

**Authority:** 5 U.S.C. 301, 303, 7301; 5 U.S.C. App. (Ethics in Government Act); 5 U.S.C. App. (Inspector General Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105; 18 U.S.C. 207, 208.

■ 2. The heading to Part 1010 is revised as set forth above.

■ 3. Sections 1010.101 through 1010.104 are designated as Subpart A and the heading is added to read as set forth below:

#### Subpart A—Conduct of Employees

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##### § 1010.101 [Amended]

■ 4. Section 1010.101 is amended by removing the word “part,” and adding the word “subpart” in its place.

■ 5. A new Subpart B is added to Part 1010 to read as follows:

#### Subpart B—Procedures for Exemption of Scientific and Technological Information Communications From Post-Employment Restrictions

Sec.

1010.201 Purpose and scope.

1010.202 Definitions.

1010.203 Procedures for review and approval of requests.

##### § 1010.201 Purpose and scope.

(a) This subpart sets forth criteria for the types of communications on scientific or technological matters permitted under 18 U.S.C. 207(j)(5) by defining the term “scientific or technological information.” This subpart also establishes the procedures for receiving and approving requests from former employees of the executive branch to make such communications to DOE.

(b) This subpart applies to any former employee of the executive branch subject to the post-employment conflict of interest restrictions in 18 U.S.C. 207(a), (c), and (d), who wishes to communicate with DOE under the exemption in 18 U.S.C. 207(j)(5) for the purpose of furnishing scientific or technological information to DOE offices or officials.

(c) This subpart does not apply to a former DOE employee’s testimony as an expert in an adversarial proceeding in which the United States is a party or has a direct and substantial interest.

##### § 1010.202 Definitions.

For purposes of this subpart:

(a) *Agency designee* means an individual serving in a position in DOE requiring appointment by the President of the United States with the advice and consent of the Senate.

(b) *Authorized communication* means any transmission of scientific or technological information to any DOE office or official that is approved by DOE under § 1010.203 of this subpart.

(c) *DOE* means the U.S. Department of Energy.

(d) *Scientific or technological information* means: Information of a scientific or technological character, such as technical or engineering information relating to the natural sciences. The exception does not extend to information associated with a nontechnical discipline such as law, economics, or political science.

(e) *Incidental references or remarks.* Provided the former employee’s communication primarily conveys information of a scientific or technological character, the entirety of the communication will be deemed made solely for the purpose of furnishing such information notwithstanding an incidental reference or remark:

(1) Unrelated to the matter to which the post-employment restriction applies;

(2) Concerning feasibility, risk, cost, speed of implementation, or other considerations when necessary to appreciate the practical significance of the basic scientific or technological information provided; or

(3) Intended to facilitate the furnishing of scientific or technological information, such as those references or remarks necessary to determine the kind and form of information required or the adequacy of information already supplied.

##### § 1010.203 Procedures for review and approval of requests.

(a) Any former employee of the executive branch subject to the constraints of the post-employment restrictions of 18 U.S.C. 207(a), (c), and (d) who wishes to communicate scientific or technological information to DOE must contact the DOE office with which the former employee wishes to communicate and request authorization to make such communication. This request must be in writing and address, in detail, information regarding each of the factors set forth in paragraphs (c)(1) through (c)(6) and (c)(8) of this section.

(b) In consultation with the Designated Agency Ethics Official (DAEO), the agency designee in the office with cognizance over the matter must advise the former employee in writing whether the proposed communication is an authorized communication. This authority cannot be delegated, except to another individual serving in a position in DOE

requiring appointment by the President of the United States with the advice and consent of the Senate.

(c) In deciding whether a proposed communication is an authorized communication, the agency designee receiving the request and the DAEO must consider the following factors:

(1) Whether the former employee has relevant scientific or technical qualifications;

(2) Whether the former employee has qualifications that are otherwise unavailable to both the former employee’s current employer and DOE;

(3) The nature of the scientific or technological information to be conveyed;

(4) The former employee’s position prior to termination;

(5) The extent of the former employee’s involvement in the matter at issue during his or her employment, including:

(i) The former employee’s involvement in the same particular matter involving specific parties;

(ii) The time elapsed since the former employee’s participation in such matter; and

(iii) The offices within the Federal department or agency involved in the matter both during the former employee’s period of employment in the executive branch and at the time the request is being made;

(6) The existence of pending or anticipated matters before the Federal government from which the former employee or his or her current employer may financially benefit, including contract modifications, grant applications, and proposals; and

(7) Whether DOE’s interests would be served by allowing the proposed communication; and

(8) Any other relevant information.

[FR Doc. 2010–30398 Filed 12–2–10; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

#### 12 CFR Part 1807

RIN 1559–AA00

#### Capital Magnet Fund

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Interim rule with request for public comment.

**SUMMARY:** The Department of the Treasury is issuing this interim rule

implementing the Capital Magnet Fund (CMF), administered by the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury. The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The CMF was established through the Housing and Economic Recovery Act of 2008, which added section 1339 to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

**DATES:** Interim rule effective December 3, 2010. Comment due date: Comments on this interim rule must be received in the offices of the CDFI Fund on or before February 1, 2011.

**ADDRESSES:** All comments concerning this interim rule should be addressed to the Capital Magnet Fund Manager, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; by e-mail to [cdjihelp@cdfi.treas.gov](mailto:cdjihelp@cdfi.treas.gov); or by facsimile at (202) 622-7754. Comments will be made available for public review on the CDFI Fund's Web site at <http://www.cdfifund.gov>.

Comments may be also be submitted and viewed through the Federal e-Rulemaking Portal, <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey C. Berg, Legal Counsel, Community Development Financial Institutions Fund, at (202) 622-8662 (This is not a toll free number). Information regarding the CDFI Fund and the CMF may be downloaded from the CDFI Fund's Web site at <http://www.cdfifund.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 (the Act), Public Law 110-289, section 1131, as a trust fund whose appropriation will be used to carry out a competitive grant program administered by the CDFI Fund. Through the CMF, the CDFI Fund is authorized to make financial assistance grants to certified Community Development Financial Institutions (CDFIs) and Nonprofit Organizations (if one of their principal purposes is the Development or management of Affordable Housing). CMF grants must be used to attract financing for and increase investment in: (i) The Development, Preservation,

Rehabilitation, and Purchase of Affordable Housing for primarily Extremely Low-, Very Low-, and Low-Income Families; and (ii) Economic Development Activities or Community Service Facilities (such as day care centers, workforce development centers, and health care clinics) which In Conjunction With Affordable Housing Activities will implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area. This interim rule creates the requirements and parameters for CMF implementation and administration including, among others, application eligibility, application review, award selection, Assistance Agreements, eligible uses of award dollars and related funds, Awardee reporting, and compliance monitoring.

On March 15, 2010, the CDFI Fund published in the **Federal Register** a Notice of Proposed Rulemaking, 75 FR 12408, seeking responses to specific questions regarding CMF design, implementation, and administration. The CDFI Fund seeks public comment on this entire interim rule. All capitalized terms are defined in the definition section of the interim rule, as set forth in 12 CFR 1807.104.

