal procurement of construction, encourages federal agencies to consider requiring the use of project labor agreements in connection with federally procured large-scale construction projects. The Executive Order also allows the use of project labor agreements in circumstances not covered by the Order, including projects receiving federal financial assistance.

In a previously published **Federal Register** notice pertaining to HUD's Fiscal Year 2009 (FY 2009) funding, participants in HUD programs and prospective recipients of HUD funds were notified of the issuance of Executive Order 13502, of its removal of the restrictions on the use of project labor agreements, and of the invalidity of the HUD regulation promulgated to enforce the earlier Executive Order. With the revocation of Executive Order 13202, there is no longer a legal basis for HUD's regulation that implemented that executive order with respect to HUD-assisted projects. Therefore, this rule removes the regulation from the Code of Federal Regulations.

DATES: *Effective Date:* September 28, 2009.

FOR FURTHER INFORMATION CONTACT:

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Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410; telephone number 202-402-5132 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background—Executive Order 13502, "Use of Project Labor Agreements for Federal Construction Projects"

Executive Order 13502, entitled "Use of Project Labor Agreements for Federal Construction Projects," and signed by President Barack Obama on February 6, 2009, while directed to federal agency procurement of construction, also allows federal agencies to consider requiring the use of project labor agreements in connection with large-scale federally assisted construction projects. (Executive Order 13502 was subsequently published in the **Federal Register** on February 11, 2009 (74 FR 6985).) The Executive Order revokes Executive Order 13202, "Preservation of Open Competition and Government Neutrality towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," which prohibited federal agencies from requiring or prohibiting project labor agreements as a condition for award of any federally funded contract or subcontract for construction.¹ In order to bind participants in HUD programs to the provisions of Executive Order 13202, HUD established regulations at 24 CFR 5.108 that barred recipients of HUD funds from requiring or prohibiting project labor agreements in their procurements using HUD funds. The HUD regulations applied to HUD-assisted construction contracts. Construction contracts awarded directly by HUD were covered separately by provisions in the government-wide Federal Acquisition Regulation (FAR).

Executive Order 13502 restores to federal agencies the discretion to determine when project labor agreements may be appropriate and beneficial in federally assisted construction projects, through the revocation of Executive Order 13202. As a result of the revocation, Executive

Order 13502 also removes the prohibition on recipients of HUD funds from requiring the use of project labor agreements in their procurements. Because the foundation for HUD's regulation in 24 CFR 5.108 was the prior Executive Order, which has been revoked, the rule no longer has effect. Accordingly, in an update of requirements applicable to HUD funding for FY 2009, published in the **Federal Register** on April 16, 2009 (74 FR 17685), HUD notified prospective recipients and participants in HUD programs that the new Executive Order revoked Executive Order 13202 and that the regulation in 24 CFR 5.108 was no longer in effect.

Executive Order 13502 was issued to address the challenges to efficient and timely procurement presented to the federal government by large-scale construction projects. Because construction employers often do not have a permanent workforce, it can be difficult for them to predict labor costs when bidding on contracts and to ensure a steady stream of labor on contracts being performed. Often, multiple employers are involved at a single location, and a labor dispute concerning even one employer can delay an entire project. A lack of coordination between employers or uncertainties about the terms and conditions of employment of various groups of workers can create friction and disputes in the absence of an agreed-upon resolution mechanism. Project labor agreements can present a means for addressing these problems by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of federal construction contracts.

Executive Order 13502 declares that it is the policy of the federal government to encourage the executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in federal procurement. The Executive Order, however, does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by the Order, including leasehold arrangements and projects receiving federal financial assistance. The Executive Order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

¹ (Executive Order 13202 was signed by President George W. Bush on February 17, 2001 (published in the **Federal Register** on February 22, 2001 (66 FR 11225)) and later amended by Executive Order 13208, signed by President Bush on April 6, 2001 (published in the **Federal Register** on April 11, 2001 (66 FR 18717)).

II. This Final Rule

In addition to removing the prohibition on the use of project labor agreements in federal and federally assisted construction contracts, Executive Order 13502 directs agencies to revoke any regulations based on the prior Executive Order 13202. Consistent with those directions and the lack of a legal foundation for HUD's regulation in 24 CFR 5.108, this rule removes that regulatory section from the Code of Federal Regulations.

Executive Order 13502 further directs the Director of the Office of Management and Budget (OMB), in consultation with the Secretary of Labor and with other officials, as appropriate, to provide recommendations to the President, within 180 days of the signing of Executive Order 13502, on whether broader use of project labor agreements with respect to both construction projects undertaken under federal contracts and construction projects receiving federal financial assistance would help to promote the economical, efficient, and timely completion of such projects. HUD is therefore deferring any rulemaking to implement Executive Order 13502 in HUD-assisted construction contracts, pending OMB's recommendations on this issue.

III. Justification for Final Rulemaking

Generally, HUD publishes a rule for public comment before publishing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, allows in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest." In this case, HUD has determined that prior public comment is unnecessary. Because this final rule removes a rule for which the legal basis has been revoked, HUD is left with no discretion on which public comment could be considered on the subject of removal of the regulation.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically

significant regulatory action, as provided under section 3(f)(1) of the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

■ Accordingly, for the reasons described in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d).

§ 5.108 [Removed]

■ 2. Remove § 5.108.

Dated: August 24, 2009.

Shaun Donovan,

Secretary.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, and 908

[Docket No. FR-4998-F-05]

RIN 2501-AD16

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Delay of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; delay of effective date.

SUMMARY: HUD is delaying the effective date of the rule entitled "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs" published in the **Federal Register** on January 27, 2009. The January 27, 2009, final rule, which was scheduled to become effective on September 30, 2009, will become effective on January 31, 2010. Today's action will provide the Department with the necessary additional time to review the subject matter of the January 27, 2009, final rule and to consider the public comments on HUD's February 11, 2009, **Federal Register** notice that