

agreement with individual contractors and subcontractors.

This applies equally to large and small entities that seek federally funded construction contracts and does not establish requirements applicable to entities based on their size. Further, HUD neither requires nor prohibits the use of project labor agreements on HUD-funded construction projects. Although some HUD-funded construction projects are subject to project labor agreements, in many instances this is due to the voluntary decision of individual contractors and subcontractors. Therefore, the interim rule will not significantly revise existing practices or hiring costs for small contractors and subcontractors participating in HUD's construction programs. To the extent the rule has an impact on small entities, it should be a positive economic impact on those small entities that are not union shops, because the rule may provide additional opportunities to work on federally funded construction projects by non-union small businesses.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

#### *Unfunded Mandates Reform Act*

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

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### **List of Subjects in 24 CFR Part 5**

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

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

#### **PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

■ 2. Add § 5.108 to read as follows:

##### **§ 5.108 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects.**

(a) *Purpose.* This section implements Executive Order 13202 (issued on February 17, 2001), as amended by Executive Order 13208 (issued on April 6, 2001), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."

(b) *Definitions.* For purposes of this section:

*Construction contract* means a contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, including any subcontracts awarded pursuant to such a contract.

*Financial assistance* includes:

(i) Grants, loans, and advances of federal funds; or

(ii) Proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) and title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). The term "financial assistance" does not include any other contract of insurance or guaranty.

*Labor organization* has the same meaning it has in 42 U.S.C. 2000e(d).

(c) *Neutrality towards government contractors' labor relations.* To the extent permitted by law, the bid specifications, project agreements, or other controlling documents for a construction contract awarded on or after June 23, 2003, by a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD, for a construction project (or a construction manager acting on their behalf) shall not:

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

(d) *Exemptions—(1) Exemptions due to special circumstances.* HUD may exempt a particular construction project, construction contract, subcontract, grant, or cooperative agreement from any requirement of this section, if HUD determines that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security. HUD will not base a finding of "special circumstances" on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are non-signatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the construction project who are not members of, or affiliated with, a labor organization.

(2) *Exemption of construction projects subject to project labor agreements entered into as of June 23, 2003.* HUD may exempt a particular construction project from any requirement of this section upon written request from the HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a