##### **II. Comments on the Proposed Rule and Summary of Changes**

The interim rule contained in this document is based on the Notice of Proposed Rulemaking (the proposed rule) published on March 15, 2010. The comment period for the proposed rule ended on May 14, 2010. The CDFI Fund received a total of 5 written submissions. The submissions were from three community development financial institutions (CDFIs), an affordable housing trade association and a lender. All comments received by the end of the comment period were posted on the CDFI Fund's Web site for public view.

Below are the CDFI Fund's responses to the public comments on the proposed rule and answers to the specific five italicized questions asked in the proposed rule. The following includes a discussion of the significant issues, as well as clarifying information.

##### *A. Eligibility*

*The eligibility requirements for Applicants are set forth in 12 CFR 1807.200. The CDFI Fund asked whether an eligibility requirement that 33 percent of the Applicant's resources (measured by staff time and/or budget) be dedicated to Affordable Housing is appropriate (12 CFR 1807.200(a)(2)(iii)). If not, what is the appropriate*

*percentage of activities, and how should this be measured?*

Commentators supported the 33 percent of resources eligibility requirement. Two commentators recommended that the CDFI Fund allow consortiums to apply as a single Applicant, suggesting that a consortium consisting of smaller CDFIs could collaborate to serve a number of adjacent or related markets more effectively. One commentator suggested that permitting consortiums to apply would allow an established nonprofit organization, with a track record of success, to partner with a new entity in order to address a particular and immediate affordable housing need. Thus, the three year existence requirement should apply only to non-consortium applicants, thus allowing new entities to apply, as long as they can demonstrate they have raised sufficient money to operate for a specific amount of time and have applied for their 501(c)(3) status.

Another commentator suggested the CDFI Fund divide CMF awards into two applicant pools delineated by applicant size, similar to the practice under the CDFI Program. The commentator suggested that national organizations typically cannot serve smaller more remote markets and that two applicant pools would ensure that the CMF awards are distributed to urban, suburban and rural areas fairly. The commentator also suggested reducing the maximum award amount to ensure the distribution of awards to more areas throughout the country.

*The CDFI Fund's response:* The eligibility requirement that 33 percent of an applicant's resources must be dedicated to Affordable Housing remains as set forth in 12 CFR 1807.200(a)(2)(iii). In response to comments advocating for two CMF applicant pools, consortium applicants, and a variation on the time in existence requirement for consortium applicants, at this time the CDFI Fund will maintain the requirements as stated in the proposed rule. As the CMF is a new program, the CDFI Fund will evaluate the program implementation and impacts before making additional modifications in these areas. If in the future, the CDFI Fund determines that it is appropriate to develop more than one applicant pool, permit consortium applicants or otherwise modify the time in existence requirements, the CDFI Fund will do so in the Notice of Funding Availability (NOFA) for the applicable funding round as permitted in the interim rule.

### B. Eligible Uses

*The proposed rule in 12 CFR 1807.302 sets forth a number of restrictions on use of CMF award funds. Are there suggested restrictions that will prevent the CMF from financing predatory lending practices that should be included in this section? Is the use restriction that no more than 30 percent of an Awardee's CMF award can be used for Economic Development Activities and Community Service Facilities appropriate (12 CFR 1807.302(d))? If not, what is the appropriate percentage?*

One commentator remarked that the new industry rules emerging for mortgage finance will provide additional protections for low-income purchasers and thus, suggested that there is no need for the addition of anti-predatory lending provisions to the proposed rule.

Another commentator suggested that the CDFI Fund lower the statutorily imposed maximum award percentage that an Awardee can receive in any given funding round and also remove the 30 percent restriction on use of CMF awards for Economic Development Activities or Community Service Facilities. To allow for maximum flexibility, a commentator also suggested that no cap be placed on the amount of a CMF award that can be used for Operations. One commentator suggested that the CDFI Fund make clear that Awardees can utilize an Affordable Housing Fund at the enterprise level and be able to aggregate a CMF award with an existing fund maintained by the Awardee. The commentator also suggested that the definition of Affordable Housing Fund mirror that of the FY 2010 NOFA published on March 15, 2010, which allows the Awardee to use the fund to make grants and investments.

*The CDFI Fund's response:* The CDFI Fund considers the restrictions on eligible uses in 12 CFR 1807.302 of the Proposed Rule appropriate and therefore these restrictions are maintained in the interim rule. As there are other Federal programs and mechanisms better suited to deal with predatory lending, the interim rule will not explicitly address this issue. The six eligible uses of CMF awards are set forth in 12 CFR 1807.301. One of those eligible uses is to capitalize an Affordable Housing Fund. As suggested by Commentators, the definition of Affordable Housing Fund in 12 CFR 1807.104(e) is revised in this interim rule to include grants and investments to be consistent with the definition published in the FY 2010 CMF NOFA. Any previous

inconsistency between the Proposed Rule and the NOFA was inadvertent.

The statutory purpose of the CMF is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities and Community Service Facilities. The CDFI Fund wants to ensure that the awards are used primarily for those specific purposes. Therefore, the CDFI Fund thinks the 5 percent cap on Operations uses and the 30 percent cap on use of CMF awards for Economic Development Activities or Community Service Facilities is in line with the spirit of the authorizing statute. As this is a new program, the CDFI Fund may at a future point determine that the Operations use restriction should be modified. In such a case, the interim rule, as set forth in 12 CFR 1807.302(b), allows the CDFI Fund to establish the restrictions on Operations uses in the applicable NOFA.

Finally, an Awardee is not required to create a separate legal entity or investment vehicle in which it will undertake the eligible activities listed in 12 CFR 1807.301. However, as set forth in 12 CFR 1807.600, the Awardee must be able to account for every dollar of its CMF award and track its uses.

### C. Affordable Housing Activities, Economic Development Activities and Community Service Facilities

*This proposed rule currently defines Economic Development Activities as "the Development, Preservation, Rehabilitation, or Purchase of Community Service Facilities and/or other physical structures in which neighborhood-based businesses operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area." Is this an appropriate definition? Should it be expanded to include working capital loans to businesses? Should refinancing of existing loans be a permissible activity?*

One commentator generally agreed with the proposed rule's definition of Economic Development Activities and supported limiting the use of CMF awards for non-housing activities. However, the same commentator suggested that the CDFI Fund broaden the definition of Economic Development Activity beyond its relation to defined Affordable Housing Activities and instead have it apply to housing-related activities more generally. The same commentator also suggested changing the definitions of Development, Preservation, Rehabilitation and Purchase to align with that which is

used in the affordable housing industry, which would allow for more flexibility. This commentator suggested that these terms are used interchangeably and are not mutually exclusive. The commentator recommended adding the term "resident services" to the definition of Community Service Facility to acknowledge the presumed eligibility of physical spaces for resident services in the use of CMF awards, as well as expanding the list of the types of community services provided.

*The CDFI Fund's response:* The interim rule accepts the commentator's suggestion and revises the definition of Economic Development Activity in 12 CFR 1807.104(t) to apply to real estate development activities generally. The interim rule revises the definition of Preservation in 12 CFR 1807.104(tt) to provide for the purchase or refinance of single-family or multi-family rental mortgages or housing that was not previously subject to affordability restrictions, with the intent of subjecting the housing to the CMF affordability qualifications, as set forth in 12 CFR 1807.400 *et seq.* The definition of Purchase is also revised in 12 CFR 1807.104(vv) to clarify the authorization of mortgage financing of Single-family housing. The interim rule also adds the definition of Multi-family housing, as set forth in 12 CFR 1807.104(nn), and Family in 12 CFR 1807.104(x).

