

listed below. Compliance with the tolerance levels specified below is to be determined by measuring only isopyrazam, 3-difluoromethyl-1-methyl-1H-pyrazole-4-carboxylic acid (9-isopropyl-1,2,3,4-tetrahydro-1,4-methano-naphthalen-5-yl)-amide, in or on the following commodity.

Commodity	Parts per million
Banana <sup>1</sup> .....	0.05

<sup>1</sup> There is no U.S. registration for use of isopyrazam on banana.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2011-25707 Filed 10-4-11; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Parts 18 and 19

RIN 2105-AD60

#### Grants and Cooperative Agreements to State and Local Governments: DOT Amendments on Regulations on Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

**AGENCY:** Department of Transportation (DOT), Office of the Secretary (OST).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (DOT) is adopting a public proposal on Grants and Cooperative Agreements to State and Local Governments; Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations. The rule amends Department of Transportation regulations on uniform administrative requirements for grants and agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations. Specifically, the DOT is making requirements for these grants and agreements consistent with the uniform administrative requirements for grants and cooperative agreements to State and Local Governments. In addition, this rule updates references to applicable cost principles for grants and cooperative agreements with State and Local Governments that appear in

current Department of Transportation regulations.

**DATES:** This rule is effective November 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ellen Shields, Office of the Senior Procurement Executive, Office of Administration (M-61), (202) 366-4268, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

#### Background

Regulations governing two types of U.S. Department of Transportation grant and cooperative agreements recipients are found in Parts 18 and 19 of Title 49 of the Code of Federal Regulations:

1. *49 CFR part 18:* Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

2. *49 CFR part 19:* Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

Both of these parts contain a provision that governs allowable costs. However, 49 CFR 18.22 imposes specific limitations on the use of grant funds while 49 CFR 19.27 merely lists cost principles applicable to each kind of grant and agreement recipient. Specifically, under 49 CFR 18.22(a), grant funds may only be used for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

Public comments on this matter were solicited in a **Federal Register** notice dated May 2, 2008. Only one comment was received, from Robert Taylor, regarding the Office of Management and Budget (OMB) cost principle circulars as well as revisions prohibiting the payment of profit or fee to grantees and subgrantee covered by 49 CFR part 19. This comment did not pertain to the content of the proposed rule. Therefore, we are adopting the proposed rule without change.

This rule imposes the same limitation on the use of funds used for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations as there are on the use of funds used for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

In addition, this rule updates references to applicable cost principles for grants and cooperative agreements with State and Local Governments that appear in 49 CFR 18.22(b) and include comparable updates references in 49 CFR 19.27(b). These updated references are necessary in light of the establishment of title 2 of the Code of Federal Regulations in 2004. Subtitle A of title 2 of the Code of Federal Regulations consists of government-wide guidance from the Office of Management and Budget (OMB) to Federal agencies for grants and other financial assistance and nonprocurement agreements that previously had been contained in seven separate OMB circulars and other OMB policy documents. Currently, 49 CFR 18.22(b) references three specific OMB circulars that are now codified in several Parts in chapter II, subtitle A of title 2 of the Code of Federal Regulations. This rule amends 49 CFR 18.22(b) by replacing the citations to these former OMB circulars with the appropriate references in title 2 of the Code of Federal Regulations and would reflect these same changes in 49 CFR 19.27(b).

The rule also makes minor referencing revisions to the Office of Management and Budget (OMB) cost principle circulars and, consistent with OMB materials, revises prohibitions on payment of profit or fee to grantees and subgrantees covered by 49 CFR part 19. The revised referencing is needed as the OMB cost circulars have been published in Title II of the Code of Federal Regulations since August 2005. However, these OMB circulars are only published as guidance (see 2 CFR 1.105(a)). Also, the OMB circular number has been retained in the title of each circular, for example, 2 CFR part 225, Cost Principles for State and Local Governments (OMB Circular A-87).

The title for the CFR part 19, which includes the OMB Circular number in the title, is included in the reference for all three cost principles. In addition, this makes the formatting of all titles in 49 CFR sections 18.22 and 18.27 consistent.

#### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The DOT has determined that this document does not constitute a significant rule within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. DOT anticipates that the

economic impact of this rule will be minimal because the effect of the rule is simply to make similar provisions consistent with each other. These changes do not adversely affect, in a material way, any sector of the economy. In addition, the change does not interfere with any action taken or planned by another agency and does not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the Department has evaluated the effects of this proposed action on small entities. This rule does not have any economic effects, let alone significant effects, on anyone. This rulemaking establishes the same limitation on the use of funds for both Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The amendment does not change or limit the potential eligibility of any small entity. For these reasons, the DOT certifies that this action would not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48).

Indeed, it does not impose any mandates. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532).

*Executive Order 13132 (Federalism Assessment)*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the DOT has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The DOT has also determined that this rule does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/ do not apply] to this program.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this rule does not

contain collection of information requirements for the purposes of the PRA.

*National Environmental Policy Act*

The agency has analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this rule does not have any effect on the quality of the environment.

**List of Subjects in 49 CFR Parts 18 and 29**

Administrative practice and procedure, Grant programs, Allowable costs, Cooperative agreements.

Issued this 21st day of September 2011, at Washington, DC.

**Ray LaHood,**  
*Secretary of Transportation.*

In consideration of the foregoing, the DOT amends, title 49, Code of Federal Regulations, Parts 18 and 19, as set forth below:

**PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

- 1. The authority citation for 49 CFR part 18 continues to read as follows.