Under the interim rule, Awardees may pursue any or all of the strategies set forth in 12 CFR 1807.300(a). Thus, it is not necessary to revise the definitions of Development, Preservation, Rehabilitation and Purchase to make them interchangeable, as the commentator suggested. The interim rule, however, makes technical and clarifying corrections to those definitions, as previously described. It also revises the definition of Community Services Facility in 12 CFR 1807.104(o) to expand the types of services, as suggested by the commentator.

The interim rule also revises 12 CFR 1807.501 to require the date by which CMF awards must be Committed for use and initially disbursed, to the date designated in the Awardee's Assistance Agreement. Similarly, 12 CFR 1807.503 of the interim rule is revised to require that CMF-funded projects must be completed and placed into service by the date designated in the Awardee's Assistance Agreement. The proposed rule required CMF funds to be Committed for use within two and disbursed within three years of the effective date of the Assistance Agreement. The CDFI Fund anticipates that the Assistance Agreement will still

provide an Awardee at least two years to commit for use and three years to initially disburse its CMF award, and five years to complete CMF-funded projects. The interim rule incorporates these changes to provide the Awardee flexibility, should additional time be needed to complete environmental reviews and to accommodate unique circumstances.

*Should physical proximity be necessary to meet the requirement that Economic Development Activities or Community Service Facilities financed In Conjunction with Affordable Housing Activities implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area? If physical proximity is necessary, what is the best measure of being "physically proximate" with respect to projects undertaken in urban areas, and with respect to projects undertaken in rural areas?*

One commentator remarked that census tract boundaries are sometimes inconsistent with neighborhood boundaries, which would limit the usefulness of census tracts as proxies for physical proximity. This commentator suggested that "physically proximate" should allow for strategies that provide access to the services through readily available transit options within the Awardee's Service Area. Another commentator suggested that "or located within 20 miles" be added to the definition of In Conjunction With to deal with situations in which a property is located near a county line but may rely on services that are just a few miles away.

*The CDFI Fund's response:* Geographical proximity is the best measure of being "physically proximate." However, the CDFI Fund recognizes that census tract boundaries can be limiting in certain instances. Therefore, the interim rule revises the definition of In Conjunction With in 12 CFR 1807.104(cc) to include a 2 mile radius for a Metropolitan Area and a 20 mile radius for a Non-Metropolitan Area.

#### D. Affordability Qualifications

*Is the Affordable Housing qualification that requires a minimum of 20 percent of units in multi-family rental housing projects financed with a CMF award be occupied by Low-Income, Very Low-Income, or Extremely Low-Income Families appropriate (12 CFR 1807.401)? If not, what is the appropriate percentage?*

One commentator agreed with the proposed rule's level of targeting.

*The CDFI Fund's response:* The percentage threshold in 12 CFR 1807.401 remains unchanged.

*As set forth in 12 CFR 1807.400 et seq., Affordable Housing is subject to a 10-year affordability requirement that begins at Project Completion. Is this 10-year affordability requirement appropriate? How should this be measured with respect to funds that are deployed, returned to the Awardee, and reinvested during the life of the Assistance Agreement (e.g., in the case of CMF awards that are used to establish a revolving loan fund)?*

Two commentators expressed significant concern with the 10-year affordability requirement for homeownership. One commentator remarked that the 10-year provision would impose an onerous administrative burden on nonprofit program sponsors, as well as the homeowner, and suggested that the affordability qualification only be measured at purchase. That same commentator also opposed specific underwriting criteria as the affordability criteria. A second commentator opposed the 10-year affordability requirement because it would impose an affordability covenant and deter otherwise qualified homeowners. It would create a situation where the homeowner would have to suppress the sale price if he or she had to sell before the 10-year period ended. Thus, the provision serves as a barrier to homeownership, cited the commentator. The commentator provided an alternative to the 10-year affordability requirement: To remove the 10-year affordability covenant for each individual loan and instead require Awardees to redeploy the CMF dollars, upon resale, to new borrowers that meet the affordability requirements. Another commentator suggested that the proposed rule adopt the affordability qualifications of all Federal and state affordable housing programs.

One commentator suggested that the front-end and back-end ratios for homeownership affordability qualification are too inflexible. The commentator suggested deleting the ratios and provide for the ability to negotiate specific terms with an Awardee should the CDFI Fund discover abusive lending.

*The CDFI Fund's response:* The CDFI Fund recognizes the limitation of an affordability covenant on homeownership. However, the CDFI Fund also recognizes the challenges from a compliance standpoint in accepting the many definitions of "affordable housing" across all Federal and state programs. In an effort to

balance the two interests, the interim rule removes the required affordability covenant on homeownership and allows Awardees to create their own mechanism of recouping and redeploying the CMF award in cases where the original homeowner sells the property to a buyer that does not meet the affordability qualifications. Under those circumstances, the Awardee must ensure that the portion of the CMF award spent or designated to finance the Affordable Housing Activity is recouped from the homeowner or the Awardee's other resources, and redeployed in an eligible use for a qualified family for the remaining affordability period. The interim rule thus places the affordability restriction on the dollar amount of the CMF award used for the eligible activity, instead of the housing itself. The interim rule sets forth the parameters of resale, recoupment and redeployment in 12 CFR 1807.402(a)(5).

Likewise, the CDFI Fund wants to allow for increases in tenant incomes while also increasing affordable housing opportunities. Therefore, in 12 CFR 1807.401(g)(3), the interim rule provides that in the event a tenant's income increases, the Awardee may replace that unit with another qualifying unit for purposes of meeting the 10-year affordability requirement. This provision encourages increases in wealth by low-income families, yet allows Awardees to fulfill the purpose of the CMF without encountering noncompliance.

With regard to the homeownership front-end and back-end ratios, the interim rule removes those as affordability standards and simply uses the "no greater than 95 percent of median purchase price" as the qualification.

The interim rule also adds the new defined term, "Eligible-Income" in 12 CFR 1807.104(u), to describe families whose annual income does not exceed 120 percent of the area median income, as determined by HUD.

#### E. Record Retention

*The proposed rule sets forth record data collection and record retention requirements in 12 CFR 1807.902. What documentation should Awardees be required to retain to demonstrate compliance with (i) the affordability qualification requirements in 12 CFR 1807.400 et seq. and (ii) the leveraging, commitment and Project Completion requirements in 12 CFR 1807.500 et seq.?*

No commentators offered specific recommendations regarding the documentation Awardees should be

required to retain in order to demonstrate compliance.

*The CDFI Fund's response:* The CDFI Fund will set forth guidance and information on the documentation requirements in the Assistance Agreements and compliance guidance documents to be issued at a future date.

#### *F. Income Determination and Rent Limitations*

Although the CDFI Fund did not ask a specific question about the income determination and rent limitation provisions in the proposed rule, comments were submitted regarding these issues. One commentator remarked that the rent-setting mechanisms and income definitions are unnecessarily complex and should defer to the Department of Housing and Urban Development (HUD) program, the U.S. Department of Agriculture (USDA) program and the Low Income Housing Tax Credit (LIHTC) Program, authorized under the Tax Reform Act of 1986, I.R.C. section 42, rules for rent-setting and income determinations. The commentator also suggested that the rent limitation of no more than 30 percent of a family's annual income is too restrictive, especially if the housing provider does not have access to rental assistance subsidies. In addition, the developer must be able to demonstrate predictable rental proceeds for the property, which would be speculative under the proposed rule, remarked the commentator. As an alternative, the commentator suggested that in projects where CMF funds will represent 10 percent or less of the total capital, the proposed rule should defer to the income targeting and rent-setting requirements of other Federal programs, thus allowing rents to increase but not decrease below a floor, based on the initial rents.

Another commentator suggested in lieu of the "30 percent of the family's annual income" rent limitation is to adopt the LIHTC standard in which rents are restricted based on levels that are affordable to a family making 60 percent of area median income or less.

*The CDFI Fund's response:* The proposed rule largely mirrors the income determination rules and rent limits of the HOME Investment Partnership Program (HOME Program), authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*, administered by HUD. Thus, in 12 CFR 1807.401(a), the interim rule adopts the commentator's suggestion of using the HOME Program rent limitations and sets the rent limitations as 30 percent of the income threshold of Eligible-

Income, Low-Income, Very Low-Income and Extremely-Low Income Families. Similar to the HOME Program, 12 CFR 1807.401(2)(iii) is added to the interim rule to allow an Awardee to determine a tenant's income by using HUD's definition of "annual income" in its Section 8 program, as set forth in the United States Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*

#### *G. Rural Definitions*

The CDFI Fund received comments on the definition of Underserved Rural Area. One commentator suggested that the proposed rule revise the definition of Underserved Rural Area to include rural areas that are eligible for USDA housing. The commentator remarked that defining only Non-Metropolitan Areas as "rural" areas excludes many underserved rural areas from consideration. In addition, the commentator advocated that the CDFI Fund use USDA's definition of "housing stress" as one criteria of economic distress.

*The CDFI Fund's response:* The CDFI Fund has opted to use Non-Metropolitan areas as a proxy for rural areas because it is an objective classification that wholly comprises areas that would be deemed "rural" under most, if not all other definitions of the word "rural."

With regard to the use of "housing stress" as an additional criteria of economic distress, the interim rule in 12 CFR 1807.800(c)(5) provides for the addition of any criteria the CDFI Fund deems appropriate. Should the CDFI Fund decide to include additional criteria of economic distress, it will do so in the applicable NOFA.

### **III. Rulemaking Analysis**

#### *Executive Order (E.O.) 12866*

It has been determined that this interim rule is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact assessment is not required.

#### *Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. 553), the Regulatory Flexibility Act does not apply.

#### *Paperwork Reduction Act*

The collection of information contained in this interim rule has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559-0036. An agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change. Comments concerning suggestions for reducing the burden of collections of information should be directed to the Capital Magnet Fund Manager, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

#### *National Environmental Policy Act*

This interim rule has been reviewed in accordance with 12 CFR part 1815. The CDFI Fund's Environmental Regulations under the National Environmental Protection Act of 1969 (NEPA) require that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the NEPA and the CDFI Fund Environmental Quality Regulations, 12 CFR part 1815, neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### *Administrative Procedure Act*

Because this interim rule relates to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act, 5 U.S.C. 553(a)(2).

#### *Catalogue of Federal Domestic Assistance Number*

Capital Magnet Fund—21.011.

#### **List of Subjects in 12 CFR Part 1807**

Community development, Grant programs—housing and community development, Reporting and record keeping requirements.

■ For the reasons set forth in the preamble, 12 CFR chapter XVIII is amended by adding part 1807 to read as follows:

### **PART 1807—CAPITAL MAGNET FUND**

#### **Subpart A—General Provisions**

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**Subpart B—Eligibility**

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**Subpart C—Use of Funds/Eligible Activities**

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1807.400 Affordable Housing—General.  
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**Subpart E—Leveraging and Commitment Requirement.**

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**Subpart G—Applications for Assistance**

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1807.801 Evaluation of Applications.

**Subpart I—Terms and Conditions of Assistance**

1807.900 Assistance Agreement.  
1807.901 Disbursement of funds.  
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1807.903 Compliance with government requirements.  
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1807.905 Criminal provisions.  
1807.906 CDFI Fund deemed not to control.  
1807.907 Limitation on liability.  
1807.908 Fraud, waste and abuse.

**Authority:** Housing and Economic Recovery Act of 2008, Pub. L. No. 110–289, section 1131

**Subpart A—General Provisions****§ 1807.100 Purpose.**

The purpose of the Capital Magnet Fund (CMF) is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities and Community Service Facilities.

**§ 1807.101 Summary.**

(a) Through the CMF, the CDFI Fund will competitively award grants to CDFIs and qualified Nonprofit Organizations to leverage dollars for:

- (1) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing primarily for Low-Income Families; and
- (2) Financing Economic Development Activities or Community Service Facilities.

(b) The CDFI Fund will select Awardees to receive financial assistance grants through a merit-based, competitive application process. Financial assistance grants that are awarded through the CMF may only be used for eligible uses set forth in subpart C of this part. Each Awardee will enter into an Assistance Agreement which will require it to leverage the CMF grant amount and abide by other terms and conditions pertinent to any assistance received under this part.

**§ 1807.102 Relationship to other CDFI Fund programs.**

A Certified CDFI will automatically be deemed to meet the eligible entity requirements, provided that it has been in business as an operating entity for a period of at least three years prior to the application deadline.

**§ 1807.103 Awardee not instrumentality.**

No Awardee shall be deemed to be an agency, department, or instrumentality of the United States.

**§ 1807.104 Definitions.**

For the purpose of this part:

- (a) *Act* means the Housing and Economic Recovery Act of 2008, as amended, Public Law 110–289, section 1131;
- (b) *Affiliate* means any entity that Controls, is Controlled by, or is under common Control with, an entity;
- (c) *Affordable Housing* means rental or for-sale single-family or multi-family housing that meets the requirements set forth in subpart D of this part;
- (d) *Affordable Housing Activities* means the Development, Preservation, Rehabilitation, or Purchase of Affordable Housing;
- (e) *Affordable Housing Fund* means a loan, grant or investment fund, managed by the Awardee, whose capital is used to finance Affordable Housing Activities;
- (f) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;
- (g) *Applicant* means any entity submitting an application for assistance under this part;
- (h) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;
- (i) *Assistance Agreement* means a formal, written agreement between the CDFI Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(j) *Awardee* means an Applicant selected by the CDFI Fund to receive assistance pursuant to this part;

(k) *Capital Magnet Fund (or CMF)* means the program authorized by section 1131 of the Act, Public Law 110–289, and implemented under this part;

(l) *Certified Community Development Financial Institution (or Certified CDFI)* means an entity that has been determined by the CDFI Fund to meet the eligibility requirements set forth in 12 CFR 1805.201;

(m) *Committed* means that the Awardee is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment for use pursuant to § 1807.501;

(n) *Community Development Financial Institutions Fund (or CDFI Fund)* means the Community Development Financial Institutions Fund, an office of the U.S. Department of Treasury, established under the Community Development Banking and Financial Institutions Act of 1994, as amended, 12 U.S.C. 4701 *et seq.*;

(o) *Community Service Facility* means the physical structure in which service programs for residents or service programs for the broader community (including, but not limited to, health care, childcare, educational programs including literacy and after school programs, job training, food and nutrition services, cultural, and/or social services) operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