**Authority:** 49 U.S.C. 322(a).

- 2. In § 18.22, revise the table in paragraph (b) to read as follows:

**§ 18.22 Allowable costs.**  
\* \* \* \* \*  
(b) \* \* \*

For the costs of a	Use the principles in—
State, local or federal-recognized Indian tribal government .....	2 CFR part 225.
Private nonprofit organization other than an (1) Institution of higher education, (2) hospital, or (3) organization named in 2 CFR part 230, Appendix C, as not subject to that part.	2 CFR part 230.
Institutions of Higher Education .....	2 CFR part 220.
For-profit organizations other than a hospital, commercial organization or a non-profit organization listed in 2 CFR part 230, Appendix C, as not subject to that part.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

**PART 19—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

- 3. The authority citation for 49 CFR part 19 continues to read as follows:

**Authority:** 49 U.S.C. 322(a).

- 4. Revise § 19.27 to read as follows:

**§ 19.27 Allowable Costs.**

(a) *Limitation on use of funds.* Grant funds may be used only for:

- (1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
- (2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined according to the cost principles applicable to the entity organization incurring the costs. The following chart lists the kinds of organization and the applicable cost principles:

For the costs of a	Use the principles in—
State, local or federal-recognized Indian tribal government .....	2 CFR part 225.
Private nonprofit organization other than an (1) Institution of higher education, (2) hospital, or (3) organization named in 2 CFR part 230, Appendix C, as not subject to that circular.	2 CFR part 230.
Institutions of Higher Education .....	2 CFR part 220.
Hospitals .....	45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals."
For-profit organizations other than a hospital, commercial organization or a non-profit organization listed in 2 CFR part 230, Appendix C, as not subject to that part.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

[FR Doc. 2011-25416 Filed 10-4-11; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R1-ES-2008-0079; 92210-1117-0000-FY08-B4]

RIN 1018-AW84

#### Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Marbled Murrelet

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are revising designated critical habitat for marbled murrelet (*Brachyramphus marmoratus marmoratus*) pursuant to the Endangered Species Act of 1973, as amended (Act). On May 24, 1996, we designated 3,887,800 ac (ac) (1,573,340 hectares (ha)) as critical habitat for the marbled murrelet in Washington, Oregon, and California. We are revising the designated critical habitat for the marbled murrelet by removing approximately 189,671 ac (76,757 ha) in northern California and southern Oregon from the 1996 designation, based on new information indicating that these areas do not meet the definition of critical habitat. The areas being removed from the 1996 designation in northern California are within Inland Zone 2, where we have no historical or current survey records documenting marbled murrelet presence. Intensive surveys in southern Oregon indicate the inland distribution of the marbled murrelet is strongly associated with the hemlock/tanoak habitat zone, rather than distance from the coast. Accordingly, the areas being removed in southern Oregon are limited to those areas not associated with the hemlock/tanoak zone. The areas being

removed are not considered essential for the conservation of the species.

Approximately 3,698,100 ac (1,497,000 ha) of critical habitat is now designated for the marbled murrelet. In this rule, we are also finalizing the taxonomic revision of the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus*.

**DATES:** This rule becomes effective on November 4, 2011.

**ADDRESSES:** The final rule and map of critical habitat will be available on the Internet at <http://www.regulations.gov> and <http://www.fws.gov/wafwo/>. Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available at <http://www.regulations.gov> or for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503-1273, telephone 360-753-9440, facsimile 360-753-9008.

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, at the above address, (telephone 360-753-9440, facsimile 360-753-9008); Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, telephone 503-231-6179, facsimile 503-231-6195; or Nancy Finley, Field Supervisor, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, telephone 707-822-7201, facsimile 707-822-8411. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

A final rule designating critical habitat for the marbled murrelet was published in the **Federal Register** on May 24, 1996 (61 FR 26256), and is available under the "Supporting

Documents" section for this docket in the Federal eRulemaking Portal: <http://www.regulations.gov> at Docket Number FWS-R1-ES-2008-0079. It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat for the marbled murrelet in this final rule.

##### *Species Description, Life History, Distribution, Ecology, and Habitat*

The marbled murrelet is a small seabird of the Alcidae family. The marbled murrelet's breeding range extends from Bristol Bay, Alaska, south to the Aleutian Archipelago; northeast to Cook Inlet, Kodiak Island, Kenai Peninsula, and Prince William Sound; south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon; to northern Monterey Bay in central California. Birds winter throughout the breeding range and occur in small numbers off southern California. Marbled murrelets spend most of their lives in the marine environment where they forage in near-shore areas and consume a diversity of prey species, including small fish and invertebrates. In their terrestrial environment, the presence of platforms (large branches or deformities) used for nesting in trees is the most important characteristic of their nesting habitat. Marbled murrelet habitat use during the breeding season is positively associated with the presence and abundance of mature and old-growth forests, large core areas of old-growth, low amounts of edge habitat, reduced habitat fragmentation, proximity to the marine environment, and forests that are increasing in stand age and height.

##### *Taxonomy*

Two subspecies of the marbled murrelet were previously recognized, the North American murrelet (*Brachyramphus marmoratus marmoratus*) and the Asiatic murrelet (*B. marmoratus perdux*). New published information suggests that the Asiatic murrelet is a distinct species (Friesen *et*