(p) *Concerted Strategy* means a formal planning document that evidences the connection between Affordable Housing Activities and Economic Development Activities or Community Service Facilities. Such documents include, but are not limited to, a comprehensive, consolidated, or redevelopment plan, or some other local or regional planning document adopted or approved by the jurisdiction;

(q) *Control* means:

- (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;
- (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or
- (3) The power to exercise, directly or indirectly, a controlling influence over

the management, credit or investment decisions, or policies of any company;

(r) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(w)(1);

(s) *Development* means land acquisition, demolition of existing facilities, and construction of new facilities, which may include site improvement, utilities development and rehabilitation of utilities, necessary infrastructure, utility services, conversion, and other related activities;

(t) *Economic Development Activity* means the development, preservation, rehabilitation, or purchase of Community Service Facilities and/or other physical structures in which neighborhood-based businesses operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area;

(u) *Eligible-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 120 percent of the area median income; and

(2) In the case of rental housing units, income not in excess of 120 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(v) *Eligible Project Costs* means Leverage Costs plus those costs funded directly by a CMF award, exclusive of Operations;

(w) *Extremely Low-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 30 percent of the area median income; and

(2) In the case of rental housing units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(x) *Families* means households that reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands) and that meet the criteria set forth in § 1807.104(u), (w), (jj) or (fff);

(y) *HOME Program* means the HOME Investment Partnership Program set forth in the HOME Investment Partnerships Act under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*;

(z) *Homeownership* means ownership in fee simple title or a 99-year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership (which shall include cooperative housing and mutual housing project). For purposes of housing located on trust or restricted Indian lands, homeownership includes leases of 50 years. The ownership interest may be subject only to the following:

(1) Restrictions on resale permitted under the Assistance Agreement;

(2) Mortgages, deeds of trust, or other liens or instruments securing debt on the property; or

(3) Any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest;

(aa) *Housing* means single- and multi-family residential units, including, but not limited to, manufactured housing and manufactured housing lots, permanent housing for disabled and/or homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO), as described in 24 CFR 92.258;

(bb) *HUD* means the Department of Housing and Urban Development established under the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3532–3537;

(cc) *In Conjunction With* means physically proximate to Affordable Housing and reasonably available to residents of Affordable Housing. For a Metropolitan Area, In Conjunction With means located within the same census tract or within 2 miles of the Affordable Housing. For a Non-Metropolitan Area, In Conjunction With means located within the same county, township, or village, or within 20 miles of the Affordable Housing;

(dd) *Insured CDFI* means a Certified CDFI that is an Insured Depository Institution or an Insured Credit Union;

(ee) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund by the National Credit Union Administration pursuant to authority granted in 12 U.S.C. 1783 *et seq.*;

(ff) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation as determined in 12 U.S.C. 1813(c)(2);

(gg) *Leveraged Costs* means those costs as described in 12 CFR 1807.500;

(hh) *Loan Guarantee* means an agreement to indemnify the holder of a loan all or a portion of the unpaid

principal balance in case of default by the borrower;

(ii) *Loan Loss Reserves* means funds that the Applicant or Awardee will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable, or for related purposes that the CDFI Fund deems appropriate;

(jj) *Low-Income* means:

(1) In the case of owner-occupied housing units, income not in excess of 80 percent of area median income; and

(2) In the case of rental housing units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by HUD;

(kk) *Low-Income Area (LIA)* means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract or block numbering area located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide Non-Metropolitan Area median family income or the national Non-Metropolitan Area median family income, whichever is greater;

(ll) *Low Income Housing Tax Credit Program or LIHTC Program* means the program as set forth under Title I of the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*;

(mm) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(nn) *Multi-family housing* means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, apartment or townhouse;

(oo) *Non-Metropolitan Area* means an area set forth in the Assistance Agreement;

(pp) *Nonprofit Organization* means any corporation, trust, association, cooperative, or other organization that is:

(1) Designated as a nonprofit or not-for-profit entity under the laws of the organization's State of formation; and

(2) Exempt from Federal income taxation pursuant to the Internal Revenue Code of 1986;

(qq) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in 12 CFR 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(rr) *Operations* means all allowable expenses as defined by Office of Management and Budget (OMB) Circular A-122, "Cost Principles For Non-Profit Organizations," and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," incurred by the Awardee in the administration, operation, and implementation of a CMF award;

(ss) *Participating Jurisdiction* means a jurisdiction designated by HUD, as a participating jurisdiction under the HOME Program in accordance with the requirements of 24 CFR 92.105;

(tt) *Preservation* means:

(1) Activities to refinance, with or without Rehabilitation, single-family or multi-family rental property mortgages that, at the time of refinancing, are subject to affordability and use restrictions under State or Federal affordable housing programs, including but not limited to, the HOME Program, the LIHTC Program, the Section 8 Tenant-Based Assistance and the Section 8 Rental Voucher programs (24 CFR part 982), or the Section 515 Rural Rental Housing program (7 CFR part 3560), hereinafter referred to as "similar State or Federal affordable housing programs," where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(2) Activities to refinance and acquire single-family or multi-family properties that, at the time of refinancing or acquisition, were subject to affordability and use restrictions under similar State or Federal affordable housing programs, by the former tenants of such properties, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(3) Activities to refinance the mortgages of single-family, owner-occupied housing that at the time of refinancing are subject to affordability and use restrictions under similar State or Federal affordable housing programs, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(4) Activities to acquire Single-family or Multi-family housing, with or without rehabilitation, with the commitment to subject the properties to

the affordability qualifications set forth in subpart D of this part; or

(5) Activities to refinance, with or without Rehabilitation, single-family or multi-family rental property mortgages, with the commitment to subject the properties to the affordability qualifications set forth in subpart D of this part;

(uu) *Project Completion* means that all of the requirements set forth at § 1807.503 for a project supported by a CMF award have been met;

(vv) *Purchase* means to provide direct financing to a homeowner to acquire Homeownership through an exchange of money;

(ww) *Rehabilitation* means any repairs and/or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, or energy efficiency of Affordable Housing.

(xx) *Revolving Loan Fund* means a pool of funds managed by the Applicant or Awardee wherein repayments on Affordable Housing Activities loans, Economic Development Activities loans and/or Community Services Facilities loans are used to finance additional loans;

(yy) *Risk-Sharing Loan* means loans for Affordable Housing Activities and/or Economic Development Activities in which the risk of borrower default is shared by the Applicant or Awardee with other lenders (e.g., participation loans);

(zz) *Service Area* means the geographic area in which the Applicant proposes to use CMF funding, and the geographic area approved by the CDFI Fund in which the Awardee shall use CMF funding as set forth in its Assistance Agreement;

(aaa) *Single-family housing* means a one- to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot;

(bbb) *State* means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States;

(ccc) *State-Insured Credit Union* means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

(ddd) *Subsidiary* means any company which is owned or Controlled directly or indirectly by another company;

(eee) *Underserved Rural Area* means a Non-Metropolitan Area that:

(1) Qualifies as a Low-Income Area;

(2) Is experiencing housing stress evidenced by 30 percent or more of resident households with one or more of these four housing conditions in the last decennial census:

- (i) Lacked complete plumbing,
- (ii) Lacked complete kitchen,
- (iii) Paid 30 percent or more of income for owner costs or rent, or
- (iv) Had more than 1 person per room;

or

(3) Is remote-rural county consisting of a Non-Metropolitan Area that is also not adjacent to a Metropolitan Area;

(fff) *Very Low-Income* means:

(1) In the case of owner-occupied housing units, income not greater than 50 percent of the area median income; and

(2) In the case of rental housing units, income not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

#### § 1807.105 Waiver authority.

The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the **Federal Register**.

#### § 1807.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559-0036.

### Subpart B—Eligibility

#### § 1807.200 Applicant eligibility.

(a) *General requirements.* An Applicant will be deemed eligible for a CMF award if it is:

(1) A Certified or certifiable CDFI. An entity may meet the requirements described in this paragraph (a)(1) if it is:

(i) A Certified CDFI, as set forth in 12 CFR 1805.201, that has been in existence as a legally formed entity as set forth in the Notice of Funds Availability (NOFA) for the applicable funding round; or

(ii) A certifiable CDFI that has been in existence as a legally formed entity as set forth in the NOFA for the applicable round and, although not yet certified as

a CDFI, has submitted a complete CDFI certification application as of the date set forth in the applicable NOFA; or

(2) A Nonprofit Organization having as one of its principal purposes the development or management of affordable housing. An entity may meet the requirements described in this paragraph (a)(2) if it:

(i) Has been in existence as a legally formed entity as set forth in the applicable NOFA;

(ii) Demonstrates, through articles of incorporation, by-laws, or other board-approved documents, that the development or management of affordable housing are among its principal purposes; and

(iii) Can demonstrate that at least one-third of the Applicant's resources (either as a portion of total staffing or as a portion of total assets) are dedicated to the development or management of affordable housing.

(b) *Eligibility verification.* An Applicant shall demonstrate that it meets the eligibility requirements described in § 1807.200(a)(2) of this section by providing information described in the application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund. For an Applicant seeking eligibility under § 1807.200(a)(1), the CDFI Fund will verify that the Applicant is a Certified CDFI during the application eligibility review. For an Applicant seeking eligibility under § 1807.200(a)(2), the CDFI Fund, in its sole discretion, shall determine whether the Applicant has satisfied said requirements.

### Subpart C—Use of Funds/Eligible Activities

#### § 1807.300 Purposes of grants.

The CDFI Fund may provide financial assistance grants to organizations described under subpart B of this part for the purpose of attracting private capital for and increase investment in:

(a) The Development, Preservation, Rehabilitation, or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income, and Low-Income families; and

(b) Economic Development Activities or Community Services Facilities. With respect to an Economic Development Activity or Community Service Facility funded with a CMF grant, the Affordable Housing that it is In Conjunction With may be financed by sources other than the CMF grant.

#### § 1807.301 Eligible activities.

Grants awarded under this part shall be used by an Awardee to support Affordable Housing Activities,

Economic Development Activities or Community Service Facilities, including the following eligible uses:

(a) To provide Loan Loss Reserves;

(b) To capitalize a Revolving Loan Fund;

(c) To capitalize an Affordable Housing Fund;

(d) To capitalize a fund to support Economic Development Activities or Community Service Facilities;

(e) For Risk-Sharing Loans;

(f) For Loan Guarantees; and

(g) For the Awardee's Operations.

#### § 1807.302 Restrictions on use of assistance.

(a) An Awardee's activities under § 1807.301 shall not include the use of CMF for the following:

(1) Political activities;

(2) Advocacy;

(3) Lobbying, whether directly or through other parties;

(4) Counseling services (including homebuyer or financial counseling);

(5) Travel expenses;

(6) Preparing or providing advice on tax returns;

(7) Emergency shelters (including shelters for disaster victims);

(8) Nursing homes;

(9) Convalescent homes;

(10) Residential treatment facilities;

(11) Correctional facilities; or

(12) Student dormitories.

(b) An Awardee may use up to a percentage of CMF award for Operations as specified in the applicable NOFA.

(c) An Awardee shall not use CMF award to support projects that:

(1) Consist of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(2) Consist of farming (within the meaning of I.R.C. section 2032A(e)(5)(A) or (B)) if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such a trade or business, exceeds \$500,000.

(d) In any given funding round, no more than 30 percent of an Awardee's CMF award may be used for purposes described in § 1807.300(b).

### Subpart D—Qualification as Affordable Housing

#### § 1807.400 Affordable housing—general.

Each Awardee that uses CMF funding to support Affordable Housing Activities shall ensure that 100 percent of Eligible Project Costs are attributable to housing units that meet the affordability qualifications set forth below for Eligible-Income Families. In addition, greater than 50 percent of the Eligible Project Costs must be attributable to housing units that meet the affordability qualifications set forth below for either Low-Income, Very Low-Income, or Extremely Low-Income Families.

#### § 1807.401 Affordable housing—rental housing.

To qualify as Affordable Housing, a rental Multi-family housing project financed with a CMF award must have at least 20 percent of the housing units occupied by Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits set forth herein.

(a) *Rent limitation.* The maximum rent is a rent that does not exceed:

(1) For an Eligible-Income Family, 30 percent of the annual income of a family whose annual income equals 120 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(2) For a Low-Income Family, 30 percent of the annual income of a family whose annual income equals 80 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(3) For a Very Low-Income Family, 30 percent of the annual income of a family whose annual income equals 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD; or

(4) For an Extremely Low-Income Family, 30 percent of the annual income of a family whose annual income equals 30 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

(b) *Nondiscrimination against rental assistance subsidy holders.* The Awardee shall require that the owner of a rental unit cannot refuse to lease the unit to a Section 8 Program certificate or voucher holder (24 CFR Part 982, Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program

because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(c) *Initial rent schedule and utility allowances.* The Awardee shall ensure that the housing adheres to the applicable Participating Jurisdiction's maximum monthly allowances for utilities and services (excluding telephone). If the Participating Jurisdiction's allowances have not been determined or are otherwise unavailable, the Awardee shall rely upon the utility and services allowances established by the applicable city, county or State public housing authority.

(d) *Periods of Affordability.* Housing under § 1807.401 must meet the affordability requirements for not less than 10 years, beginning after Project Completion and at initial occupancy. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership and must be imposed by deed restrictions, covenants running with the land, or other recordable mechanisms, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. Other recordable mechanisms must be approved in writing and in advance by the CDFI Fund. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(e) *Subsequent rents during the affordability period.* Any increase in rent for a CMF-funded unit requires that tenants of those units be given at least 30 days prior written notice before the implementation of the rent increase.

(f) *Tenant income determination.*

(1) Each year during the period of affordability the tenant's income shall be re-examined; tenant income examination is the responsibility of the Awardee. Annual income shall include income from all household members.

(2) One of the following three definitions of "annual income" must be used to determine whether a family is income eligible:

(i) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, *etc.*;

(B) Self-employment income from owned non-farm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) Interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions;

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; and

(I) Any other sources of income the CDFI Fund may deem appropriate;

(ii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes; or

(iii) "Annual Income" as defined at 24 CFR 5.609 (except that when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of net family assets).

(3) Although any of the above three definitions of "annual income" are permitted, in order to calculate adjusted income, exclusions from income set forth at 24 CFR 5.611 shall be applied.

(4) The CDFI Fund reserves the right to deem certain government programs, under which a Low-Income family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this subsection.

(g) *Over-income tenants.* (1) CMF-funded units continue to qualify as Affordable Housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to the CDFI Fund are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(2) Tenants whose incomes no longer qualify must pay rent no greater than the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's annual income, except that tenants of units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986, I.R.C. section 42, must pay rent governed by section 42. Tenants who no longer qualify as Eligible-Income are not required to pay as rent an amount that exceeds the

market rent for comparable, unassisted units in the neighborhood.

(3) If the income of a tenant of a CMF-funded unit no longer qualifies, the Awardee may designate another unit, in the CMF-funded project, as a replacement unit that meets the affordability qualifications for Eligible-Income, Low-Income, Very Low-Income, or Extremely Low-Income Families and as set forth in the Awardee's Assistance Agreement. If there is not an available replacement unit, the Awardee must fill the first available vacancy with a tenant that meets the affordability qualifications for Eligible-Income, Low-Income, Very Low-Income, or Extremely Low-Income Families as necessary to maintain compliance with the CMF requirements and the Assistance Agreement.

#### § 1807.402 Affordable housing—homeownership.

(a) *Acquisition with or without rehabilitation.* Housing that is for Homeownership purchase must meet the affordability requirements of this subsection.

(1) The housing must be Single-family housing.

(2) The housing price does not exceed 95 percent of the median purchase price for the area as used in the HOME Program and as determined by the applicable Participating Jurisdiction.

(3) The housing must be purchased by a qualifying family as set forth in § 1807.400. The housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

(4) *Periods of Affordability.* Housing under this subsection must meet the affordability requirements for at least 10 years at the time of purchase by the homeowner.

(5) *Resale.* To ensure that CMF awards are being used for qualifying families for the entire 10-year affordability period, recoupment and redeployment or resale strategies must be imposed by the Awardee. A recoupment strategy must ensure that, in the event the qualifying homeowner sells the housing before the end of the 10-year affordability period and the new homeowner does not meet the affordability qualifications set forth in § 1807.400, the portion of the CMF award used to finance the Affordable Housing Activity is recouped and redeployed to a qualifying family for affordable housing homeownership in the manner set forth in § 1807.402, except that the housing must meet the affordability requirements only for the remaining affordability period. The Awardee may design and implement its own recoupment strategy. Deed

restrictions, covenants running with the land, or other similar mechanisms may be used as the mechanism to impose the resale strategy. The Awardee shall report to the CDFI Fund the event of resale, recoupage and redeployment of the CMF award in the manner described in the Assistance Agreement. The affordability restrictions may terminate upon occurrence of any of the following termination events: Foreclosure, transfer in lieu of foreclosure or assignment of an FHA-insured mortgage to HUD. The Awardee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(b) *Rehabilitation not involving acquisition.* Housing that is currently owned by a qualifying family, as set forth in § 1807.400, qualifies as Affordable Housing if it meets the requirements of this subsection.

(1) The estimated value of the housing, after Rehabilitation, does not exceed 95 percent of the median purchase price for the area, as used in the HOME Program and as determined by the applicable Participating Jurisdiction; or

(2) The housing is the principal residence of a qualifying family as set forth in § 1807.400, at the time that CMF funding is Committed to the housing.

(3) Housing under this subsection must meet the affordability requirements for at least 10 years after Rehabilitation is completed or meet the resale provisions of § 1807.402(a)(5).

(c) *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of "Homeownership" as defined in § 1807.104(z).

(d) *New construction without acquisition.* Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as Affordable Housing if it meets the requirements under paragraph (a) of this section.

(e) *Converting rental units to Homeownership units for existing tenants.* CMF-funded rental units may be converted to Homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of § 1807.402. The Homeownership units are subject to a

minimum period of affordability equal to the remaining affordability period.

### Subpart E—Leveraging and Commitment Requirement

#### § 1807.500 Leveraged costs—general.

(a) Each CMF grant is expected to result in Eligible Project Costs that total at least 10 times the grant amount. Such costs may be for activities that include Affordable Housing Activities, Economic Development Activities, or Community Service Facilities. Thus, an Awardee shall demonstrate that it leveraged, over its CMF funded portfolio, its CMF award at least 10 times the CMF grant amount or some other standard established by the CDFI Fund in the Awardee's Assistance Agreement. Leveraged Costs are costs that exceed the dollar amount of the Awardee's CMF contribution to each CMF-funded activity. However, the applicable NOFA may set forth a required percentage of Leveraged Costs that must be attributable to non-governmental sources. An Awardee may report to the CDFI Fund all Leveraged Costs, with the following limitations:

(1) No costs attributable to Operations may be reported as Leveraged Costs.

(2) No costs attributable to prohibited uses as identified in § 1807.302(a) and (c) may be reported as Leveraged Costs.

(3) All costs attributable to Affordable Housing Activities reported as Leveraged Costs must be for housing units that qualify as Affordable Housing under § 1807.401 or § 1807.402 for Eligible-Income Families.

(b) Awardees shall self-report leveraging information through forms or electronic systems developed by the CDFI Fund, subject to audit requirements set forth herein. Consequently, Awardees shall maintain appropriate documentation, such as audited financial statements, wire transfers documents, pro-formas, and other relevant records, to support its reports.

#### § 1807.501 Commitment for use.

(a) CMF awards shall be Committed for use by the date designated in the Awardee's Assistance Agreement. An Awardee shall demonstrate that its CMF award is Committed by having executed a written, legally binding agreement under which CMF assistance will be provided to the developer or project sponsor for an identifiable project under which:

(1) Construction can reasonably be expected to start within 12 months of the agreement date; or

(2) Property title will be transferred within six months of the agreement date.

(b) An Awardee shall make an initial disbursement of its CMF award for Affordable Housing Activities, Economic Development Activities or Community Service Facilities by the date designated in its Assistance Agreement.

#### § 1807.502 Assistance limits.

An eligible Applicant and its Subsidiaries and Affiliates may not be awarded more than 15 percent of the aggregate funds available for CMF grants during any funding year.

#### § 1807.503 Project completion.

Once a CMF-funded project has been completed, it must be placed into service by the date designated in the Awardee's Assistance Agreement. Project Completion occurs, as determined by the CDFI Fund, when:

(a) All necessary title transfer requirements and construction work have been performed;

(b) The project complies with the requirements of this part, including the following property standards (these property standards must be complied with at the time of Project Completion and maintained for a period of at least 10 years thereafter):

(1) Housing that is constructed or rehabilitated with CMF funding must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, such housing must meet, as applicable: One of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI)); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(2) The housing must meet the accessibility requirements at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

(3) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such

housing. The installation of all manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using CMF funds must meet the requirements set out in paragraph (b)(1) of this section; and

(c) The final drawdown has been disbursed for the project.

#### Subpart F—Tracking Requirements

##### § 1807.600 Tracking funds—general.

An Awardee receiving a CMF award shall develop and maintain a system to ensure that its CMF award is used in accordance with this part, the Act, its Assistance Agreement, and any requirements or conditions under which such amounts were awarded. Thus, an Awardee may create a separate account or accounting code for CMF activities.

##### § 1807.601 Nature of funds.

A CMF award shall be considered Federal financial assistance in regards to applying Federal civil rights laws.

#### Subpart G—Applications for Assistance

##### § 1807.700 Notice of funds availability.

Each Applicant shall submit an application for funding under this part in accordance with the regulations in this subpart. The applicable NOFA will advise potential Applicants on how to obtain and complete an application and will establish deadlines and other requirements. The NOFA will specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the CDFI Fund may request clarifying or technical information on the materials submitted as part of such application.

#### Subpart H—Evaluation and Selection of Applications

##### § 1807.800 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive assistance based on a review process that may include an interview(s) and/or site visit(s) intended to:

- (a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;
- (b) Ensure that each Awardee can successfully meet its leveraging goals and achieve Affordable Housing

Activity, Community Service Facility and/or Economic Development Activity impacts;

(c) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas and Underserved Rural Areas across the United States that meet criteria of economic distress, which may include:

- (1) The percentage of Low-Income Families or the extent of poverty;
  - (2) The rate of unemployment or underemployment;
  - (3) The extent of blight and disinvestment;
  - (4) Economic Development Activities or Community Service Facilities that target Extremely Low-Income, Very Low-Income, and Low-Income families within the Awardee's Service Area; or
  - (5) Any other criteria the CDFI Fund shall set forth in the applicable NOFA; and
- (d) Take into consideration other factors as described in the applicable NOFA.

##### § 1807.801 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive a CMF award if it fails to meet the eligibility requirements described in Part 1807.200 and in the applicable NOFA, or if the Applicant has not submitted complete application materials. For the purposes of this paragraph (a), the CDFI Fund reserves the right to request additional information from the Applicant, if the CDFI Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the CDFI Fund will evaluate the Applicant's likelihood of success in meeting the factors set forth in the applicable NOFA, including but not limited to:

- (1) The Applicant's ability to use CMF funding to generate additional investments;
- (2) The need for affordable housing in the Applicant's market; and
- (3) The ability of the Applicant to obligate amounts and undertake activities in a timely manner. In the case of an Applicant that has previously received assistance under any CDFI Fund program, the CDFI Fund will also consider the Applicant's level of success in meeting its performance goals, reporting requirements, and other requirements contained in the previously negotiated and executed assistance, allocation or award agreement(s) with the CDFI Fund, any undisbursed balance of assistance, and compliance with applicable Federal laws. The CDFI Fund may consider any other factors, as it deems appropriate, in

reviewing an application, as set forth in the applicable NOFA.

(c) *Consultation with appropriate regulatory agencies.* In the case of an Applicant that is a federally-regulated financial institution, the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to making a final award decision and prior to entering into an Assistance Agreement.

(d) *Awardee selection.* The CDFI Fund will select CMF Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

#### Subpart I—Terms and Conditions of Assistance

##### § 1807.900 Assistance agreement.

(a) Each Applicant that is selected to receive a CMF award must enter into an Assistance Agreement with the CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions of the Assistance Agreement which may include, but are not limited to, the following:

- (1) The amount of the award;
- (2) The approved uses of the award;
- (3) The approved Service Area in which the award may be used;
- (4) The time period by which the award proceeds must be Committed;
- (5) The required documentation to evidence Project Completion; and
- (6) Performance goals that have been established by the CDFI Fund based upon the Awardee's application.

(b) The Assistance Agreement shall provide that in the event of fraud, mismanagement, noncompliance with the Act or the CDFI Fund's regulations; or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee; the CDFI Fund, in its discretion, may:

- (1) Require changes in the performance goals set forth in the Assistance Agreement;
  - (2) Revoke approval of the Awardee's Application;
  - (3) Reduce or terminate the Awardee's assistance;
  - (4) Require repayment of any assistance that has been distributed to the Awardee;
  - (5) Bar the Awardee from reapplying for any assistance from the CDFI Fund; or
  - (6) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.
- (c) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the CDFI Fund shall, to the maximum extent practicable, provide

the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

#### § 1807.901 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or in some other manner, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any assistance under this part until an Awardee has satisfied all conditions set forth in the applicable NOFA and Assistance Agreement.

#### § 1807.902 Data collection and reporting.

(a) *Data—General.* An Awardee shall maintain such records as may be prescribed by the CDFI Fund that are necessary to:

(1) Disclose the manner in which CMF funding is used, including providing documentation to demonstrate Project Completion;

(2) Demonstrate compliance with the requirements of this part and the Assistance Agreement; and

(3) Evaluate the impact of CMF funding.

(b) *Customer profiles.* An Awardee shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the CDFI Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of the Awardee's Service Area are adequately served and to evaluate the impact of CMF funding.

(c) *Access to records.* An Awardee must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of CMF funding. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate and audit or provide for an audit at least annually. The CDFI Fund, if it deems appropriate, may prescribe access to record requirements for entities that are

borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A-110 (as applicable).

(e) *Data collection and reporting.*

(1) Financial Reporting: (i) All Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements that have been reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants by a time set forth in the applicable Notice of Funding Availability or Assistance Agreement (audited financial statements can be provided by the due date in lieu of reviewed statements, if available). Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) that are required to have their financial statements audited pursuant to OMB Circular A-133 *Audits of States, Local Governments and Non-Profit Organizations*, must also submit their A-133 audited financial statements by a time set forth in the applicable NOFA or Assistance Agreement. Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, must submit to the CDFI Fund a statement signed by the Awardee's authorized representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A-133.

(ii) For-profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public by a time set forth in the applicable NOFA or Assistance Agreement.

(iii) Insured CDFIs are not required to submit financial statements to the CDFI Fund. The CDFI Fund will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the CDFI Fund copies of the financial statements that they submit to the Appropriate State Agency.

(2) Performance Goal Reporting: Performance goals and measures that are specific to the Awardee's application for funding shall be met as set forth in its

Assistance Agreement. Awardees shall submit data and information to the CDFI Fund regarding achievement of these Performance Goals as described in the Assistance Agreement.

(f) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet ([http://www.whitehouse.gov/omb/grants\\_circulars/](http://www.whitehouse.gov/omb/grants_circulars/)); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

#### § 1807.903 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

#### § 1807.904 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

#### § 1807.905 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and insiders.

#### § 1807.906 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

#### § 1807.907 Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any assistance to an Awardee in accordance with this part shall be limited to the amount of the investment in the Awardee. The CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State.

Nothing in this section shall affect the application of any Federal tax law.

#### § 1807.908 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: November 24, 2010.

**Donna J. Gambrell,**

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010-30303 Filed 12-2-10; 8:45 am]

BILLING CODE 4810-70-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2008-0732; FRL-8854-6]

#### Metrafenone; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of metrafenone (3-bromo-6-methoxy-2-methylphenyl)(2,3,4-trimethoxy-6-methylphenyl)methanone in or on grapes. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 3, 2010. Objections and requests for hearings must be received on or before February 1, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0732. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South

Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Tawanda Maignan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8050; e-mail address: [maignan.tawanda@epa.gov](mailto:maignan.tawanda@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>. To access the harmonized test guidelines referenced in this document electronically, please go <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines."

###### C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection

or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2008-0732 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 1, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2008-0732, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

##### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 7, 2009 (74 FR 51599) (FRL-8792-7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7371) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.624 be amended by establishing tolerances for residues of the fungicide metrafenone, (3-bromo-6-methoxy-2-methylphenyl)(2,3,4-trimethoxy-6-methylphenyl)methanone, in or on table and wine grapes at 4.5 parts per million (ppm), juice grapes at 0.45 ppm, and raisin grapes at 17 ppm. That notice